

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.787 OF 2003

The State of Maharashtra,
Through -
Sunita w/o. Rajendra Lokhande,
Age-20 years, Occu:Household,
R/o-Saramkundi, Tq-Bhoom,
Dist-Osmanabad.

...APPELLANT
(Orig. Complainant)

VERSUS

- 1) Rajendra Vishnu Lokhande,
Age-25 Years,
- 2) Prayagabai w/o. Vishnu Lokhande,
Age-65 years,

Occu: of both accused is Agri.
and both are R/o-Saramkundi,
Tq-Washi, Dist-Osmanabad.

...RESPONDENTS
(Orig. Accused)

...
Shri. R.V. Dhasalkar, A.P.P. for Appellant.
Shri. B.R. Jaybhay, Advocate for Respondent
Nos.1 and 2.

...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 8TH JUNE, 2016.

DATE OF PRONOUNCING JUDGMENT: 16TH JUNE, 2016.

JUDGMENT :

1. State has filed this Appeal against Respondents - Accused (hereafter referred as "Accused") against their acquittal under Section 498-A, 306 read with Section 34 of the Indian Penal Code, 1860 ("I.P.C." in brief) in Sessions Case No. 123 of 1998 passed by Ad-hoc Additional Sessions Case, Osmanabad on 20th August, 2003.

2. The prosecution case, in short, is as follows :-

(A) On 17th April, 1996 P.S.I. Audumbar Khedkar (PW-12) was working at Washi Police Station. Village Saramkundi, Tq-Bhoom was under

his jurisdiction. The P.S.I. received letter from Medical Officer, Rural Hospital, Washi regarding Sunita, wife of Accused No. 1 - Rajendra Vishnu Lokhande being admitted in the Hospital at 5.00 p.m. in burnt condition. The P.S.I. went to the Hospital and recorded statement of Sunita (hereafter referred as "Victim"). She blamed the Respondents - Original Accused Nos. 1 and 2, her husband and mother-in-law for having ill-treated her and having beaten her leading to she pouring kerosene on herself and burning herself. The P.S.I. recorded statement in presence of Dr. Manju Shelke (PW-3) and the statement Exhibit 73 was converted into First Information Report (F.I.R.), registering offence at Crime No. 19 of 1996 of the Police Station. The P.S.I. went and recorded the Spot Panchanama (Exhibit 41). The spot was the residential house of the accused persons. Certain articles like burnt clothes having smell of kerosene, kerosene can etc. were seized from the spot.

(B) Looking to the condition of the Victim, Rural Hospital, Washi referred her to Civil Hospital at Osmanabad. At the Civil Hospital A.S.I. Pandit Kavde (PW-1) received letter from Medical Officer at about 1.20 a.m. on 18th April, 1996. He also went and in presence of Dr. Ashok Kathare (PW-9) recorded the second dying declaration (Exhibit 32) of the Victim between 2.00 - 2.15 a.m. This was followed by the Naib Tahsildar Vithal Tidke (PW-11) reaching the Hospital and recording the third dying declaration (Exhibit 67). In all the three dying declarations the Victim claimed that she was ill-treated and beaten and so she had burnt herself after pouring kerosene on herself.

(C) The Victim expired in the night between 18th - 19th April 1996. Her Inquest Panchanama (Exhibit 43) was prepared at 6.00 - 6.30 a.m. of 19th April 1996. Postmortem (Exhibit 34) was done

by Dr. Vikram Alangekar (PW-2). The Victim had succumbed to the burn injuries. PW-12 P.S.I. Audumbar Khedkar recorded statements of witnesses, investigated into the offence and filed charge-sheet.

(D) The Accused were charged with offence under Sections 498-A and 306 read with 34 of I.P.C. by the Additional Sessions Judge, Osmanabad. The Accused pleaded not guilty. Their defence is of denial. According to them, the Victim was boiling water at the fire place for giving bath to the small daughter. There was wooden plank over the *Sigdi* (fire place). The Victim tried to pick up jar of pickle from the wooden plank, at which time accidentally can of kerosene kept there fell down and there was a blaze and Victim got accidental burns.

3. Prosecution brought on record evidence of twelve witnesses. The trial Court considered the

record and documentary evidence brought on record and for reasons recorded, acquitted the accused persons. Thus, this Appeal.

4. It has been argued by the learned A.P.P. for State that in all the three dying declarations the Victim blamed the accused persons for her act of burning herself. The accused persons were ill-treating the Victim and because of the ill-treatment given by the accused persons and as the Victim was beaten, she burnt herself. The Accused No. 2 - Prayagabai is sister of father of Victim and there was no reason for the Victim to falsely implicate her aunt. According to the learned A.P.P., the reasons recorded by the trial Court are not justified and the trial Court has wrongly acquitted the accused persons.

5. Against this, the learned counsel for Respondents - Accused submitted that dying declarations do not show that the Doctors

certified mental fitness of the Victim to give the statement. According to the counsel there was no specific evidence regarding alleged ill-treatment. According to the counsel the evidence of father of Victim, namely, PW-10 Sadashiv Kamble shows that Victim was mad and in the absence of evidence to show that she was in fit mental condition to give statement, reliance cannot be placed on the dying declarations. The evidence regarding ill-treatment does not disclose conduct which would make living impossible for the Victim. According to the learned counsel for Accused reasons recorded by the trial Court are correct and proper and do not required to be disturbed.

6. A brief reference needs to be made to the concerned evidence. There is evidence of PW-5 Annapurna Kamble, the mother of the Victim. Prosecution also examined PW-10 Sadashiv, the father of the Victim. Yet another witness PW-4 Deorao Kale, who resides in neighbour-hood was

examined. PW-4 Deorao turned hostile. I have gone through the evidence of these witnesses regarding the marriage which took place and subsequent alleged ill-treatment. If the Judgment of the trial Court is perused, the trial Court comparatively analyzed the evidence of PW-5 Annapurna and her husband PW-10 Sadashiv to highlight different versions. It was noted that PW-5 Annapurna claimed that the Accused were given two Tola gold and other articles in the marriage, but PW-10 Sadashiv was silent in this regard. PW-5 Annapurna claimed that Accused No. 2 Prayagabai would talk with husband PW-10 Sadashiv in insulting manner, while the husband claimed that he was not on talking terms with the Accused since 5-6 months after the marriage. PW-5 Annapurna had deposed that she herself was not on talking terms with the Accused. The trial Court discussed this evidence to observe that the relationship between PW-5 and PW-10 on one side and the accused persons on the other side had got strained after the

marriage took place. Trial Court further discussed the evidence of these witnesses which shows that although, PW-10 Sadashiv was denying that he had taken loan from Accused No. 2 - Prayagabai and when she demanded back the same there was quarrel, there was evidence of PW-4 Deorao that Accused No. 2 indeed was giving money to PW-10 Sadashiv. Trial Court also considered that PW-5 Annapurna preferred to claim that she does not know about the financial condition of the accused persons, but PW-10 Sadashiv accepted that Accused No.2 - Prayagabai was having irrigated land and was getting pension. PW-4 Deorao has deposed that Accused No.1 Rajendra had 4 Acres of irrigated land. Trial Court further considered the fact that although there was evidence that the Victim was being ill-treated, there was no effort made by the parents of the Victim to pacify the situation. The trial Court also further took note of the fact that for long period before and after the delivery of child, the Victim had been staying at the place

of her parents.

7. In the cross-examination of PW-5 Annapurna, she admitted it to be true that the Victim was short tempered. The evidence of PW-4 Deorao also shows that the Victim was short tempered. The witness deposed that Victim used to do acts which she was prevented. What the witness has stated is that she would do what she was told not to do. In the examination-in-chief of PW-10 Sadashiv, the father, himself he deposed that Sunita was mad. The Marathi version of his evidence shows that the word used by the witness was "Wedsar" i.e. like mad. In the cross-examination this father admitted that his daughter, the Victim was whimsical and was hot tempered.

8. The above discussion makes it clear that the Victim was whimsical, hot tempered and person who would do things which she was told not to do

and was like a mad person. Now, keeping such person in view, another aspect which needs to be noted is that the Victim was hardly about 12 years of age when she was married to Accused No. 1. The evidence of PW-5 Annapurna in cross-examination itself shows that she admitted that Sunita was 12 years old at the time of marriage. The opinion of PW-4 Deorao, the person from neighbour-hood in the cross-examination shows his impression that Accused No.1 was about 16-17 years old at the time marriage.

9. The dying declaration of the Victim given to PW-12 P.S.I. Khedkar, Exhibit 73 states that the Victim was married about three years before the incident. In the dying declaration Exhibit 73, Victim appears to have claimed her age to be 20 years and Inquest Panchanama Exhibit 43 also mentioned her age to be 20 years. If the evidence of the mother is kept in view, the Victim was got married at the age of about 12, may be 13 years or

so. In another three years the incident has taken place. It is thus quite clear that the Victim was of quite immature age when she was married of and soon even had a baby girl. Her mental condition, I have already referred to.

10. Now the evidence of such parents who married of their minor daughter, needs to be considered regarding the claim of the ill-treatment. PW-5 Annapurna deposed that when Victim was coming to their place, she was complaining that she is being ill-treated and is not given food and that the accused persons beat her. PW-10 the father, Sadashiv deposed that the Accused were ill-treating the Victim and beat and abuse her. The cause of alleged ill-treatment is not stated by any of these witnesses.

11. The first dying declaration Exhibit 73 claimed that the accused persons were alleging against Victim that she speaks too much with

"Amkya barobar" (say - A or B); that why she does not work properly. The dying declaration claimed that for no reason she used to be scolded and beaten and she was telling this when she was going to her parents. She claimed that she was also not given complete food. On the day of incident, (she claimed that) she was told as to why she is sitting feeding the child and both the Accused abused and beat her. The dying declaration claimed that because of such conduct, she burnt herself.

. In the second dying declaration Exhibit 32, the Victim claimed that for household work and for work relating to field she was being troubled and on the day of incident at home for no reasons quarrel took place and her husband beat her by kicks and blows. The word "*Kathine*" (i.e. by stick) written, was scored out.

. The third dying declaration Exhibit 67 claimed that on 17th April, 1996 she had quarrel

with both the Accused. It was stated that due to household work Accused No.2 took up the matter and the quarrel took place due to which Accused No.1 beat her by kicks and blows. In the same statement it was mentioned that there was no question of suspicion on her due to her behaviour but she was troubled regarding her domestic work and because of that she burnt herself.

12. The above discussion shows that there were vague as well as different reasons given for the alleged ill-treatment. The trial Court in Para 16 of its Judgment, considered the nature victim had and then keeping in view the Rulings which were cited before it, trial Court went on to discuss the three dying declarations. It took note of the fact that the victim was admitted in the hospital at 5.00 p.m. and at the same time the evidence of PW-5 Annapurna shows that parents had reached the hospital. Parents were continuously with the victim thereafter and the dying

declarations recorded thereafter have been suspected by the trial Court as it observed that there was room to doubt that the victim was tutored due to strained relations the parents had with the accused persons. In Para 21 and 22 of the Judgment, the trial Court considered the different versions regarding the cause of ill-treatment in the three dying declarations and observed that there were infirmities in the dying declarations.

13. In none of the dying declarations, the doctors mentioned that the victim was in a fit mental condition to give her statement. What was endorsed by the doctors was that the patient was conscious. Being conscious is one thing and having the stability of mind to make a statement and thus be fit to make a statement is another thing. In set of facts of present matter where victim admittedly was a person who would behave like a mad person, this was material. None of the witnesses who recorded dying declarations, deposed

that they had themselves talked to the victim to verify if she was in fit mental condition to make statement. Trial Court noticed these aspects and thus did not rely on the dying declarations. It was observed that the fact of fit state of mind of Sunita remained unanswered and that it was fatal to the prosecution. Trial Court also observed that the parents of the victim were at the hospital at the time when victim was admitted and possibility of tutoring her could not be ruled out. Trial Court found that the doctors had not brought case papers showing as to what treatment was given to the victim and there was evidence of PW-9 Ashok Kathare regarding giving of pain killers to the victim. As per the trial Court, the three dying declarations were not trustworthy. The trial Court further discussed the oral dying declarations given to her parents and found it difficult to accept the same. The trial Court further noticed that looking to the considerable long period the victim was residing to the place of her parents,

it was difficult to hold that she was ill-treated for not doing domestic work. In the opinion of the trial Court, it could not be said that there was such ill-treatment as would lead the victim to commit suicide. It found that the ill-treatment was not established.

14. I have myself gone through the whole evidence which is on record and the findings recorded by the trial Court as above. The trial Court has given various reasons in support of its findings and I find that the view taken by the trial Court for the evidence, is possible view. This is Appeal against acquittal and when the view taken by the trial Court is possible view, it would not be appropriate to interfere. In the circumstances, benefit of doubt has rightly been given to the accused persons by the trial Court and I refrain from interfering with the acquittal.

15. There is no substance in the Appeal. The

Appeal is dismissed. The bail bonds of the accused persons shall be treated as cancelled.

[A.I.S. CHEEMA, J.]

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