

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 455 OF 2001

- 1] Pralhad S/o Tulshiram Chand,
Age : 33 years, Occu.: Agriculture
- 2] Gumphabai W/o Tulshiram Chand,
Age : 52 years, Occu.: Household
- 3] Jagan S/o Sitaram Chand,
Age : 30 years, Occu.: Agriculture

All R/o At Post : Mandwa,
Taluka Badnapur, District Jalna

.. Appellants
(Orig. Accused)

Vs.

The State of Maharashtra

.. Respondent

Mr. Joydeep Chatterji, Advocate for the appellants
Mrs. B.B. Gunjal, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 05/08/2015
PRONOUNCED ON : 17/08/2015

JUDGMENT :

. Heard both sides.

2. Aggrieved by the recording of conviction of the present appellants by the learned Ist Adhoc Additional Sessions Judge, Jalna vide judgment and order dated 22/10/2001 passed in Sessions Case No. 53 of 2000 for

the offences punishable under section 498-A r/w. 34 of the Indian Penal Code and section 306 r/w. 34 of the Indian Penal Code, and consequently sentencing each of the appellants, to suffer rigorous imprisonment for 2 years and to pay fine of Rs.1000/- each, in default to suffer rigorous imprisonment for 3 months for the offences punishable under section 306 r/w. 34 of the Indian Penal Code and to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1000/- each, in default to suffer rigorous imprisonment for 3 months for the offences punishable under section 498-A r/w. 34 of the Indian Penal Code, with further direction to run the sentences concurrently, the present appeal is preferred by the original three accused.

3. Appellant no.1 - Pralhad is the husband, appellant no.2 - Gumphabai is the mother-in-law while appellant no.3 - Jagan is the cousin brother-in-law of deceased Laxmibai.

. Deceased Laxmibai was admitted to the Civil Hospital at Jalna on 19/7/1999 due to 100% burn injuries. The FIR cum dying declaration at Exhibit 33.

came to be recorded on 20/7/1999 by P.W. 5, the then Police Sub Inspector - Suresh Sonkawade of Jalna Taluka Police Station upon certification by the Medical Officer i.e. P.W. 3 - Dr. Sanjay Jagtap that the lady was conscious and was able to give statement.

. Deceased Laxmibai in the said dying declaration had stated that she had married to the appellant no.1 about four years preceding the incident which occurred on 19/7/1999. The couple was blessed with one son. However, just a week preceding the incident of burning, the appellants used to quarrel with her on the ground that she had illicit relations with one Bhima residing in their neighbourhood and also used to say that they were caught red-handed.

. In the circumstances, on 19/7/1999, when she was sleeping in the house at about 5.00 pm, at that time, all the appellants again nagged her by saying that she had illicit relations with said Bhima for a period of six months, however, very boldly she continues to reside in the house. When the deceased, at that time threatened that, she might approach the Police Station,

the present appellant no.1 used harsh words by saying that she continues to have sexual intercourse with the neighbour and then very boldly continues to be in their house. He therefore said that she should die otherwise he himself would push her in a well. Rest of the appellants also said to her that she should die by burning. In the incident, the deceased stated that she herself would commit suicide and, therefore, poured kerosene on her person and set herself on fire. None of the appellants however attempted to extinguish her. Upon hearing her shouts, her cousin father-in-law Ambadas Bankar rushed in the house and put off the fire. Thereafter, after about one hour, the present appellants alongwith the said Ambadas Bankar brought her to the Civil Hospital at Jalna.

. It was further narrated in the said dying declaration that on the day of her admission in the hospital i.e. on 19/7/1999, she had made a statement to the Police that she has suffered burn injuries at the time of preparation of the tea, as the appellants had threatened her that in case she blamed them, she would

not be allowed to reside in the house. Upon recording of the said statement, P.W. 5 – P.S.I. Suresh Sonkawde conducted the further investigation.

. Panchanama of the spot of occurrence was recorded. Incriminating articles were seized. Statements of the parents of the deceased were recorded. The post-mortem examination notes were collected. Thereafter, upon transfer of P.W. 5 – Suresh Sonkawde, P.W. 4 – Mohan Jadhav, the then Senior P.S.I. attached to Taluka Jalna Police Station filed chargesheet in the Court.

4. Before the learned Ist Adhoc Additional Sessions Judge, Jalna, five witnesses were examined. Besides the Medical Officer and the Investigating Officer, as detailed supra, statements of the parents of the deceased i.e. P.W. 1 – Haribhau, the father of the deceased and P.W. 2 – Kasturabai, the mother of the deceased were recorded by the learned Additional Sessions Judge.

5. The chargesheet contained earlier two dying declarations : one recorded by the A.S.I. Sanap, who was on Medical Chowky duty and another by the Executive Magistrate, both dated 19th July, 1999. Both these dying declarations were to the effect that the deceased has suffered burn injuries while preparing the tea. Those were pressed into service by the defence. The defence of the appellants was that of accidental sufferance of burn injuries on the line of these two dying declarations.

. The learned Additional Sessions Judge, however, observed that those two dying declarations cannot be held as proved as the appellants have not examined any of the witnesses i.e. A.S.I. Sanap or the Executive Magistrate. On the other hand, the dying declaration cum complaint at Exhibit 33 is clearly proved as the P.S.I. as well as the Medical Officer have vouchsafed it's credence. Further, finding corroboration from the mouth of the parents of the deceased, the conviction and sentences came to be recorded against the appellants. Hence, the present appeal.

6. Mr. Joydeep Chatterji, learned counsel for the appellants submitted before me that while in the dying declaration at Exhibit 33, it is recited that the marriage was performed about four years back, the father of the deceased, namely, P.W.1 – Haribhau had stated that the marriage was performed six years back of the incident. The prosecution allegations however would show that there was no ill-treatment to the deceased during all these four or six years and only at the fag end i.e. a week prior to the suffering of the burn injuries, the ill-treatment was started on suspecting the chastity of the deceased.

. He further submits that when two dying declarations of the deceased were recorded on 19/7/1999, the father – P.W. 1 was very well present. He himself had admitted the deceased to the hospital with the aid of appellant no.1. In the circumstances, there is no scope for earlier two dying declarations being made under the influence of the present appellants, as has been alleged in the last of the dying declaration.

. He further submits that while the deceased has admittedly suffered 100% burn injuries, we find the thumb impression over the last of the dying declaration at Exhibit 33 and even the presence of the father right from the spot of occurrence till the admission of the deceased in the hospital, is conveniently concealed by the father in his examination-in-chief and in this dying declaration at Exhibit 33. Further, the evidence of P.W. 3 – the Medical Officer would show that he was present only at the beginning of recording of the dying declaration to certify the fitness of the lady and, thereafter, he went away.

. He further submits that the observations of the learned Additional Sessions Judge that two of the earlier dying declarations are not proved, though filed by the prosecution itself on record, is wrong. In the result, he submits that the appeal be allowed.

7. Learned A.P.P. however submits that the dying declaration at Exhibit 33 would show that earlier two dying declarations were made under the influence of the

present appellants. The testimony of the parents of the deceased has corroborated the charges. Hence, she submits that the appeal be dismissed.

8. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that for a period of one week preceding 19/07/1999, at village Mandava, the present appellants, in furtherance of their common intention, had subjected the deceased to cruelty ?

II) Whether the prosecution has proved that by subjecting the deceased to cruelty during the given period, the present appellants had abetted the commission of suicide by the deceased ?

My findings to both the points are in the negative and the appeal is therefore allowed and the appellants are acquitted of the offences punishable under section 498-A r/w. 34 of the Indian Penal Code and section 306 r/w. 34 of the Indian Penal Code, for the reasons to follow.

R E A S O N S

9. Both the sides submit that the deceased has met with an unnatural death that is due to the burn injuries. The post-mortem notes, inquest panchanama and the panchanama of the spot of occurrence are therefore admitted by the defence. The question only remains, as to whether it was a suicide or an accidental death.

. The answer to the said issue lies in the finding about alleged cruelty to the deceased.

10. It is an admitted fact that either for a period of four years or six years of the married life, there was no ill-treatment to the deceased and only during the last fateful week, according to the prosecution, the cruelty was on the ground of the unchastity of the deceased.

11. According to P.W. 1 – Haribhau, when he went to see the deceased in Civil Hospital at Jalna, his

daughter told him that the appellants were insisting to admit illicit relations with Bhima and upon that, there was threatening by the appellants, therefore, she has burnt herself.

12. During cross-examination, however, he admitted that he went to the house of the appellants on the day Laxmibai, his daughter was burnt. Thereupon, he alongwith all the appellants and the cousin father-in-law of the deceased had brought her to Civil Hospital at Jalna by a State Transport bus. Thereafter, all of them admitted Laxmibai in the hospital. On the next day, he went to his own village in the morning and on the same day, he returned to the hospital alongwith his wife and his neighbours and, thereafter, remained in the hospital till the death of Laxmibai on 30/07/1999.

. His statement before the Court that the present appellants were insisting that the deceased should admit the relations with Bhima, is an improvement to the statement made by him before the Investigating Officer.

13. P.W. 2 Kasturabai - mother of the deceased-Laxmibai deposed on the line of her husband. She deposed that when she met deceased in the hospital, she told that the appellants were suspecting her character as having illicit relations with Bhima. Upon that, they used to ill-treat her. They even threatened to throw her in a well and, therefore, she has attempted to commit suicide.

14. Her statement in the examination-in-chief that the appellants threatened her to throw in the well is an improvement over the statement recorded by the Police.

15. Deposition of P.W. 3 Dr. Sanjay Jagtap would show that he has examined the deceased and, thereafter, gave an endorsement on the dying declaration regarding her fitness and went away. No time is put on the said document of the examination by him. No record regarding the pulse rate, blood pressure of the victim was there.

16. The entire dying declaration at Exhibit 33 runs into 1-1/2 page and is a long narrative. The fact that her father was present right from her house till her admission to the Civil Hospital and, thereafter, continued there for the whole day, is conspicuous by absence in the said dying declaration.

. What is stated in the dying declaration is that on the date of her admission in the hospital, the present appellants threatened her that in case, she did not make any statement of suffering of burn injuries accidentally, she would not be allowed to cohabit, is an explanation for earlier statements made at the time of her admission in the hospital when her father was very well present there.

17. Mr. Joydeep Chatterji, learned counsel for the appellants rightly submits that withholding of the evidence regarding the earlier dying declarations by the prosecution itself should cast a doubt on the prosecution case. He rightly submits that the learned Additional Sessions Judge has taken a technical view

that the earlier two dying declarations were not "*proved*".

. On the other hand, the very blatant case of suppression of the presence of father of the deceased right from the village till admission of the deceased in the hospital and, thereafter, his stay for the whole day, has been withheld by the said witness as well as in the dying declaration at Exhibit 33. As the father of the deceased was present, there would have been no scope for the deceased to succumb to the threats of the appellants.

. In this state-of-affair, Mr. Chatterji, relies on the ratio in the case of "**Chandar S/o Laxman Rakhunde and anr. Vs. The State of Maharashtra**" 2012 ALL MR (Cri) 859, which reiterates the established principle that the Court must be satisfied about the reliability of the version of the deceased, as reflected in the dying declaration.

18. Considering all the facts on record, in my view, the learned Additional Sessions Judge ought to

have extended reasonable benefit of doubt to the appellants. In the result, the following order:-

19. Criminal Appeal is hereby allowed.

20. The impugned judgment and order dated 22/10/2001 passed by the learned Ist Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 53 of 2000, convicting and consequently sentencing each of the appellants for the offences punishable under section 498-A r/w. 34 of the Indian Penal Code and section 306 r/w. 34 of the Indian Penal Code, is hereby set aside.

. Instead, the appellants are acquitted of the offences punishable under section 498-A r/w. 34 of the Indian Penal Code and section 306 r/w. 34 of the Indian Penal Code.

21. Bail bonds of the appellants shall stand cancelled.

22. Fine amounts, if deposited by the appellants,

be refunded to them, after a period of sixty (60) days from the date of this judgment.

23. Disposal of the property as per the directions issued by the learned Ist Adhoc Additional Sessions Judge, Jalna.

24. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/