

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 304 OF 1995

Navnath Nagnath Vaste.

Age: 26 yrs., Occ. Business,

R/o. Ganesh Nagar, Kurduwadi,

Dist. Solapur.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Omkar Nagvekar, advocate appointed for Appellant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : DECEMBER 3, 2015

JUDGMENT:

1 Heard the learned Counsel appointed for the appellant and the learned APP for State.

2 The appellant herein is convicted for the offence punishable under Section 306 of the Indian Penal Code and is sentenced to suffer

R.I. for 10 years and fine of Rs. 500/- i.d. to suffer R.I. for 6 months. The appellant is also convicted for offence punishable under Section 498A of the Indian Penal Code and is sentenced to suffer R.I. for 2 years and to pay fine of Rs. 500/- I.d. to suffer R.I. for 6 months in Sessions Case No.210 of 1994 by Sessions Judge, Solapur vide Judgment and Order dated 29/6/1995. Hence, this appeal.

3 Such of the facts necessary for the decision of this appeal are as follows :

- (i) That the appellant was married to Suvarna one and half years prior to 13th May, 1994. On 13/5/1994 she had son aged about 7 months.
- (ii) On 13/5/1994 Suvarna was admitted in Civil Hospital, Solapur with 100% burn injuries. The medical officer of Civil Hospital, Solapur had given the said information to the police station situated in Civil Hospital.

(iii) A requisition was given for recording statement of the injured. P.W. 2 Bhimrao Mane, who was Special Executive Magistrate was called by the police station to record the statement of the injured.

(iv) Pursuant to the said requisition, P.W. 2 Bhimrao Mane had been to Civil Hospital, Solapur. He had visited burn injury ward. He had enquired with the doctor about the condition of the injured. Upon being satisfied that she was in a position to give statement, P.W. 2 had recorded her statement.

(v) It appears from the record that in the said statement Suvarna had disclosed that her husband did not want a child. She had given birth to boy. Her husband intended to perform second marriage. On 13/5/1994 she was annoyed with her husband and therefore, in the early hours at 5.30 a.m. she had poured kerosene from big chimney and set herself ablaze.

(vi) After she raised cries, the fire was extinguished by her father-in-law and she was admitted in Civil Hospital, Solapur. She had specifically stated that she was harassed by her husband.

(vii) On the basis of her statement, Crime No. 23 of 1994 was registered against the accused appellant for offence punishable under Section 498A of the Indian Penal Code.

(viii) Suvarna succumbed to the injuries on 20/5/1994. Thereafter, Section 306 of the Indian Penal Code was added.

(ix) After completion of investigation, charge-sheet is filed. Case was committed to the Court of Sessions and registered as Sessions Case No. 210 of 1994. Charge was framed against accused for offence punishable under section 306 and 498A of the Indian Penal Code.

(x) At the trial, prosecution examined 8 witnesses to bring home the guilt of the accused.

4 P.W. 1 happens to be Dr. Vijaykumar Nagnath Bet who had performed autopsy on the dead body of Suvarna on 20/5/1994. He has deposed before the Court that the cause of death was shock and toxemia due to 100% burns.

5 P.W.2 Bhimrao Vithal Mane happens to be the Special Executive Magistrate who had recorded the statement of Suvarna. He has deposed before the Court that on 13/5/1994. He has received a letter from Civil Hospital Police Chowky for recording statement of Suvarna Navnath Vaste. The said letter is marked as Exh. 9. He had visited the hospital at about 9 a.m. The burnt patient was in the ward. He has further deposed that he had enquired with one doctor about consciousness of the patient. The doctor had answered in the affirmative and allowed him to record her statement. The doctor was present next to the bed of the injured throughout the recording of the statement. He has deposed before the Court that he had recorded the statement in question and answer form. She had capacity to understand the questions put to her. He has deposed that he had recorded the answers in her own words. He had obtained her thumb impression. According to him, the statement was also endorsed by the doctor. He had attested the thumb impression of the injured. In the cross-examination, P.W.2 has admitted that he has not brought

the order issued by the Government to him to work as a Special Executive Magistrate.

6 P.W. 3 Sharda Sadashiv Dhole happens to be the mother of Suvarna. According to her, the accused had demanded cash of Rs. 10,000/- for his business and gold ring at the time of naming ceremony of the son of Suvarna. She has also admitted in the cross-examination that the accused had taken school leaving certificate of Suvarna for seeking admission for Suvarna in the course of Balwadi. It is also admitted that father-in-law of Suvarna is school teacher.

7 P.W. 4 Shankar Ramchandra Dhole is the paternal uncle of Suvarna.

8 P.W. 5 Sadashiv Dhole is the father of deceased Suvarna. He has also corroborated the substantive evidence of P.W. 3.

9 P.W. 7 Dr. Asha Gaikwad is the medical officer attached to Civil Hospital, Solapur. According to her, the patient was conscious when she was admitted in hospital. She had given history for injury as suicidal burn injuries at 5.30 a.m. on 13/5/1994. PW 7 had proved the case papers of deceased Suvarna. From the medical case papers, it appears that the statement of the injured was recorded in the casualty and she had disclosed that she had suicidal burns.

10 P.W.8 Dineshkumar Kadam is the medical officer who was attached to primary health center on 13/5/1994. According to him, on 13/5/1994 at about 6.20 a.m. Suvarna Navnath Vaste was brought by her father-in-law Nagnath Vaste. She had sustained superficial to deep burn injuries all over the body except scalp i.e. about 95%. He had referred her to the Civil Hospital, Solapur. She had given the history of injuries due to suicidal burns at 5.00 a.m.

11 P.W. 9 Chandrakant Ghodake was attached as PSI to Kurduwadi Police Station on the relevant date. The offence was initially

registered as zero number and thereafter, he had registered Crime No. 23/1994 against the accused. He has deposed before the Court about the steps taken by him in the course of investigation.

12 The case rests upon the dying declaration. Upon perusal of the dying declaration, which is at Exh. 10, it appears that the Special Executive Magistrate i.e. P.W. 2 had obtained thumb impression of Suvarna. The rings on the thumb impression are clear, although it is a case of the prosecution that she had sustained 100 % burn injuries. Moreover, there is no endorsement to the effect that the statement was read over and recorded. From the substantive evidence of P.W. 2, all that can be inferred is that he had been to the hospital and had recorded statement of Suvarna. He has not deposed before the Court that the recitals of Exh. 10 were recorded as narrated to him by deceased Suvarna.

13 Reliance can be placed in the case of **Paikuji s/o Shankar Ataram Vs. State of Maharashtra 2012 All MR (Cri) 2453** in which

reliance is placed on the Judgment of Hon'ble Apex Court in the case of **Sheikh Bakshu and others Vs. State of Maharashtra reported in (2008) 1 Supreme Court cases (Criminal) 679**. The Hon'ble Apex Court held that-

“There was no mention in the dying declaration that it was read over and explained to the deceased. The trial court and the High Court concluded that even though it is not stated, it has to be presumed that it was read over and explained. The view is clearly unacceptable.”

13 Upon perusal of the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, it is clear that the learned Court has relied upon Exh. 10 the dying declaration, without its contents being proved by the Special Executive Magistrate. In fact, that is the most incriminating circumstance.

14 The learned Sessions Judge has not apprised the accused of the fact that it is the case of the prosecution and more particularly, P.W. 2 that Suvarna had disclosed to him that she was harassed by her husband, since she has given birth to a child and therefore, she had committed suicide. According to the learned Counsel appointed for

the appellant, this is a gross error and goes to the root of the matter, as it would cause prejudice to the defence of the accused.

15 Learned Counsel appointed for the appellant further submits that taking the case of the prosecution as it is, the prosecution has failed to establish that the accused/appellant had in any manner abetted, instigated or facilitated the commission of suicide of his wife. The dying declaration at Exh. 10 is silent on this aspect. The act as alleged by the prosecution does not fall within the ambit of Section 109 of the Indian Penal Code and hence, by no stretch of imagination, it can be said that the appellant herein had either instigated, abetted or facilitated commission of suicide by Suvarna.

16 Section 107 of the Indian Penal Code reads thus :

“Abetment of a thing.—A person abets the doing of a thing, who
— (First) — Instigates any person to do that thing; or
(Secondly) —Engages with one or more other person or persons
in any conspiracy for the doing of that thing, if an act or illegal

omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.”

17 In case of **Sanju @ Sanjay Singh Sengar v/s. State of M.P. Reported in (2002) 5 SCC 371**, the Hon'ble Apex Court has observed:

“The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with *mens rea*. It is in a fit of anger and emotion.”

18 No specific overt act is attributed to the accused/appellant to show that he had rather abetted commission of the suicide by Suvarna.

19 In view of the above observations, upon perusal of the evidence adduced by the prosecution and the documents on record and considering the submissions advanced across the bar, this Court is inclined to allow the appeal. The appellant deserves to be acquitted.

20 Before parting with the Judgment, this Court records appreciation for the efforts put by the advocate appointed for the appellant. The professional fees are quantified at Rs. 3,000/- to be paid the learned advocate so appointed within 3 months from today.

21 Hence, following order is passed :

ORDER

- (i) The appeal is allowed.
- (ii) The Judgment and Order dated 29th June, 1995 passed by the learned Sessions Judge, Solapur in Sessions Case No. 210 of 1994 is hereby quashed and set aside.
- (iii) The appellant-Navnath Nagnath Vaste is hereby acquitted of all the charges.

- (iv) The bail bond of the appellant to stand cancelled.
- (v) Fine amount, if paid, be refunded.
- (vi) Writ be issued forthwith.

22 Appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)