

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

CRIMINAL APPEAL NO. 641 OF 2012

Dhansingh s/o Gokulsingh Bayas,
age 48 years, occ. Labour,
R/o Dharangaon, Tq. Dharangaon,
District Jalgaon

...APPELLANT
[Orig. Accused]

VERSUS

The State of Maharashtra

...RESPONDENT
[Orig. Complainant]

Mr. Pratap Mandlik, advocate h/f
Shri K.C.Sant, Advocate for the Appellant
Mr. K.S.Patil, APP for Respondent/State

CORAM : A.V.NIRGUDE & INDIRA K. JAIN, JJ.
DATED : MARCH 7, 2016

JUDGMENT : [Per Indira K.Jain, J.]

This is an appeal preferred by original accused against the judgment and order dated 1.10.2012 passed by the learned Additional Sessions Judge, Jalgaon in Sessions Case No. 131 of 2009. By the said judgment and order, learned Additional Sessions Judge convicted appellant for the offence punishable under Section

302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default rigorous imprisonment for six months. Appellant was, however, acquitted of the offence punishable under Section 498-A of the Indian Penal Code.

2] For the sake of convenience we shall refer appellant in his original status as accused as he was referred before the trial court.

3] Prosecution case briefly stated is as under : -

(i) Laxmibai was the wife of appellant. She was married to accused before 20 years of the incident. Couple was blessed with three sons.

(ii) Incident occurred on 24.5.2009 at around 3.30 p.m. at the house of accused at Dharangaon, District Jalgaon. That time Laxmibai was preparing tea. Accused came and prevented her from preparing tea. He threatened Laxmibai to kill her, poured kerosene on her person, brought match stick and set her on fire. She sustained burns. The elder brother of accused shifted victim

Laxmibai to Rural Hospital, Dharangaon.

(iii) An intimation of admission of burn patient was given to police station, Dharangaon. PW 1 PSI Rahul Pagare rushed to the hospital. He inquired from the Medical Officer whether patient was in a fit state of mind to give her statement. After the Medical Officer certified, he recorded statement of Laxmibai in which she narrated that her husband prevented her from preparing tea, threatened to life, poured kerosene and set her on fire.

(iv) On the basis of statement recorded by PW 1 PSI Pagare Crime No. 97 of 2009 was registered against the accused for the offences punishable under Sections 307, 498-A, 504 and 506 of the Indian Penal Code. Initial investigation was taken over by PSI Pagare. He visited the scene of offence and recorded spot panchanama. From the spot, burnt pieces of clothes, a plastic can containing kerosene, burnt necklace, half burnt match stick and pieces of broken bangles were seized. A sketch of the scene of incident was prepared. Accused was arrested and sent for medical examination.

(v) On 24.5.2009 PW 6 Special Executive Magistrate

Lata More was requested to record statement of victim. Accordingly, Special Executive Magistrate visited the hospital. She inquired from the Medical Officer on duty regarding condition of the patient to give statement. After Medical Officer certified that she was fit to give her statement, PW 6 Lata More recorded dying declaration of Laxmibai.

(vi) During investigation, statements of several witnesses including PW 2 Kalpesh minor son of the victim and accused were recorded. Laxmibai succumbed to injuries on 29.5.2009. After her death, offence under Section 302 of the Indian Penal Code was added. Inquest panchanama was drawn. It was followed by the postmortem examination. Seized muddemal was sent to Chemical Analyser.

(vii) On completing investigation, charge sheet was submitted to the court of Judicial Magistrate, First Class, Dharangaon, who in turn committed the case for trial to the Court of Sessions.

4] Charge came to be framed against the accused at Exh.3 for the offences punishable under Sections 498-A and 302 of the Indian Penal Code. He pleaded not guilty to the charge and claimed to be tried. The factum of relationship between accused and victim was, however, not in dispute.

5] Prosecution examined in all nine witnesses to substantiate the guilt of accused. After going through the evidence adduced by prosecution, learned Additional Sessions Judge convicted and sentenced the accused as stated in paragraph no.1 above. Being aggrieved, this appeal has been preferred by the accused.

6] We have heard the learned counsel for the parties. Considering the facts and circumstances of the case, submissions made on behalf of the parties, reasoning recorded by the trial court and the evidence on record, for the below mentioned reasons we are of the opinion that appellant poured kerosene on the person of his wife Laxmibai and set her on fire.

7] Conviction of appellant is mainly based on two written and one oral dying declarations. Needless to state that in order to pass the test of reliability a dying declaration has to be subjected to a very close scrutiny keeping in view the fact that statement has been made in the absence of Accused who had no opportunity of testing the veracity of the statement by cross-examination. It is a settled law that once the Court comes to a conclusion that dying declaration was the truthful version as to the circumstances of death and the assailant of victim no further corroboration is required to such a dying declaration. Keeping in view these legal principles in mind we now advert to the dying declarations on which reliance is placed by the prosecution.

8] The first dying declaration was recorded by PW 1 PSI Rahul Pagare on 24.5.2009. PSI Pagare was attached to Dharangaon police station at the relevant time. He was present in the police station. PSO Dharangaon informed him that one lady by name Laxmibai Dhanusing Bayas was admitted to Rural Hospital, Dharangaon in burnt condition and he should go and record her statement. It is stated by PSI Pagare that he visited the hospital. He inquired from the Medical Officer in which ward Laxmibai was

admitted and whether she was in a condition to give her statement. It appears from the evidence of PSI Pagare that after doctor certified that patient was in a condition to give her statement he recorded statement of Laxmibai as per her say. The said statement is at Exh.23.

9] It can be seen from dying declaration (Exh.23) that Laxmibai disclosed that on 24.5.2009 at about 9.00 a.m. she came back to Dharangaon from Surat. She cleaned the house. Her husband Danusing and son Kalpesh were at home. At around 3.30 p.m. when she was about to prepare tea her husband prevented her from doing so. He picked up quarrel with her, brought a plastic can containing kerosene, poured kerosene on her person, ignited a match stick and set her on fire by uttering that he would not keep her alive.

10] The evidence of PW 1 PSI Pagare particularly regarding fitness of the patient to give her statement is corroborated by PW 8 Dr. Pandurang Sapkale. Dr. Sapkale was Medical Officer on duty when Laxmibai was admitted to the hospital at 4.40 p.m. in burnt condition on 24.5.2009. It is stated by Dr. Sapkale that immediately

after admission of the patient he informed Dharangaon police and started giving treatment to the patient. It can be seen from the evidence of Dr. Sapkale that at 5.30 p.m. police officer came and inquired with him about the condition of patient to give her statement. It is stated by Dr. Sapkale that he examined the patient and found that she was conscious, well oriented and was in a fit condition to give her statement. Accordingly, he made an endorsement on the statement and informed the police that the patient was fit to give her statement.

11] So far as second dying declaration is concerned, evidence of PW 6 Special Executive Magistrate Smt. Lata More and PW 7 Dr. Shivdas Chavan is important. According to PW 6 Lata More, she received intimation from police on 24.5.2009 to record statement of Laxmibai Danusing Bayas a patient admitted in Civil Hospital, Jalgaon. On receiving intimation she visited Civil Hospital, Jalgaon at around 9.00 p.m. on the same day. She met the Medical Officer and inquired from him regarding condition of the patient to give her statement. After doctor examined the patient and told her that patient was fit to give her statement, PW 6 Special Executive Magistrate recorded statement of Laxmibai. The said statement is

proved at Exh.45. In this dying declaration also Laxmibai narrated the manner of incident in the same way as she stated before PW 1 PSI Pagare.

12] The evidence of PW 6 Lata More is supported by the Medical Officer PW 7 Dr.Chavan who was attached to Civil Hospital, Jalgaon at the relevant time. It is stated by Dr.Chavan that Special Executive Magistrate visited the hospital. She inquired from him whether patient was fit to give her statement. He examined the patient and then made an endorsement to the effect that patient was able to make her statement.

13] Commenting upon the dying declarations Exhs. 23 and Exh.45, learned counsel for the appellant Mr. Mandlik vehemently contended that there is variance in both the dying declarations, and therefore, it was not proper for the trial court to rely upon the same. Learned counsel would submit that in the first dying declaration victim had stated regarding presence of her son, whereas in the second dying declaration presence of son had disappeared which makes the dying declarations doubtful.

14] With the assistance of the learned counsel for the parties, we have carefully examined evidence of material witnesses – PW 1 PSI Pagare, PW 8 Dr. Sapkale, PW 6 Lata More and PW 7 Dr. Chavan. We find both the dying declarations consistent in material particulars and particularly regarding manner of occurrence of the incident. Nothing could be elicited in the cross-examination of the above witnesses to disbelieve their testimonies. Merely because in one dying declaration victim stated regarding presence of her son and in another dying declaration she omitted the same, would not be fatal to the prosecution case and only on that ground dying declarations cannot be said to be doubtful or suspicious.

15] As regards oral dying declaration, prosecution has relied upon the evidence of PW 9 SDPO Samadhan Pawar. He received further investigation from PSI Pagare. On receiving investigation on 25.5.2009 he visited the hospital and recorded statement of Laxmibai after confirming from the doctor her condition to give her statement. He, however, did not obtain signature or thumb impression of the patient as her statement was already recorded on earlier occasions. The trial court has not given much importance to this dying declaration for want of signature or thumb impression of

the victim. We too would keep the same out of consideration as we have no reason to differ from the view taken by the trial court.

16] In addition to the dying declarations Exh. 23 and Exh.45, there is one more reason to accept the prosecution case and that is the absence of plausible explanation from the side of accused to point out the circumstances under which Laxmibai sustained burns. Accused does not dispute his presence in the house at the time of occurrence of incident in the after noon. Under Section 106 of the Indian Evidence Act it was for the accused to explain the circumstances in which Laxmibai sustained 85 per cent burns. Failure on the part of the accused to explain the circumstances tilts in favour of prosecution and further negatives his defence of false implication.

17] It is pertinent to note that victim was admitted to hospital by her elder brother-in law. Accused did not bother to take her to hospital. He did not even think it fit to inform the police. He did nothing even after his wife received severe burns. This post conduct of accused speaks volumes and substantiates the prosecution version that accused and accused alone was responsible for causing

death of his wife.

18] Thus, on appreciation of evidence of material witnesses and placing reliance on both the consistent dying declarations Exhs. 23 and 45 we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that accused poured kerosene on the person of his wife Laxmibai and set her on fire which resulted in her death. In this premise, we find no merit in the appeal.

19] Criminal Appeal No. 641 of 2012 stands dismissed.

[INDIRA K. JAIN, J.]

[A.V.NIRGUDE, J.]

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