

1. Smt. Nirmaladevi Ramkrupal Kori,	]	<i>Appeal abates</i>
Adult, Female, Indian Inhabitant,	]	<i>as per Court's</i>
Aged about 66 years, Occ.: Housewife,	]	<i>...order dt. 27/7/15</i>
R/at Room No.519, Jokim Estate,	]	
P.N. Road, Bhandup (West), Mumbai-78.	]	
	]	
2. Smt. Lalita Sunil Kori,	]	
Adult, Female, Indian Inhabitant,	]	
Aged about 66 years, Occ.: Housewife,	]	 Appellants /
R/at Room No.519, Jokim Estate,	]	(Original Accused
P.N. Road, Bhandup (West), Mumbai-78.	]	Nos.3 and 4)

1. The State of Maharashtra, Through the Senior Inspector of Police, Bhandup Police Station, Mumbai.	]]]]	
2. Shri. Premchand Ramkrupal Kori, Adult, Male, Indian Inhabitant, Aged about 45 years, Occ.: Service, R/at Room No.519, Jokim Estate, P.N. Road, Bhandup (West), Mumbai-78.	]]]]]]	
3. Shri. Ramkrupal Nageshan Kori, Adult, Male, Indian Inhabitant, Aged about 71 years, Occ.: Retired, R/at Room No.519, Jokim Estate, P.N. Road, Bhandup (West), Mumbai-78	]]]]]	 Respondents / (Org. Complainant & Accu. Nos.1 & 2)

Mrs. A.S. Pai, A.P.P., for Respondent No.1/State.

**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 10TH AUGUST, 2015.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. The Appellants are original Accused Nos.3 and 4. They are convicted by the Ad-Hoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.812 of 2002 vide Judgment dated 5th March, 2008 for the offences punishable under Sections 302 and 498-A r/w. 34 of the IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.500/- each, in default to suffer R.I. for three months, on the first count, and R.I. for three years and to pay fine of Rs.500/- each, in default to suffer further R.I. for three months, on the second count.

2. Facts of the Appeal can be stated as follows :-

Deceased Seema was the daughter of PW-1 Suraj Kori. Her marriage was performed with Premchand, Accused No.1, (since acquitted), in the year 1998. At the time of marriage, elder brother of Accused No.1, namely, Omprakash insisted for payment of Rs.500/- for '*Dhulha Utarai*'. PW-1 Suraj, Seema's

father, pleaded his inability to pay the amount. Hence, there was some dispute on this count at the time of marriage. On the next day, Accused No.1 insisted for payment of Rs.1,00,000/- towards dowry. Again the mediators intervened and tried to settle the dispute.

3. After the marriage, Seema went to reside in the house of Accused No.1, who was residing jointly along with his parents, namely, Accused No.2 Ramkrupal (acquitted) and Accused No.3 Nirmaladevi. Accused No.4 Lalita is the married sister of Accused No.1. She was residing in the adjoining house.

4. As per prosecution case, after the marriage, Seema was treated properly only for about two years. Since then there was physical and mental torture to her on the count that dowry amount of Rs.1,00,000/- was not given as per demand. For some days, therefore, Seema resided in the house of her parents, but thereafter again Siddharth, younger brother of Accused No.1, brought her to the house of the Accused with an assurance that she will be treated properly. After some months, murder of Siddharth took place and hence Seema was being blamed for the same and subjected to more ill-treatment and cruelty.

5. Incident giving rise to the instant case took place on 15th December, 2001. On that day, her father received message that Seema was burnt and admitted in M.S. Hospital, Bhandup. He came to Mumbai and visited her in M.S. Hospital on 17th December, 2001. On enquiry, Seema told him that Accused Nos.1 to 4 have burnt her by pouring kerosene on her person.

6. Meanwhile, the Dying Declaration of Seema came to be recorded by Special Executive Officer PW-3 Deepmala Badhe on 15th December, 2001. Initially, Seema attributed cause of her burns to the accident. However, on 16th December, 2001, in another statement, she attributed the cause of her burns to the pouring of kerosene and setting her ablaze by her husband, mother-in-law and sister-in-law.

7. On 15th December, 2001, in her statement recorded by PW-4 PSI Parshuram Salvi also, she has attributed the cause of injuries to accident, whereas, on 16th December, 2001, she attributed the cause of her burns to her mother-in-law and sister-in-law. This statement of Seema recorded by PSI Salvi on 16th December, 2001 vide Exhibit-23 was treated as F.I.R. and on the said F.I.R., C.R. No.255 of 2001 came to be registered against the

Accused for the offences punishable under Sections 307 and 498-A r/w. 34 of the IPC.

8. During the course of investigation, PW-4 PSI Salvi visited the spot of incident and drew the Scene of Offence Panchanama (Exhibit-13). Under the said Panchanama, he seized kerosene can, match-sticks and stove from the spot. Further investigation of the case was entrusted to PW-5 Senior P.I. Siddique Shaikh on 17th December, 2001. He recorded the statements of the witnesses and arrested the accused persons. On 30th December, 2001, Seema succumbed to the burn injuries. Hence, after Inquest Panchanama (Exhibit-14) and the Postmortem Report (Exhibit-28), charge under Section 302 of the IPC came to be added. Further to completion of investigation, Charge-Sheet was filed in the Court against the Accused.

9. On committal of the case to the Sessions Court, Trial Court framed charge against the Accused vide Exhibit-5. The Accused pleaded not guilty and claimed trial.

10. In support of its case, prosecution examined five witnesses and on appreciation of their evidence, the Trial Court held the

guilt of Accused No.3 Nirmaladevi, the mother-in-law of Seema, and Accused No.4 Lalita, the sister-in-law of Seema, to be proved beyond reasonable doubt for both the offences punishable under Sections 498-A and 302 r/w. 34 of the IPC and convicted and sentenced them, as aforesaid, acquitting husband and father-in-law of Seema of the charges levelled against them, giving them benefit of doubt.

11. This Judgment of the Trial Court is the subject matter of this Appeal. During pendency of the Appeal, original Accused No.3 Nirmaladevi, mother-in-law of Seema, expired. Hence, as per the order passed on 27th July, 2015, Appeal against her is abated. This Appeal is, accordingly, heard only in relation to Appellant No.2 Lalita, the sister-in-law of Seema.

12. In this Appeal, we have heard learned Counsel for the Appellants, who has challenged the impugned Judgment of the Trial Court and learned A.P.P., who has supported the same. In our considered opinion, before adverting to the rival submissions advanced by them, it would be useful to refer to the evidence on record.

13. This case stands on the evidence of the Dying Declarations. There are in all four written Dying Declarations of deceased Seema; two recorded by PW-3 SEO Deepmala Badhe and two recorded by PW-4 PSI Parshuram Salvi. The first Dying Declaration is dated 15th December, 2001 i.e. immediately after the incident. In this Dying Declaration recorded by PW-3 SEO Badhe vide Exhibit-19, Seema has stated that while she was lighting the stove, due to explosion of the flame, she sustained the burn injuries and she has no complaint against anyone. Whereas, in the Dying Declaration (Exhibit-20) recorded by PW-3 SEO Badhe on 16th December, 2001, Seema has stated that her mother-in-law, sister-in-law and husband poured kerosene on her and set her ablaze. Therefore, she has complaint against them.

14. Similar is the case as regards the two Dying Declarations recorded by PW-4 PSI Salvi. In the first Dying Declaration recorded by him vide Exhibit-24, on 15th December, 2001, Seema has stated that when she lighted the stove, as the plastic kerosene can was near the stove, there was explosion of the flame and as she was wearing nylon saree, she sustained the burns. When she shouted, her husband poured water on her and

extinguished her fire. In the attempt of extinguishing her fire, her husband also sustained some burns on his right hand. He brought her to the hospital. She has further stated that she has no complaint against anyone. However, in the Dying Declaration recorded on 16th December, 2001 vide Exhibit-23, Seema has stated that she was subjected to harassment and ill-treatment and on 15th December, 2001, her husband, parents-in-law and sister-in-law quarreled with her and assaulted her. Then her mother-in-law poured kerosene on her, her sister-in-law lighted the match-stick and set her on fire. Hearing her shouts, her father-in-law and husband extinguished her fire and brought her to the hospital.

15. All these four Dying Declarations are properly proved by the prosecution itself. However, these two sets of Dying Declarations are totally inconsistent with each other. Not only they are inconsistent in material and crucial aspects, but they are also mutually destructive and explosive. If one set of Dying Declaration that of sustaining the burns accidentally, which is first in time, immediately after her admission in the hospital, is accepted, then second set of Dying Declaration, which is

subsequent in time, after she met her sister Kumkum Kori and her other relatives, is required to be disbelieved. The reason for the same is that the possibility of Seema being tutored by her relatives in such situation cannot be ruled out totally. It is pertinent to note that PW-2 Kumkum is the elder sister of Seema and she has admitted that immediately after she came to know that Seema was burnt and admitted in the hospital, she went and met her and was with her for five to six hours. Then on the next day thereafter, Seema has changed her version.

16. As to the oral Dying Declaration alleged to be made by Seema before her father on 17th December, 2001, she has again given a different version by stating that Accused Nos.1 to 4 have burnt her by pouring kerosene on her person. Nowhere any inculpatory act was attributed to Accused No.1, her husband, in the Dying Declaration recorded by PW-4 PSI Salvi vide Exhibit-23. In the said Dying Declaration, she has attributed the cause of her burns only to her mother-in-law and sister-in-law, whereas, in the Dying Declaration (Exhibit-20) recorded by PW-3 SEO Badhe, she has attributed the cause of her burns to her mother-in-law, sister-in-law and husband also. As per evidence of PW-2 Kumkum, her

elder sister, in oral Dying Declaration made by Seema before her, Seema has attributed the incriminating act to her mother-in-law and sister-in-law only.

17. Thus, none of the Dying Declarations are consistent as regards the material aspects. One can understand some discrepancy or inconsistency in other peripheral matters of the Dying Declarations, but when the Dying Declarations are mutually exclusive and the possibility of the Deponent being influenced or tutored by her relatives cannot be ruled out, considering that the relatives had ample opportunity to do so, it becomes difficult to place implicit reliance on one set of Dying Declaration, by disbelieving the other set of Dying Declaration; especially, when the entire case and the fate of the Accused rests on the evidence of Dying Declarations alone.

18. It has to be stated that, the Dying Declaration not being a statement on oath so that its truth could be tested by cross-examination, the Court has to apply the strictest scrutiny and closest circumspection to the statement before acting upon it. While the great solemnity and sanctity is attached to the words of dying person, because the person on the verge of death is not

likely to tell lies or concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The Court has to be, therefore, satisfied that the said statement is truthful and voluntary.

19. In the instant case, the two contradictory sets of Dying Declarations have robbed both the sets of Dying Declarations of their truthfulness and voluntary nature. To pick and choose one set of Dying Declaration over the other, without there being any corroborating evidence on record to do so, is not the correct way of appreciation of evidence. Moreover, in the instant case, the Spot Panchanama (Exhibit-13), which proves recovery of kerosene can and stove, instead of supporting the incriminating set of Dying Declaration, negatives the same. In our considered opinion, therefore, in the instant case, the evidence relating to Dying Declaration produced on record by the prosecution, fails to inspire confidence in the judicial mind. By their very nature, the Dying Declarations have become bereft of credibility. Except for Dying Declarations, there is no other evidence on record to prove the prosecution case that it was Accused No.3 Nirmaladevi, who

poured kerosene on Seema and Accused No.4 Lalita, the present Appellant No.2, who set her ablaze.

20. Even as regards charge under Section 498-A of the IPC, whatever incident of dowry demand, which is alleged, is of much prior period, immediately after the marriage, as deposed by Seema's father. Thereafter Seema has resided in the house of the Accused persons happily, as deposed by him, initially for a period of two years and thereafter also, she willingly went to the house of the Accused, when her husband came to take her home or, thereafter, when her younger brother-in-law Siddharth came to take her home. She was also having one son and one daughter from Accused No.1.

21. The evidence of her elder sister PW-2 Kumkum also reveals that the present Appellant No.2 Lalita, sister-in-law of Seema, was not residing jointly with her, but was residing in the adjoining premises. There are no specific instances of cruelty, either mental or physical, alleged against her. General allegation is made that accused persons were subjecting Seema to cruelty and harassment. Hence, in the absence of any specific act of cruelty or harassment attributed to the present Appellant No.2

Lalita, it would be difficult to uphold her conviction, as recorded by the Trial Court, for the offence punishable under Section 498-A of the IPC also.

22. Resultantly, on re-appreciation of entire evidence on record, we hold that prosecution has failed to prove its case against Appellant No.2 Lalita Sunil Kori, beyond reasonable doubt. Hence, the Appeal is allowed. The conviction and sentence of Appellant No.2 Lalita for the offences punishable under Sections 302 and 498-A r/w. 34 of the IPC is quashed and set aside. She is acquitted of both the offences. Her Bail Bonds stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]