

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 454 OF 2012

Sumanbai w/o Prabhakar Sawandkar
Age 51 years, Occ. Household
R/o. Tembhurni, Tq. Basmat,
District Hingoli

...Appellant

versus

The State of Maharashtra
Through Police Inspector,
Hatta Police Station, Tq. Basmath,
District Hingoli

...Respondent

.....
Mr. P.R. Katneshwarkar, advocate for the Appellant
Mr. A.S. Shinde, A.P.P. for respondent-State
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 17.11.2015**

**Date of pronouncing
the Judgment : 02.12.2015**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. The challenge in this appeal is to the judgment of conviction dated 26.6.2012, passed by the learned Additional Sessions Judge, Basmathnagar in Sessions Trial No. 34 of 2011 for the offences punishable under Sections 498-A and 302 of I.P.C. thereby sentencing the appellant/original accused to suffer imprisonment for life and to pay fine of Rs.1000/- for the offence punishable under

Section 302 of I.P.C. i/d to suffer further R.I. for three months. Besides, the appellant is also sentenced to suffer R.I. for one year and to pay fine of Rs.500/- for offence punishable under section 498-A of I.P.C. i/d to suffer further R.I. for two months.

2. The prosecution version, as unfolded during trial, is as under:-

Deceased Rukhminibai was the wife of Pralhad Prabhakar Sawandkar and their marriage was solemnized 4 years prior to the date of incident. The incident took place on 24.6.2011. Out of this marital wedlock, deceased Rukhminibai gave birth to male child viz. Yuvraj, who was 1 and $\frac{1}{2}$ years old at the time of incident. The husband of deceased Rukhminibai has two brothers and they reside in separate room. Deceased Rukhminibai alongwith her husband and son reside in separate room from the parents of her husband. Accused Sumanbai is mother-in-law of deceased Rukhminibai and she used to reside with her husband in the adjacent room. It is the case of the prosecution that accused used to tease deceased Rukhminibai. The incident had taken place on 24.6.2011. On that day, at about 9.30 a.m. the deceased Rukhminibai was in her room. At that time, son of deceased Rukhminibai viz. Yuvraj gave a slap to his cousin, thus, the accused had quarrel with deceased Rukhminibai on that count. Then accused Sumanbai had poured kerosene on the

person of deceased Rukhminibai and set her on fire with the help of matchstick. Upon hearing the shouts of deceased Rukhminibai, her husband Pralhad, father-in-law Prabhakar and others came there and extinguished the fire. Immediately deceased Rukhminibai was shifted to Sub District Hospital, Basmath for medical treatment by her husband and father-in-law and from there she was referred to Civil Hospital, Parbhani.

3. During the course of her medical treatment, P.W. 5 A.S.I. Abdul Wahid Abdul Sattar, received M.L.C. of deceased Rukhminibai. On 24.6.2011, deceased Rukhminibai was not in a position to talk and therefore, her statement could not be recorded on that day. On 25.6.2011, P.W.5 A.S.I. Abdul Wahid went to the ward where deceased Rukhminibai was admitted and on examination by concerned doctor and on his certification, recorded dying declaration of deceased Rukhminibai in between 11.15 a.m. to 11.35 a.m., which is marked at Exh.32. Said P.W.5 Abdul Wahid also gave a letter to the Tahsildar for recording dying declaration of deceased Rukhminibai. On the same day, P.W. 3 Balasaheb Ramchandra Lande, Naib Tahsildar, has recorded a dying declaration of deceased Rukhminibai and the same is marked at Exh.29. The learned Additional Sessions Judge, Basmathnagar has found both the dying declarations consistent, trustworthy, reliable and based upon the

same, coupled with the some other evidence, sentenced the accused, as aforesaid.

4. Learned counsel for the appellant submits that deceased Rukhminibai was not in a position to give her dying declaration and P.W.1, father of deceased Rukhminibai has admitted so in his cross-examination by saying that when they reached the hospital, deceased Rukhminibai was unconscious and till her death she did not talk. Learned counsel also submits that dying declarations at Exh. 29 and 32 are not in consonance with each other and they are at variance. Learned counsel further submits that there are glaring inconsistencies in the two dying declarations and it cannot be reconciled. Learned counsel further submits that in the dying declaration at Exh.29, recorded on 25.6.2011 by P.W.3 Naib Tahsildar, Balasaheb Lande, deceased Rukhminibai stated that while she was taking meals on 24.6.2011 at about 9.30 a.m. her mother-in-law Sumanbai Prabahkar Sawandkar came from back side, she took kerosene can and poured kerosene on her body and set her on fire. Whereas in the dying declaration at Exh. 32 (recorded by P.W.5 A.S.I. Abdul Wahid), deceased Rukhminibai stated that on 24.6.2011 at 9.30 a.m. she herself and her husband were at home and at that time her son gave a slap to the son of her brother-in-law, therefore, her mother-in-law accused Sumanbai, quarreled with her and at that

time poured kerosene on her person and with match stick set her on fire. Learned counsel for the appellant further submits that the said dying declarations also suffer from inconsistencies to the extent of persons and other family members in the house and also as to who among them tried to extinguish the fire. Learned counsel further submits that there is no proper certification on the part of doctor about the state of mind of deceased Rukhminibai at the time of recording of alleged dying declarations by P.W.3 A.S.I. and Naib Tahsildar, respectively. Learned counsel further submits that both the dying declarations have been falsely prepared. Learned counsel also submits that though the history of accidental burns came to be recorded initially, it was converted into homicidal death by recording false dying declarations. Learned counsel thus submits that the prosecution has failed to prove the case beyond reasonable doubt and the appellant accused thus entitled for benefit of doubt and deserves to be acquitted.

5. Learned counsel for the appellant-original accused places reliance on the following judgments

1. *Laxman Vs. State of Maharashtra, reported in (2002) 6 SCC 710.*
2. *Lahu Govind Shingare Vs. The State of Maharashtra reported in 2013 ALL MR (Cri) 216.*
3. *Vallabhaneni Venkateshwara Rao Vs. State of A.P.*

Reported in (2009)6 SCC 484.

4. *Deepak Kumar Vs. Ravi Virmani and another reported in (2002)2 SCC 737.*
5. *Harijana Thirupala and others Vs. Public Prosecutor, High Court of A.P. Hyderabad reported in (2002) 6 SCC 470.*
6. *Samadhan Dhudaka Koli Vs. State of Maharashtra reported in 2009 ALL MR (Cri) 229 (S.C.)*
7. *Sharda Vs. State of Rajasthan reported in AIR 2010 Supreme Court 408.*
8. *Sohan and another Vs. State of Haryana and another reported in (2001) 3 SCC 620.*
9. *Kashi Vishwanath Vs. State of Karnataka reported in (2013) 7 SCC 162.*
10. *Shaikh Bakshu and others Vs. State of Maharashtra reported in 2008 (1) SCC (Cri) 679.*

6. Learned A.P.P. submits that both the dying declarations at Exh. 29 and 32 respectively, are consistent, truthful, trustworthy and reliable. The learned A.P.P. further submits that concerned medical practitioner P.W.4 Dr. Manjushree Arlekar has ascertained the physical and mental condition of deceased Rukhminibai before recording her dying declarations. According to P.W.4 Dr. Manjushree Arlekar, deceased Rukhminibai was conscious and well oriented and fit to give her statement. She made endorsement on the top of both the dying declarations before recording of dying declarations commences. She further stated on oath that after completion of statement again she had examined deceased Rukhminibai to

ascertain her physical and mental condition and accordingly made endorsement to that effect at the bottom of both the dying declarations and such endorsements bear her signatures. Learned A.P.P. Thus submits that P.W.4 Dr. Manjushree Arlekar is an independent witness having no reason to support the prosecution case unnecessarily.

7. Learned A.P.P. further points out that there is nothing in cross examination to disbelieve P.W.4 Dr. Manjushree Arlekar. Learned A.P.P. further submits that A.S.I. Abdul Wahid has recorded detail dying declaration at Exh.32 as per the version of deceased Rukhminibai and P.W.3 Naib Tahsildar Balasaheb Lande has recorded the dying declaration of deceased Rukhminibai in brief. The learned A.P.P. further submits that if the dying declarations are reconciled, then there is no inconsistency or difference, as such, so as to make the dying declarations untrustworthy or unreliable. The learned A.P.P. further submits that even though the conviction can be based upon the dying declarations alone without any corroboration, even then in the case in hand, the prosecution story is corroborated by other evidence on record. Learned A.P.P. further submits that the husband and father-in-law of deceased Rukhminibai had sustained burn injuries while attempting to extinguish the fire on the person of deceased Rukhminibai. Learned A.P.P. submits that

the dying declarations Exh.29 and 32 respectively inspire confidence. Learned A.P.P. thus submits that the prosecution has proved its case beyond doubt and the learned Judge of the trial court has rightly convicted the accused-appellant. The learned A.P.P. thus submits that there is no merit in the appeal and thus appeal is liable to be dismissed.

8. The law on dying declaration is now well settled. The dying declaration can form sole basis of conviction. Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made. If the Court is satisfied that the dying declaration is true and voluntary, it can base the conviction without corroboration. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not a result of tutoring, prompting or product of imagination. The deceased must be in fit state of mind to make the declaration. In order to test its reliability the dying declaration has to be subjected to a very close scrutiny keeping in view the fact that the statement has been made in the absence of accused, who had no opportunity to test the veracity of the statement by cross examination. But once the Court has come to the conclusion that the dying declaration was truthful version as to the circumstances of the death and assailants of the victim, there is no question of further corroboration. The necessity for corroboration

arises not from any inherent weakness of dying declaration, as a piece of evidence, but from the fact that the court, in a given case, has come to the conclusion that particular dying declaration was not free from infirmity.

9. It is also settled principle of law that in a case resting on multiple dying declarations, the Court cannot pick and choose any one dying declaration. The dying declarations are required to be consistent in respect of material aspects of the incident. Thus, once there are more than one dying declarations, they have to be read as one and the same statement for proper appreciation of value and if they differ from each other on material aspects, efforts should be made to see that they could be reconciled. If no assumption could explain the difference, the statement might become unworthy of credit but if one is possible the position may be different. In case the contradictory and inconsistent stand is taken by the deceased, the corroboration from other sources would become necessary.

10. In the case in hand, on 25.6.2011, P.W.5 A.S.I. Abdul Wahid Abdul Sattar has recorded the dying declaration of deceased Rukhminibai in between 11.00 a.m. to 11.35 a.m. P.W.5 Abdul Wahid being a police personnel recorded the dying declaration at Exh.32 of deceased Rukhminibai in detail. Deceased Rukhminibai

had given all details including the cause, assailant and as to how the main incident occurred and lastly as to who extinguished the fire.

P.W.3 Naib Tahsildar, Balasaheb Lande on the same day has recorded the dying declaration at Exh.29 of deceased Rukhminibai with quick succession as to the first dying declaration. The dying declaration Exh.29 came to be recorded on 25.6.2011 in between 12.50 p.m. to 1.05 p.m. So far as the dying declaration Exh.29 is concerned, there are certain omissions. The learned counsel for the appellant by pointing out the said omissions vehemently submits that the two dying declarations are inconsistent or differ and thus, none of the dying declarations are truthful and worthy of credit. It is quite interesting to mention here those omissions. In dying declaration Exh.29, deceased Rukhminibai had not stated the reason behind the said incident of pouring kerosene on her person and setting her on fire by the accused, whereas in the dying declaration at Exh.32, deceased Rukhminibai had stated that her son Yuvraj slapped son of her brother in law and therefore, the accused had quarreled with her and accordingly the said incident occurred.

11. We have already mentioned that in quick succession the dying declaration Exh.29 came to be recorded. On careful perusal of dying declaration at Exh.29, it appears that certain questions were formed

by P.W.3 Naib Tahsildar, Balasaheb Lande and accordingly dying declaration was recorded in question and answer form. The question Nos. 1 to 4 are formal one, but question No.5 is important question. Which is in the form that "*where, when and how the incident took place?*" It appears that there is no specific question asked by P.W.3 Naib Tahsildar, Balasaheb Lande to deceased Rukhminibai as to the reason behind the said incident. Deceased Rukhminibai had given the details of cause in her first dying declaration Exh.32. Under these circumstances, mere omission of stating cause in the later dying declaration cannot be termed as inconsistency between two dying declarations. Most particularly, when deceased Rukhminibai had no opportunity to tell the said cause since the question was not formed and put to her to that effect and secondly deceased Rukhminibai had not stated different inconsistent cause than stated in the earlier dying declaration Exh.32. A dying declaration which depends upon oral testimony may suffer from all the infirmities of human memory and human character.

12. Learned counsel for the appellant has further pointed out that the deceased Rukhminibai had stated in her dying declaration Exh.29 that while she was taking food, accused came from her back side, poured kerosene on her person and set her on fire. Whereas in the dying declaration Exh.32 deceased Rukhminibai had not stated

so. Learned counsel for the appellant has also pointed out that in the dying declaration Exh.29 deceased Rukhminibai had marked the presence of her husband and father-in-law while extinguishing the fire, however in the dying declaration at Exh.32 she added one more person Bapurao Sawandkar as a person attempted to extinguish the fire alongwith her husband and father-in-law. It is not out of place to mention here that the husband and father-in-law of deceased Rukhminibai had sustained burn injuries while attempting to extinguish the fire on the person of deceased Rukhminibai. Medical certificates to that effect are placed on record and marked at Exh.20.

13. It is settled principle of law that in case of resting on multiple dying declarations, the dying declarations are required to be consistent in respect of material aspects of the incident. On perusal of both the dying declarations, it appears to us that there is consistency or common thread which support the case of the prosecution to point out the guilt of the appellant/original accused. There is no variance of the incident as recorded in each of the dying declarations.

14. Learned counsel for the appellant has submitted that though deceased Rukhminibai had marked presence of her husband and father-in-law in the house, instead of relying upon ocular evidence of

those witnesses, the prosecution preferred to rely on dying declarations. Learned counsel further submits that though father of deceased Rukhminibai admitted in his cross examination that deceased Rukhminibai was not in a position to talk till her death, even then the learned Judge of the trial court placed reliance on the dying declarations. Learned counsel submits that both the dying declarations are falsely recorded and no reliance can be placed on them. It does not inspire any confidence.

15. On careful perusal of spot panchnama Exh.38, it appears that house is consisting of four rooms. All four rooms are facing towards north side and there is courtyard in front of the house. It also appears from the contents of spot panchnama and the map drawn on it that all four male members alongwith their respective wives occupied each of the room separately. This incident had taken place in second room from west side. Deceased Rukhminibai though marked presence of husband and father-in-law in the house, had stated in her dying declaration Exh.29 that after setting her on fire when she was running, her husband and father-in-law attempted to extinguish the fire. Deceased Rukhminibai had not stated in any of the dying declarations that in the same room, where the incident had taken place, her husband and father-in-law were present. Even the defence has given an opportunity to the investigating officer while he

was under cross examination to explain the things. In para 6 of the cross examination, the investigating officer has explained that it was transpired in the investigation that the husband, father-in-law of deceased Rukhminibai and one Bapurao Sawandkar reached the place of incident after hearing the hue and cry of deceased Rukhminibai. In view of this, it is clear that the prosecution case clearly rests upon dying declarations at Exh.29 and 32.

16. Learned counsel for the appellant has also submitted that history of accidental burns came to be recorded initially, however, it is not clear as to on whose instructions, the said history was written in the medical papers initially when deceased Rukhminibai was admitted in the hospital. It is not out of place to mention here that on 24.6.2011 an attempt was made to record the statement of deceased Rukhminibai, however, she was not conscious and therefore, her statement could not be recorded on that day.

17. On careful examination of prosecution evidence, we are of the opinion that there is no inconsistency between two dying declarations Exh.29 and 32. The said dying declarations were truthful version as to the circumstances of death. In our opinion, there is no need of any further corroboration. Both the dying declarations are fully supported by the medical evidence. The Medical Officer observed that

deceased Rukhminibai was conscious, oriented and fit to give her oral statement. The Medical Officer remained present till the completion of recording of both the dying declarations. The Medical Officer has made endorsement at the time of beginning of recording and also at the end of said dying declarations. P.W.3 Naib Tahsildar, Balasaheb Lande also got himself satisfied as to the fit state of mind of deceased Rukhminibai before recording her dying declaration. After recording of dying declaration, the contents were read over to deceased Rukhminibai and she admitted the said contents to be correct. There is no possibility of tutoring or prompting since the allegations are made consistently in both the dying declarations against the mother-in-law/accused only. In our considered opinion, the dying declarations Exh.29 and 32 are truthful versions and inspires confidence. The learned Judge of the trial court has rightly placed his reliance on the said dying declarations and recorded the conviction of the appellant/original accused.

18. So far as the conviction of the accused under Section 498-A is concerned, we find that there is no evidence of cruelty against the appellant/accused, as defined under Section 498-A of I.P.C. We accordingly inclined to quash and set aside the conviction of accused for the offence punishable under Section 498-A of I.P.C.

19. In the light of above, we proceed to pass the following order:-

O R D E R

- I. Criminal Appeal No. 454 of 2012 is partly allowed.
- II. The judgment and order of conviction dated 26.6.2012 passed by the learned Additional Sessions Judge, Basmathnagar, in Sessions Trial Case No. 34 of 2011, to the extent of convicting the appellant-original accused Sumanbai w/o Prabhakar Sawandkar for the offence punishable under Section 498-A of I.P.C. sentencing her to suffer R.I. for one year and to pay fine of Rs.500/- i/d to suffer R.I. for two months, is quashed and set aside.
- III. The judgment and order of conviction dated 26.6.2012 passed by the learned Additional Sessions Judge, Basmathnagar, in Sessions Trial Case No. 34 of 2011, to the extent of convicting the appellant-original accused Sumanbai w/o Prabhakar Sawandkar for the offence punishable under Section 302 of I.P.C. sentencing her to suffer R.I. for life and to pay fine of Rs.1000/- i/d to suffer R.I. for three months is confirmed and maintained.
- IV. Criminal appeal is disposed of accordingly.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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