

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4994 of 2014

The State of Maharashtra,
Through Police Station, AUSA,
District : Latur.

.. Applicant
(Original complainant)

versus

1. Tukaram Hanmant Sagar @ Murde [Abated].
2. Padmabai Tukaram Sagar,
Age : 61 years.
3. Govind Tukaram Sagar @ Murde,
Age : 35 years.
4. Satyakala Govind Sagar,
Age : 30 years.
5. Bibhishan Prabhu Sagar,
Age : 35 years.
6. Shakuntala Bibhishan Sagar,
Age : 35 years.

All R/o. Nagarsoga,
Taluka : AUSA,
District : Latur.

.. Respondents
(Original accused)

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*Mrs. M.B. Gangwal (Patni), Additional Public Prosecutor,
for the applicant - State.*

Application abated as against respondent no.1.

Mr. A.V. Patil Indrale, Advocate, for respondent nos.2 to 6.

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

DATE : 6TH FEBRUARY 2015

COURT'S ORDER (Per A.M. Badar, J.) :

1. By this application, appellant - State is seeking leave to appeal challenging the judgment and order dated 13th June 2014, passed by the learned Sessions Judge, Latur, in Sessions Case No. 12 of 2012, between the parties, thereby acquitting respondents - accused of the offences punishable under Sections 498A, 302, 506, 323 read with Section 34 of Indian Penal Code.

2. We heard the learned Additional Public Prosecutor appearing for the State extensively. She argued that immediately after sustaining burns, deceased Pallavi was taken to the Government Hospital at Latur and subsequently to the hospital of Dr. Lahane at Latur itself. According to the learned APP, officially recorded dying declarations of deceased Pallavi are unerringly pointing guilt of respondents - accused of the crime in question. According to the learned APP, the dying declaration so recorded by the prosecution are reliable and trustworthy.

3. Per contra, according to the learned Counsel appearing for respondents - accused, plausible view is taken by the learned trial court on the basis of evidence on record and, therefore, this Court while exercising appellate jurisdiction should not interfere with the judgment and order of

acquittal of respondents - accused.

4. With the assistance of the learned Counsel appearing for the parties, we have perused the record and proceedings.

5. We may note of brief facts projected from Police report leading to prosecution of respondents - accused.

Deceased Pallavi Sanjay Sagar @ Murde is daughter-in-law of deceased accused Tukaram Hanmant Sagar @ Murde and respondent - accused no.2 - Padmabai Tukaram Sagar. Rest of the respondents - accused are relatives of husband of deceased Pallavi, including her brothers and sisters-in-law. The incident of incinerating Pallavi is alleged to have happened in the residential house in which she used to reside with her husband Sanjay Tukaram Murde at village Nagarsoga in Ausa Taluka of District Latur. According to the prosecution case, respondents - accused including deceased accused - Tukaram, initially came to house of Pallavi at about 8.30 a.m. of 20-10-2011. Quarrel took place between accused persons and deceased Pallavi over the issue that Pallavi does not know household work as well as agricultural work, she spoiled life of her husband and that she has not arranged for a job to her husband through her father. Then, according to the prosecution case, at about 10 to 10.30 a.m. of the very same day, all accused persons in furtherance of their common intention, poured kerosene on person of Pallavi and set her ablaze.

Initially, on 20-10-2011, Pallavi was taken to Government Hospital, Latur, and thereafter against medical advice, her husband as well as

maternal uncle of Pallavi shifted her to hospital of Dr. Lahane at latur. At that hospital, first dying declaration of Pallavi came to be recorded from 12.05 p.m. to 12.30 p.m., by PW 9 Head Constable - Uttam s/o. Raghunath Jadhav, after ascertaining condition of Pallavi, to make statement. Subsequently, her second dying declaration came to be recorded by PW 5 Vilas Shivajirao Jogdand, Naib Tahsildar, on the very same day from 12.50 p.m. to 1.20 p.m.

6. Perusal of dying declaration at Exhibit 49 allegedly recorded by Head Constable Uttam Jadhav shows that declarant has made a statement to him, that at about 8.30 a.m. of 20-10-2011, her father-in-law and mother-in-law came to her house and quarrelled with her over spoiling life of her husband as well as on account of non-bringing the amount of dowry. As per this dying declaration at Exhibit 49, at about 10.00 a.m. of that day, other accused persons also came to her house and while she was preparing dough, all accused persons poured kerosene on her person from can and set her ablaze. Thereafter, they left.

7. Second dying declaration of deceased Pallavi made to Naib Tahsildar PW 5 Vilas Jogdand at Exhibit 40 shows that at about 8.30 a.m. of 20-10-2011, her father-in-law and brother-in-law came and told her that she spoiled life of her husband and accused her that she does not know agricultural operation. They also alleged to have insinuated her by saying that she has not managed to provide service to her husband through her father. This second dying declaration shows that while Pallavi was preparing meal, her father-in-law, mother-in-law, brother-in-law, wife of brother-in-law, cousin brother-in-law and his wife came, abused her and

set her ablaze by pouring kerosene.

8. Close scrutiny of both these dying declarations show that the declarant has not made consistent statement as to cause of her death. Section 32 of the Indian Evidence Act is an exception to the rule of hearsay evidence and it makes statement of the deceased as to the cause of her death or circumstances of prosecution leading to her death, as relevant. It needs to be kept in mind, that dying declaration is not a statement made on oath and maker thereof is not available for cross examination. As such, sphere of scrutiny of the dying declaration is very limited field and the court cannot afford to sideline description found in case of plurality of dying declaration. Therefore, rule of prudence requires that the dying declaration in case of plurality must be consistent so as to base conviction by placing reliance on them. The second test is that the dying declaration must be honest, truthful and trustworthy. They should inspire confidence of the court in respect of their truthfulness. In the case in hand, deceased Pallavi has attributed different roles to different accused persons in both her officially recorded dying declarations. As such, it is unsafe to rely on either of the dying declarations.

9. There is another aspect which cast shadow of doubt on both these officially recorded dying declarations of deceased Pallavi. Evidence on record shows that deceased Pallavi along with her husband were residing separately. None of respondents - accused persons were residing with deceased Pallavi. The defence has examined DW 1 Umesh s/o. Bhimrao Kohale and DW 2 Shivshankar s/o. Basavanappa Khot to prove the defence of alibi so far respondent - accused no.3 Govind and his wife

respondent - accused no.4 Satyakala is concerned. Evidence of both these defence witnesses show that respondent - accused no.3 Govind and his wife, respondent - accused no.4 Satyakala were not present on the scene of offence. In fact, respondent - accused no.3 Govind was Teacher and he was present at his school at the relevant point of time. The school where respondent - accused no.3 Govind was working is situated at village Malkondji, Taluka Ausa of District Latur. The learned trial court has accepted this position. In the wake of this proved fact, recitals in both officially recorded dying declarations, that respondent - accused no.3 Govind and his wife respondent - accused no.4 Satyakala played active role in setting deceased Pallavi ablazed, makes both dying declarations doubtful. The third aspect which cast shadow on prosecution case is, medical case record of deceased Pallavi maintained at Government Hospital, Latur. The history of sustaining burn injuries by deceased Pallavi recorded therein is of accidental burns.

10. The prosecution case rested on witnesses PW 2 Vinayak Madhavrao Suryawanshi - an auto-rickshaw driver, PW 3 Ramchandra s/o. Bhimrao Musande, neighbour, who had allegedly witnessed the incident, as well as PW 6 Sanjay, husband of the deceased who was very much present in the neighbouring house where incident had happened. All these three important witnesses have not supported the prosecution case and their cross examination could not bring any incriminating material on record.

11. In the wake of this evidence on record, though the prosecution has proved that Pallavi w/o. Sanjay Murde died because of sustaining ante

mortem burn injuries, it cannot be held that respondents - accused persons along with deceased accused Tukaram, in furtherance of their common intention, committed murder of deceased Pallavi by setting her ablaze.

12. Similarly, we have also perused evidence of parental relatives of deceased Pallavi, in order to examine whether the charge for the offence under Section 498A of IPC is proved or not. There is no evidence of required strength on record in order to demonstrate that on account of demand of money, respondents - accused persons or any of them have coerced Pallavi and harassed her in order to bring money from her parents.

13. In the light of foregoing reasons, we are of the view that the learned trial court has taken plausible view of the evidence on record and the impugned judgment and order of acquittal cannot be said to be a perverse one.

14. In the result, the Application is rejected. Consequently, leave to file appeal is refused.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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