

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 144 OF 1996

The State of Maharashtra
through Police Station Nanalpeth
Parbhani

...Appellant

Versus

Anant S/o Ramji @ Ramrao
Aged : 28 Years, Occu.: Driver,
R/o Palasgaon, Tq. Basmath at present
HUDCO Colony, Parbhani

...Respondent

...

Mr. S.D. Kaldate, APP for Appellant/State.
Mr. R.N. Borulkar, Advocate for sole Respondent.

WITH

CRIMINAL REVISION APPLICATION NO. 78 OF 1996

Pandurang S/o Kathalji Dhembre,
Age 57 Years, Occu.: Service,
R/o Parbhani, Tq. & Dist. Parbhani.

...Applicant
(Orig.Complainants)

Versus

- 1] The State of Maharashtra,
- 2] Anant S/o Ramji @ Ramrao
Aged : 31 Years, Occu.: Driver,
R/o Palasgaon, Tq. Basmath
at present HUDCO Colony, Parbhani

...Respondents
(R.No.2 Orig. accused)

...

Mr. G.N. Patil, Advocate for Applicant (Absent)

**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE OF RESERVING JUDGMENT : 22ND JANUARY, 2015

DATE OF PRONOUNCING JUDGEMENT : 29TH JANUARY, 2015

JUDGMENT : [PER A.M. BADAR, J]:

1] The appellant State has challenged the judgment and order dated 2.12.1995 passed by the learned Additional Sessions Judge, Parbhani, in Sessions Trial Case No. 159 of 1992, thereby acquitting the accused Anant Ramji Azade for the offence punishable under sections 498-A and 302 of IPC, whereas, the same judgment and order of acquittal is questioned by informant Pandurang Kathlaji Dhembre, by filing Criminal Revision Application No. 78 of 1996. Hence, both these matters are being decided by this common judgment.

2] According to prosecution case, respondent/accused-Anant Ramji Azade who happened to be the husband of deceased Ashabai Anant Azade had subjected her to cruelty and ultimately committed her murder by setting her ablaze after pouring kerosene on her person at his residential house at HADCO colony, Parbhani at about 3.30 p.m. on 24.10.1992. She died while taking medical treatment at Civil

Hospital, Parbhani, on 29.10.1992.

3] Facts in brief are thus :-

[a] Respondent/accused-Anant Ramji Azade married Ashabai Pandurang Dhembre in the year 1988 at Nanded. Out of this wedlock, the couple gave birth to a son and daughter. The respondent/accused-Anant Ramji Azade after marriage shifted his residence to Parbhani and started residing in a house located at HADCO Colony. He came to be engaged as Driver in Forest Department. According to prosecution soon before the incident in question, the accused had taken a woman named Sunanda Ingole with her in a jeep of Police Department to Hingoli and while on the way, they visited house of PW-5 - Mangalabai Lahu Khandare - sister of Ashabai Azade. Lateron, Ashabai came to know about this fact. This is stated to be the reason of quarrel between accused Anant and his wife Ashabai. Prosecution alleged that on the day of the incident, i.e. on 24.10.1992, in the afternoon, Ashabai was at the house of her neighbourer PW-2 Saraswatibai Kirtane. The accused came there under the influence of liquor and called her. Thereafter, the couple returned to their house. Ashabai then informed her husband that she want to go to her town for

celebrating Diwali. Her husband/accused told her that she should not go. Thereafter, accused poured kerosene on her person and asked Ashabai to set herself ablaze. It is prosecution case that in this manner, the accused incinerated his wife Ashabai causing her death. Upon hearing her shouts, their neighbourer PW-2 Saraswatibai Kirtane and other neighbourers came on the spot and saw Ashabai in burnt condition. Deceased Ashabai Anant Azade was then taken to Civil Hospital, Parbhani for medical treatment.

[b] On 24.10.1992 itself, her father Pandurang Dhembre, lodged report against the accused which has resulted in registration of Crime No. 220 of 1992 for the offence punishable under sections 498-A, and 307 of IPC against the accused. The accused came to be arrested on 25.10.1992. At Civil Hospital, Prabhani, PW-7-P. Kankayya Narsayya, Special Executive Magistrate recorded dying declaration of deceased Ashabai Anant Azade. While taking treatment Ashabai succumbed to burn injuries on 29.10.1992 and as such, the offence punishable under section 302 of IPC was added to the case diary of the crime.

[c] During the course of investigation, the investigation officer recorded statements of witnesses, visited the spot of the incident and recorded spot panchanama. He seized the burnt pieces of

clothes, broken bangles, can of kerosene with open lid, as well as match box from the spot of incident. After recording the inquest memorandum, dead body of Ashabai was sent for autopsy. On conclusion of routine investigation, the accused was charge sheeted for the offence punishable under sections 498-A and 302 of IPC, On committal of the case, the learned Additional Sessions Judge, Prabhani had framed and explained charge for the offences punishable under sections 498-A and 302 of IPC, to which the accused/respondent pleaded not guilty and claimed trial.

[d] In order to bring home the guilt of the accused, the prosecution has examined in all 9 witnesses, including informant, Panch witnesses official, who recorded the dying declaration of deceased Ashabai as well as her neighbourers who heard her oral dying declaration. After hearing the parties, by the impugned judgment and order dt. 2.12.1995, the learned Additional Sessions Judge, Parbhahi, came to the conclusion that the prosecution has failed to prove the offences alleged against respondent/accused-Anant Ramji Azade. He was, therefore, acquitted of for the offence punishable under sections 498-A and 302 of IPC.

4] We have heard the learned APP appearing for the

appellant/State. Learned APP argued that officially recorded dying declaration at Exhibit 18 is duly corroborated by oral dying declarations as well as such circumstances brought on record by the prosecution and, therefore, the impugned judgment and order of acquittal is suffering from perversity and as such liable to be quashed and set aside. None appeared for revision petitioner in Criminal Revision Application No. 78 of 1996. On behalf of the respondent/accused, it was contended that the view taken by the trial court is as per the evidence on record and evidence on record shows that prosecution has failed to establish that the accused had committed murder of deceased Ashabai Anant Azade.

5] With the assistance of learned counsel for the parties, we have carefully gone through the Record and proceedings including deposition of witnesses as well as documentary evidence. At the outset, some undisputed facts needs to be put on record. It is not in dispute that the deceased Ashabai Anant Azade was wife of respondent/accused-Anant Ramji Azade and that the couple was staying alongwith their children at HUDCO Colony, Parbhani. Undisputedly, the incident of sustaining burn injuries to deceased Ashabai Anant Azade happened on 24.10.1992 at the residential house of the couple. Death of Ashabai occurring on 29.10.1992 due to burn

injuries suffered by her is also not in dispute.

6] It is defence of the accused as reflected from his written statement Exhibit 29 that he was sitting outside the house alongwith his children at about 4:00 pm of 24.10.1992 when his wife Ashabai sustained burn injuries while cooking food. Accused has taken defence that upon hearing her shouts, he attempted to extinguish fire on her person by wrapping his wife Ashabai with bed sheet. In that process, he also sustained burns. Neighbourers gathered on the spot and Ashabai was taken to the hospital. Thus, according to the accused, deceased Ashabai Anant Azade sustained burn injuries accidentally while cooking.

7] Death of deceased Ashabai Anant Azade because of burn injuries is not a disputed fact. It is seen from the evidence on record that after her death on 29.10.1992, inquest memorandum was recorded and post mortem examination was conducted by PW-8 Baburao Satwajirao Doifode, Medical Officer, Civil Hospital, Parabhani.. Evidence of PW-1 Dr. Baliram Sambhaji Narwade, Medical Officer, Civil Hospital, Parabhani, coupled with contemporaneous documentary evidence in the nature of post mortem report at Exhibit 6, goes to show that deceased Ashabai Anant Azade died due to cardio-

respiratory failure secondary to endo toxic shock due to extensive deep burns 98%. Post mortem report shows that Head, neck and face of deceased Ashabai Anant Azade was having 4% deep burns. The question which falls for consideration is, whether, deceased Ashabai Anant Azade suffered accidental burns or it was respondent/accused-Anant Ramji Azade who murdered her after pouring kerosene on her person. In order to establish the offence of murder by the accused, the prosecution has relied upon oral as well as written dying declarations of deceased Ashabai Anant Azade.

8] In order to prove the oral dying declaration of deceased Ashabai Anant Azade the prosecution has examined PW-2 Saraswatibai Kirtane who being neighbourer rushed to the spot of incident and heard utterances of deceased Ashabai Anant Azade. Though PW-2 Saraswatibai Kirtane has deposed that after hearing hue and cry, she rushed to the house of Ashabai, saw her in burnt condition shouting that she was burnt by pouring kerosene and her husband had poured kerosene on her. This part of the evidence of PW-2 Saraswatibai Kirtane is coming on record undisputedly by way of omission. This witness has not stated to the police at the first available opportunity, that deceased Ashabai was shouting that she was burnt by pouring kerosene and it was her husband, who poured kerosene on her person.

As such, being material omission, this portion of evidence of PW-2 Saraswatibai Kirtane needs to be ignored and on ignoring this portion of evidence, there is nothing in evidence of PW-2 Saraswatibai Kirtane which would show complicity of the accused in the crime in question.

9] According to prosecution case, PW-4 Zahiruddin Sharifuddin, who is also neighbor of deceased Ashabai Anant Azade had heard her oral dying declaration . Perusal of evidence of PW-4 Zahiruddin shows that on the date of incident, at about 4.00 p.m. he heard noise and saw Ashabai in burnt condition. She was shouting, “MALA VACHAVA, MALA VACHAVA” (Save me, Save me). PW-4 Zahiruddin further deposed that Ashabai uttered that her husband has spoiled her life. Evidence of this witness so far as utterances of Ashabai “MALA VACHAVA, MALA VACHAVA” has come on record by way of omission. Evidence of PW-4 Zahiruddin that he heard utterances of Ashabai that her husband spoiled her life, by no stretch of imagination leads us to conclude that husband of Ashabai had set herself ablaze by pouring kerosene on her person. As such, from evidence of PW-4 Zahiruddin, statement as to cause of death of Ashabai or circumstances of transaction leading to her death, pointing a finger of accusation to the accused are not established.

10] The third dying declaration of Ashabai Azade relied upon by prosecution is in the nature of history allegedly stated by her to Dr. Baburao Doiphode, Medical Officer, Civil Hospital, Parbhani, where Ashabai was admitted for medical treatment. It is an evidence of PW-8 Dr. Baburao Doiphode that on 24.10.1992 he got Ashabai Azade admitted to civil hospital upon being brought by neighbourers in burnt condition. PW-8 Dr. Baburao Doiphode stated that, at the time of admission he inquired about the incident from her and Ashabai stated that her husband poured kerosene on her person and asked her to set herself ablaze. As per the version of this witness, he recorded history given by Ashabai in medical case papers (Exhibit-25). As per Exhibit-25 the relevant history allegedly stated by Ashabai and recorded by PW-8 Dr. Baburao Doiphode reads thus :-

“H/O : being poured kerosene oil by husband and fire by herself as per patients statement. Burnt one hour back.”

This history allegedly given by deceased Ashabai and recorded by PW-8 Dr. Doiphode does not show that it was the accused who set deceased Ashabai on fire by lighting her. It only reflects that, it was the accused who poured kerosene on her person.

11] PW-7 P. Kankayya Narsayya, is the Special Judicial Magistrate who recorded dying declaration of deceased Ashabai on

24.10.1992 in presence of PW-8 Dr. Doiphode. The evidence of both these witnesses shows that initially PW-8 Dr. Doiphode examined Ashabai and found her conscious and fit mental condition to give statement. A note to that effect came to be recorded and then PW-7 P. Kankayya Narsayya is stated to have recorded dying declaration of Ashabai. He again gave certificate on that dying declaration to the effect that Ashabai was fully conscious and statement was recorded as per her dictation. The officially recorded dying declaration of Ashabai is at Exhibit-18. Perusal of this dying declaration shows that Ashabai made a statements that on 24.10.1992 at about 3:30 PM she asked her husband, permission to go to her town for celebrating Diwali. On her husband's reply that she should not go to her town. As per statement of this witness, then her husband uttered that he will kill her. He then poured kerosene from a can on her person and told Ashabai that she should ignite herself by means of match stick. Thus, as per this statement of deceased at Exhibit-18, she set herself ablaze by means of match stick.

12] If the dying declaration at Exhibit-18 allegedly made by deceased Ashabai before PW-7 P Kankayya Narsayya is accepted as it is, then it is seen that it was the deceased who set herself ablaze by means of match stick. It gives an indication that deceased had

committed suicide by incinerating herself on the say of her husband. The alleged statement at Exhibit-18 of deceased Ashabai does not disclose that accused had done any act in setting deceased Ashabai ablaze with requisite intention and knowledge of causing her death.

13] Even if it is assumed that accused had poured kerosene on deceased Ashabai, said act, by itself cannot be termed as “an act so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.” It can not be said that the act attributed to the accused in statement at Exhibit-18 falls within the definition of “murder” as per the provision of Section 300 of IPC. Even statement of deceased Ashabai at Exhibit-18 is accepted, then also it can not be said that the accused had created an immediate sense of danger in the mind of Ashabai so as to cause fright in her mind to believe that her life is in danger, so as to compel her to set herself ablaze. Statement at Exhibit-18 nowhere reflects that the accused had created such circumstances leaving no possibility of escape of Ashabai from his clutches requiring herself to indulge in self-effacement. Bare perusal of this statement shows that, Ashabai was free to leave to house or to call neighbourers for help. The house was not located so as to prevent escape of Ashabai. Therefore the offence punishable under Section 302 of IPC is not made out even if statement

at Exhibit-18 is accepted in its entirety.

14] It is an evidence of PW-3 Pandurang Dhembre- informant father of deceased Ashabai that there used to be quarrel between the accused and his deceased wife Ashabai, for the reason that, accused had taken a lady to the house of his another daughter while on the way from Parbhani to Hingoli. Mangalabai is that daughter of informant PW-3 Pandurang and she is examined as PW-5 by the prosecution. It is in her evidence that 8 days prior to the death of Ashabai, the accused had come to her house with a woman. PW-5 Mangalabai in her evidence states that the accused told her that the said woman is serving in his office and under directions of his superior officer, he is taking that woman to Hingoli. It is thus clear that the accused, even if had taken a woman to the house of sister in law PW-5 Mangalabai, then also it is not possible to conclude that this trifle and stray incident can amount to motive for the accused to eliminate his wife Ashabai.

15] Thus, there is no trustworthy and reliable evidence on record to conclude that the accused was subjecting his deceased wife Ashabai to cruelty or that on 24.10.1992 he has committed her murder by intentionally and knowingly causing her death.

16] In the light of foregoing discussion, even after re-examination of whole evidence on record, we are of the opinion that the view taken by the learned trial court in acquitting the accused is a plausible view. No perversity is found in the impugned judgment and order of acquittal recorded by the trial Court and therefore the appeal sans merit and is therefore dismissed. For the very same reasons the Criminal Revision Application No. 78 of 1996 also stands dismissed.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-