

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.253 OF 2001

Jagannath s/o. Laxman Attarde,
Age 49 years, occ. Trader,
r/o. Chingaon, Tq. Yawal,
Dist. Jalgaon ..Appellant

Versus

The State of Maharashtra ..Respondent

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Mr.Satej S. Jadhav, advocate for appellant

Mrs.R.K.Ladda, A.P.P. for respondent – State

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**WITH
CRIMINAL APPEAL NO.416 OF 2001**

The State of Maharashtra
(At the instance of Yawal
Police Station, Crime No.185/96) ..Appellant

Versus

- 1] Dnyaneshwar Laxman Attarde,
Age 44 years, r/o. Kingaon,
Taluka Yawal, Dist.Jalgaon.
- 2] Lilabai Laxman Attarde,
Age 65 years,
- 3] Sunil Laxman Attarde,
Age 28 years,
Accused nos.3 and 5 – residents

of Kingaon, Taluka Yawal,
Dist. Jalgaon

..Respondents

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Mrs.R.K.Ladda, A.P.P. for appellant – State

Mr.Satej S. Jadhav, advocate for respondents

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : AUGUST 26, 2015
JUDGMENT PRONOUNCED ON : SEPTEMBER 08, 2015

JUDGMENT :

Heard both sides.

2] Appellant – Jagannath s/o. Laxman Attarde in Criminal Appeal No.253 of 2001, was arrayed as accused no.1 in Sessions Case No.186 of 1997 decided by learned 2nd Addl. Sessions Judge, Jalgaon on 15th June, 2001. He along with the respondents in Criminal Appeal No.416 of 2001, were charged for commission of offence punishable under Section 498-A and 306 read with 34 of Indian Penal Code. While appellant – Jagannath was convicted by learned Sessions Judge for the

offences punishable under Section 498-A and 306 of Indian Penal Code, rest of the accused i.e. respondents in Criminal Appeal No.416 of 2001, were acquitted.

. Appellant – Jagannath was sentenced to suffer rigorous imprisonment for three years for the offence punishable under Section 498-A of Indian Penal Code and was further sentenced to suffer rigorous imprisonment for five years for the offence punishable under Section 306 of Indian Penal Code. Direction to pay fine was also issued. Aggrieved by the conviction and sentence, appellant – Jagannath preferred Criminal Appeal No.253 of 2001. Aggrieved by acquittal of rest of the accused, the State has preferred Criminal Appeal No.416 of 2001.

3] For the sake of convenience, appellant – Jagannath would be hereinafter called as accused

no.4 while, the respondents in Criminal Appeal No.416 of 2001 would be called as accused nos.1, 3 and 5 as arrayed before the sessions court. Accused no.2 – Laxman (father-in-law of deceased) has died before the trial could begin and the sessions case itself abated as against him.

4] The evidence adduced from both sides and suggestions given to the prosecution witnesses, would show the following admitted facts :-

. That deceased – Lalita, wife of accused no.4 Jagannath, was married to him on 6th April, 1996.

. The deceased was earlier married to a person at Savda. After acrimonious legal battle between them, ultimately, they obtained divorce from each other. Thereafter, the deceased – Lalita, being a diploma holder in education, was employed as a teacher at the village of her parents at Vivra,

Tq. Raver, Dist. Jalgaon. Accused no.4 – Jagannath was a widower with a son. The marriage between these two were solemnized on 6th April, 1996 at the village of the accused i.e. Kingaon, Tq. Yawal, Dist.Jalgaon. Within a period of nine months, however, i.e. on 1st December, 1996, at about 2:00 a.m., the deceased suffered 100% burn injuries while residing at the house of accused no.1. Accused no.1 immediately took her to civil hospital at Jalgaon. She, however, died on 4th December, 1996.

. In the meantime, two dying declarations of Lalita were recorded. The first of the dying declarations was recorded at 6:15 a.m. on the same day by Police Constable – Rane, who was no more at the time of trial. The same was, therefore, proved by PW 9 – Dr.Sharadsing Pardeshi of Civil Hospital, Jalgaon at Exhibit 82. The same was treated as FIR on the basis of which, the crime

was registered at Zilla Peth Police Station. The second dying declaration was recorded by PW 7 – Subhash Onkar Sonwane, Special Executive Magistrate, on the same day between 7:30 a.m. to 7:45 a.m. (Exhibit 67).

. PW 8 – Rajendra Raising, A.P.I. of Yawal Police Station, had received the papers in the crime upon transfer of the same from Zilla Peth Police Station, Jalgaon. He conducted investigation in the case. Initially, the crime was registered for the offences punishable under Section 498-A, 504, 506 read with 34 of Indian Penal Code. He recorded panchnama of the spot of occurrence and arrested the accused. It was reported to him that the deceased had died on 4th December, 1996 and accordingly, he added Section 306 of Indian Penal Code to the crime. He also recorded statements of the relatives of the deceased and other persons to whom, the deceased

had occasion to narrate about the illtreatment at the hands of the accused persons, including PW 3 – Govinda Talele, father of deceased; PW 4 – Pravinchandra Jangale, husband of deceased's sister; and PW 5 – Liladhar Pachpande, resident of Vivare, who had given appointment to the deceased as a teacher in the school after she had obtained divorce from her former husband. PW 9 – Dr.Pardeshi had examined the deceased at the time of recording both the dying declarations. Rest of the witnesses are peripheral witnesses to the panchna, the driver who had brought the deceased to the hospital etc.

. The defence of the accused was of denial as regards cruelty. The accused, however, admitted that it was a suicide. It is the prosecution case that both the brothers-in-law of the deceased i.e. accused no.1 – Dnyaneshwar and accused no.5 – Sunil used to reside separately from the family.

. In the first dying declaration, the deceased appears to have stated that she used to operate a general store shop from where, kerosene was also imparted. Her grievance was that her brothers-in-law i.e. accused no.1 - Dnyaneshwar and accused no.5 - Sunil always used to abuse her under influence of liquor, as she was not permitting them to have any articles from the general stores and that her husband i.e. accused - Jagannath did not intervene in such episodes. As regards father-in-law of the deceased i.e. accused no.2 - Laxman (since deceased), the grievance was that he used to question the deceased, as to why she was not maintaining daughters of her brother-in-law Dnyaneshwar. Over the same, father-in-law used to abuse her. As regards her mother-in-law i.e. accused no.1-Lilabai, the grievance was that she used to have hard talks with her over trifling matters.

. In this background, she purportedly narrated the incident dated 30th November, 1996. According to her, in the evening, her husband told her that he wanted divorce from her and therefore, in the midnight at about 2:00 a.m., she poured kerosene and set herself on fire. In the circumstances, she summerized that due to the trouble at the hands of the accused, she committed suicide.

5] The second dying declaration recorded by the Executive Magistrate i.e. PW 7 – Subhash Sonawane at Exhibit 67, recorded between 7:30 a.m. and 7:45 a.m. of the same day, is more descriptive. In the said dying declaration, the deceased purportedly stated that at 4:30 p.m. on 30th November, 1996, she had a quarrel with her husband as well as her mother-in-law. The reason of the said quarrel was beating by her father-in-law about two months prior to the said incident. At about 8:00 p.m., she questioned her husband as to, what should be

done regarding the said dispute upon which, the husband threatened her that he would obtain divorce from her. Besides this, the brothers-in-law of the deceased used to threaten her to kill while standing in open lane. Because of all these episodes, she was unable to sleep for whole night and therefore, she poured kerosene on her person and set herself on fire. When all her in-laws found her in flames, they all fled away by latching the door from outside. Her sister-in-law Shanta, wife of Madhukar, however, put off the fire by pouring water.

. The deceased further narrated that she had married to accused no.4 about six months prior to the incident and a dowry of Rs.51,000/- was paid to him in the marriage by her father. Besides this, in order to have a kerosene permit in the name of Nikhil i.e. son of her husband from former wife, an amount of Rs.35,000/- was obtained by her husband from her father. Finally, the deceased

summarized that due to illtreatment at the hands of all the accused, in order to relieve herself from the illtreatment, she set herself on fire.

6] The father and brother-in-law of the deceased i.e. PW 3 and PW 4, have given detail version that as and when they had occasion to meet the deceased, she used to narrate about the illtreatment. PW 5 - Liladhar Pachpande has also deposed that as and when the deceased used to meet him after marriage, she used to narrate him regarding the illtreatment.

7] Learned Sessions Judge came to the conclusion that the second dying declaration was recorded by the Executive Magistrate after her brother-in-law i.e. PW 4 - Pravinchandra Jangale had met her. In that view of the matter, learned Sessions Judge found that the oral evidence of PW 3 - Govinda and PW 4 - Jangle that the deceased's brothers-in-law

i.e. accused nos.1 and 5 also used to illtreat her, cannot be accepted, as they were residing separately and as accused no.4 – Jagannath, husband, had already obtained a license for kerosene, there was no reason for the said brothers-in-law to demand profit in the said business. Further, he found that both the dying declarations do not show that all the in-laws used to illtreat the deceased. The learned Sessions Judge therefore acquitted all other accused, except accused no. 4 – Jagannath, husband of the deceased.

8] As regards accused no.4 – Jagannath, learned Sessions Judge, however, observed that he has failed to assure the deceased every safety and happiness of a married life. It was further found that both the dying declarations would show that when accused no.4 – Jagannath told that he would obtain divorce from the deceased, she, ultimately,

committed suicide and therefore, the offence as against the accused no.4, was said to have been proved.

9] Mr.Jadhav, learned counsel for the appellant/accused in Criminal Appeal No.253 of 2001 and for the respondents/accused in Criminal Appeal No.416 of 2001, submitted as under :-

. That, admittedly, the deceased had suffered 100% burn injuries. The evidence of PW 9 – Dr. Pardeshi would show that he merely found the deceased conscious at the time of giving both the statements. However, he did not examine as to whether, the deceased was oriented, able and competent to make the statement. There was a possibility of influencing the deceased at the time of making both the dying declarations and the inconsistency between both the dying declarations, is so prominent that no reliance on

any of the dying declarations, can be placed. Further, PW 3 – Govinda, father of deceased, PW 4 – Pravinchandra and PW 5 – Liladhar Pachpande i.e. patron of the deceased, have exaggerated their versions to such an extent and even against the admitted facts that no reliance could have been placed by the learned Sessions Judge on any of the material. He, therefore, submitted that not only accused no.4 – Jagannath be acquitted, but also the criminal appeal filed by the State, be dismissed.

10] On the other hand, learned A.P.P. submitted that just within a period of nine months from the date of the marriage, the deceased died due to commission of suicide while residing at the house of the accused. The deposition of the Medical Officer would show that the deceased was conscious and able to make statements at the time of recording both the dying declarations. She further

submitted that once the dying declarations are believed, conviction of all the accused is must. In the circumstances, she submitted that the appeal filed by accused no.4 – Jagannath, may be dismissed and the appeal filed by the State may be allowed.

. Learned A.P.P., in support her submissions, has relied upon the ratio laid down in the cases of (i) ***Shudhakar Vs. State of Madhya Pradesh, AIR 2012 SC 3265***; (ii) ***Bhajju @ Karan Singh Vs. State of M.P., AIR 2012 SCW 1963***; (iii) ***State of M.p. Vs. Dal Singh and ors., AIR 2013 SC 2059***; and (iv) ***Ashabai and anr. Vs. State of Maharashtra, AIR 2013 SC 341***.

11] On the basis of this material, following points arise for my determination :-

I. Whether the prosecution has proved that all or any of the accused, either in

furtherance of their common intention or individually, subjected deceased – Lalita to cruelty during her cohabitation with them at village Kingaon ?

II. Whether the prosecution has further proved that during the given period and the place, all or any of the accused, have abetted commission of suicide by deceased – Lalita ?

. My findings to the above points are in the negative. In the circumstances, Criminal Appeal No.253 of 2001 filed by original accused no.4, is allowed and Criminal Appeal No.416 of 2001 filed by the State, is dismissed, for the reasons to follow.

R E A S O N S

12] Few admitted facts or the statements made by the witnesses as regards the timing, are required

to be taken into consideration before appreciation of the rival arguments regarding the dying declarations.

. Deceased - Lalita suffered burn injuries on 1st December, 1996 at 2:00 a.m. at village Kingaon, Dist. Jalgaon. She was ultimately rushed by accused no.4 - Jagannath to Civil Hospital at Jalgaon. Thereafter, accused no.4 - Jagannath rushed to PW 4 - Advocate Pravinchandra Jangle, brother-in-law of the deceased, who was residing at Jalgaon. According to the deposition of PW 4 - Jangle, the accused no.4 had come to his house at 3:20 a.m. Thereupon, he rushed to the hospital (at proper Jalgaon) and met the deceased at about 4:00 a.m. The other relatives, according to him, reached the hospital at around 7:30 a.m.

13] In the situation, it is clear that both the dying declarations were recorded after deceased's

brother-in-law i.e. PW 4 – Jangle had met her. In the first dying declaration-cum-FIR Exhibit 82, the deceased made grievance, as detailed earlier. The allegations, in short, would show that she had grievance against her brothers-in-law that they, under influence of liquor, always used to abuse her, as she was not permitting them to have any articles from the general stores; while, complaint against her father-in-law was that he used to question her as to why, she was not maintaining daughters of her brother-in-law Dnyaneshwar. The complaint against her mother-in-law was that she used harsh talks with her over trifle matters. Last complaint against her husband i.e. accused no.4 – Jagannath was that he used to be a mute spectator in the disputes between her and her in-laws.

. In the circumstances, when on 30th November, 1996 in the evening, the deceased

questioned accused no.4 during talk, he told her that he wanted to obtain divorce from her, which was the immediate cause for commission of suicide by the deceased.

14] In the second dying declaration, after narrating the above incidents, the deceased additionally purportedly stated that while, she was in flames, her in-laws fled away by latching the door from outside, however, by keeping herself and Shanta, sister-in-law of deceased, in the house. She further added that in the marriage, Rs.51,000/- was paid to the accused no.4 and Rs.35,000/- was paid to accused no.4 for the purpose of obtaining license of kerosene for Nikhil, son of her husband from former wife.

15] On both these dying declarations, PW 9 – Dr.Pardeshi had endorsed that the patient i.e. deceased was conscious at the time of giving the

statements. Mr.Jadhav, learned counsel for the accused, submitted that such examination by Dr. Pardeshi of the deceased, from the point of view of merely finding the deceased's consciousness to give statement, fails to face tests of mental competency of maker of the dying declaration at the time of making of such statement. He submitted that particularly when, admittedly, the deceased had suffered 100% burn injuries, careful examination of the deceased was required to be made by the Medical Officer to find out the physical as well as mental state of the declarant at the material time.

16] Mr.Jadhav, to buttress his arguments, has relied upon the ratio laid down in the cases of (i) **Ashok Pandurang Jadhav Vs. State of Maharashtra, 2011 All. M.R. (Cri.) 2105** and (ii) **Shindo alias Sawinder Kaur and anr. Vs. State of Panjab, 2011 AIR SCW 6556**. Relying on the ratio

laid down in the above authorities, he submitted that the ability to speak is totally different from the ability to make rational statement. More particularly, he pointed towards the case of Shindo (cited supra) wherein, the deceased had suffered 100% burn injuries and the evidence of the doctor that such person can give valid dying declaration was general in nature.

17] It is true that the physical and mental state of a person would be different. Condition of a person who is physically fit and even able to make statement, is different from making rational statement. In the present case, unfortunately, the evidence of PW 9 – Dr. Pardeshi failed to meet such tests.

. Besides this, even if, we compare the two dying declarations, the improvements are prominent. It is again required to be highlighted

that the brother-in-law of deceased PW 4 – Jangale had met the deceased prior to recording of any of these dying declarations. The first of the dying declarations i.e. the FIR, fails to show any act on the part of accused no.4 – Jagannath as it is merely alleged that he used to remain to be a silent spectator in her disputes with her brothers-in-law. No issue of money i.e. either Rs.51,000/- or Rs.35,000/- was touched by the deceased in this FIR-cum-dying declaration.

18] In the second dying declaration, which was recorded within one hour from the first dying declaration, the deceased added that a dowry of Rs.51,000/- was paid to accused in the marriage and Rs.35,000/- was also obtained by accused no.4 from her father, for securing a license of kerosene in the name of said Nikhil. She further added that while she was in flames, all the accused had fled away by latching the door from

outside and she and Shanta, her sister-in-law, were kept inside.

. As against this, the prosecution case is that the deceased had suffered burn injuries at 2:00 a.m. at village Kingaon, Taluka Yawal, Dist. Jalgaon and accused no.4 himself had taken the deceased to Civil Hospital, Jalgaon, by securing a vehicle. Not only this, it is the prosecution case itself, that immediately, accused no.4 – Jagannath had rushed to PW 4–Jangale at Jalgaon at 3:30 a.m. and said witness was able to visit the deceased in the hospital at Jalgaon at 4:00 a.m. Thus, the influence over maker of the dying declaration, is prominent. Further, it is an admitted fact that accused no.4–Jagannath already had a license of kerosene right from 1993 and the deceased used to operate the said shop along with general store.

19] The improvements made by PW 3 – Govinda and PW 5 – Liladhar are also prominent. PW 3 – Govinda,

father of deceased, even deposed about the abortion and starving of the deceased, which is not, at all, the case of prosecution, as made out in the dying declaration. The statement of PW 3 – Govinda regarding the details of payment of money to accused no.4 – Jagannath, is against the statements made by PW 4 – Jangale. PW 5 – Liladhar, patron of the deceased, who had helped her by giving appointment as a teacher when she was deserted by her former husband, is also full of improvements. He deposed that the deceased used to visit her parents every fortnight and used to narrate about the illtreatment, which is not the case of PW 3 – Govinda – the father himself. He even went on to state that the deceased had obtained divorce from her earlier husband as he was mentally retarded. However, the voluminous documentary evidence and proceedings between the two, would show that deceased Lalita had left said husband who used to treat her cruelly for the

unlawful demands of money and also used to suspect her character.

20] When a near and dear one is lost untimely, the agony of the close relatives is but natural. However, said agony sometimes, lead to exaggeration of the situation in order to see that the person, according to them responsible for the death, should be dealt with severely. The immediate dying declaration-cum-FIR of the deceased has rightly been discarded by learned Sessions Judge as the same does not spell out any act of cruelty as defined under Section 498-A of India Penal Code. Learned Sessions Judge, however, has casted a duty on the accused no.4 – husband by remarking that he should have protected her in the matrimonial home.

. Though, morally, there cannot be any dispute regarding the said preposition, however, in law, it cannot be spelt out as cruelty.

21] In that view of the matter, the following order would meet the ends of justice :-

A] Criminal Appeal No.253 of 2001 is hereby allowed.

B] The judgment and order dated 15th June, 2001 passed in Sessions Case No.186 of 1997 by learned 2nd Addl. Sessions Judge, Jalgaon, convicting and sentencing the appellant/accused no.4 – Jagannath, for the offences punishable under Section 498-A and 306 of Indian Penal Code, is hereby set aside.

. Instead appellant – Jagannath is hereby acquitted of the offences punishable under Section 498-A and 306 of Indian Penal Code.

C] His bail bonds shall stand cancelled.

D] Criminal Appeal No.416 of 2001 filed by the State, is hereby dismissed.

E] Muddemal property be disposed of on the lines of directions issued by learned 2nd Addl. Sessions Judge, Jalgaon.

[M.T. JOSHI, J.]

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