

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

**CRIMINAL APPEAL NO.673 OF 2012**

- 1] Parmeshwar @ Balu s/o Namdeo Sonkamble  
Age 25 years, occu-Labour  
R/o Jalkote, Tq. Jalkot, Dist.Latur
  - 2] Panchphula w/o Namdeo Sonkamble  
Age 48 years, Occ-Household,  
R/o As above.
- ... APPELLANTS**  
**[ORIG.ACCUSED NO.1 & 3]**

**VERSUS**

- 1] The State of Maharashtra  
(Copy to be served to P.P.Office  
High Court Building at  
Aurangabad)
- .. RESPONDENT**

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Mrs. M.R.Jamdhade, Advocate for Appellants.  
Mr. A.R.Borulkar, APP for Respondent State

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**CORAM : A.V.NIRGUDE &  
V.L.ACHLIYA,JJ.**

**DATED : 7TH JUNE,2016**

**ORAL JUDGMENT [PER A.V.NIRGUDE,J.] :-**

Original accused Nos.1 and 3 in Sessions Case No.37/2009 have filed this Appeal for challenging judgment and order dated 20/10/2012 passed by Additional Sessions Judge, Udgir, Dist.Latur,

convicting them for offences punishable under Section 302 read with Section 34 of IPC. They were awarded sentence to suffer imprisonment for life and to pay fine of Rs.1000/- each with default clause. There were in all 5 accused before the learned Sessions Judge. Other 3 accused were acquitted. Appellant no.1 is son of appellant no.2. Appellant no.1 was married to Pornima. It was alleged that appellants and other accused on 7/4/2009 set Pornima on fire who ultimately during treatment died on 14/4/2009. It was also alleged that all the accused and the appellants treated Pornima with cruelty in order to extort valuables from her parents etc.

2] The prosecution examined in all 9 witnesses whereas the defence recorded depositions of 4 witnesses. The learned Additional Sessions Judge as stated above believed the prosecution case and convicted appellants. He rejected the prosecution case that Pornima was treated with cruelty, over demand of dowry etc. The only question that is required to be decided in this case is whether the prosecution has proved that the appellants had committed Pornima's murder.

3] We perused the record and all the depositions that were recorded by the trial Court. We found that despite number of circumstances, which ought to have been brought on record through depositions of various witnesses, the prosecution case mainly rested on depositions of witnesses no.2 and 6 who allegedly recorded dying declarations of the victim while she was in Nanded hospital. It is not in dispute that the victim, appellants and the other accused resided at village Jalkot, Dist.Latur. It is also not in dispute that Pornima was married to appellant no.1 for about 1 year prior to the incident. It is not in dispute that on 6/4/2009 at about 3 p.m. or so, Pornima was taken to hospital at Jalkot in burnt condition. Her brother-in-law

Haridas who is examined as DW no.1 brought autorickshaw, took her there. It is also not in dispute that thereafter she was taken to civil hospital, Udgir and then she was shifted to civil hospital Nanded. Apparently, nothing happened when Pornima was admitted in Jalkot and Udgir hospital. Nothing came on record to indicate that at these places, police approached Pornima and asked her reasons for her injuries.

4] On 7/4/2009, Pornima's brother intimated to the police that they should investigate and accordingly it is because of his intimation, police started taking steps. On that day, P.S.O. of police station Vazirabad directed prosecution witness no.2 who was then police head constable and was attached to police chowki of civil hospital, Nanded that he should record Pornima's statement. Accordingly, he went to the burn ward and recorded her detail statement. He deposed that Pornima told him that it was appellants and other accused who tormented her on 6/4/2009 at about 3 p.m. He also deposed that it was appellant no.1 who set her on fire after pouring kerosene on her person. Other accused including appellant no.2 were standing near the victim. Her statement that was recorded on 7/4/2009 was eventually sent to Jalkot police station. It reached there on 14/4/2009. Prosecution witness no.6 is one Pundlik Zunjare. He stated that on 7/4/2009 while he was working in his office at Nanded, one police head constable from civil hospital informed him on telephone that he should record Pornima's dying declaration. Accordingly, he went to the hospital and recorded Pornima's statement. This time, victim disclosed to him that after the lunch her husband appellant no.1 poured kerosene on her person, her mother-in-law (appellant no.2) caught hold of her hands on backside, appellant no.1 then gagged with bundle of cloth and then ignited match stick to set her on fire. She further disclosed to him that after

she caught fire, she came outside the house, she threw away her burning saree, took some water from the tank for extinguishing the fire. She further disclosed to him that neighbour Waghmare brought her to hospital (neighbour Waghmare is defence witness no.1). Witness no.7 stated that on that date while he was attached to the police station as police inspector he received statement from Vazirabad police station, Nanded and upon perusal of the said statement, he registered offence under Section 498-A, 307 r.w. 34 of IPC against all the accused. He then started investigation. He also visited the spot and recorded spot panchanama. He recorded statements of neighbours as well as relatives of the victim. Eventually, he sent charge sheet against the appellants.

5] We have carefully considered the submissions advanced in the light of oral and documentary evidence placed on record. In order to prove guilt of accused nos.1 to 5, the prosecution though shown to have examined 9 witnesses but in fact 8 witnesses are examined in the case. It is surprising to note that Pundlik Zunjare (PW6) who is examined as a person who recorded second dying declaration Exh.90 though recalled for recording further evidence, the evidence of same witness has been shown to be recorded as P.W.8.

6] The entire case of the prosecution is based upon two dying declarations recorded by A.S.I. Sayyed Shaffioddin Sayyed Mohd.Ali (P.W.2) and P.W.6 Pundlik Zunjare. The prosecution has examined Dr.Nandkumar Patil (P.W.5) the autopsy surgeon to prove the post mortem report at Exh.83. The prosecution has further examined Dr.Samir Ahire who alleged to have examined the deceased before and after recording of dying declarations by P.W.2 Sayyed Mohd.Ali and P.W.6 Pundlik Zunjare. Prosecution has examined Sanjay Jadhav (P.W.7) the investigating officer. Besides these witnesses

P.W.1, P.W.3 and P.W.4 are examined as panch witnesses. The entire conviction of the accused nos.1 and 3 is solely based upon the dying declarations recorded by P.W.2 and P.W.6. The accused no.5 has been convicted for committing offence u/s 504 of IPC. In order to establish the defence of the accused that deceased has committed suicide and the accused nos.1 to 5 were not present on the spot at the time of incident, the defence has examined 4 witnesses. The defence has examined Haribhau Waghmare (D.W.1) the person who has taken the deceased in burnt condition to hospital, and to whom the defence claimed that oral dying declaration was made by the deceased. Prosecution has examined Kusumbai Shinde (D.W.2) the neighbour to establish the fact that at the time of incident none of the accused were present in the house. (D.W.3) Maheboob Tamboli was examined to establish the fact that at the time of commission of offence accused no.3 was not present at the spot and she was working at her house. Parmeshwar Shingade (D.W.4) was examined as auto rickshaw driver who carried the deceased in burnt condition to hospital from the spot of the incident.

7] On perusal of the reasons and findings recorded by trial Court, it appears that the conviction is totally based upon the two dying declarations recorded by P.W.2 and P.W.6. The trial Court though has observed that there are number of inconsistencies in both the dying declarations, still held the same truthful and trustworthy. Therefore, limited question which falls for our consideration is whether the dying declarations recorded by P.W.2 and P.W.6 can be treated as truthful dying declarations so as to uphold the conviction of accused nos.1 and 3. In our considered view, both the dying declarations cannot be accepted as truthful and reliable to base the conviction. It is well settled that the dying declarations have to be dealt with carefully and upon proper circumspection though

corroboration thereof is not essential but otherwise it is helpful to strengthen the evidential value of such declaration. The Court has to scrutinise the dying declaration carefully and ensure that declaration is not the result of tutoring, prompting or imagination. It is quite settled that where dying declaration is suspicious it should not be acted upon without corroborative evidence. It is equally settled that when there are more than one dying declarations and same are found to be inconsistent, it is unsafe to rely upon such dying declarations and particularly to base the conviction upon such dying declarations.

8] It is pertinent to note that the incident in question was occurred on 6/4/2009 at village Jalkot, Dist. Latur. Immediately after the incident, the deceased was removed in burnt condition to Government hospital at Jalkot, where she was initially treated and referred to hospital at Udgir. Although the deceased was brought in a burnt condition and it was a medico legal case, no enquiry or any investigation has been conducted in the matter. From hospital at Jalkot, the deceased was shifted to Udgir and later on brought to Nanded. At Udgir also her statement was not recorded nor any enquiry or investigation was conducted by the police. On 7/4/2009, the brother of the deceased approached the police station and thereafter said dying declarations have been recorded by P.W.2 and P.W.6. It is pertinent to note that though dying declaration was recorded on 7/4/2009 by P.W.2, offence has been registered on 14/4/2009. Thus there is gross delay in registering offence for which no explanation has been offered as to delay in registration of offence after the period of 7-8 days after the incident. In the facts and circumstances of the case, the delay in registration of offence is significant. Prompt registration of offence rules out the possibility of concoction. It is very interesting to note that the investigating officer

Sanjay Jadhav police inspector attached to police station, Jalkot, who is examined as P.W.7 has stated in his cross examination that he has recorded the statement of 5 persons residing nearby the spot of incident during the course of investigation. He admitted that those statements have not been submitted alongwith charge sheet. Although in the dying declaration made by the deceased the deceased has stated that she was brought to hospital by Haribhau Waghmare P.W.1 in autorickshaw. Still P.W.7 has stated that it was not revealed to him during the investigation as to who carried Pornima to hospital. It is further pertinent to note that he has categorically admitted in the cross examination that at the time of incident, nobody was present in the house. He has also admitted that during the course of investigation, the witness residing nearby the house of deceased told him that at the time of incident accused nos.1 to 5 were present on the spot. He further admitted that at the time of incident accused no.3 was breaking tamarind fruits in the house of Maheboob Tamboli (D.W.3). He has further stated that he did not know as to whether accused nos.1 and 5 were working in the shop of one Manu Dhulshete and Balu Gutte at the time of incident and accused no.2 had gone to Chandrapur. He has further admitted in his cross examination that as per the scene of offence, it was revealed to him that Pornoma (deceased) committed suicide. He has further stated that during the course of investigation, the neighbouring witnesses told him that Pornima committed suicide.

9] The defence has examined D.W.2 Haribhau Waghmare, the person who first in time carried the deceased from the spot of incident to hospital at Jalkot and later on to hospital at Udgir and Nanded. He has categorically stated that while taking to hospital the deceased has told him that in hit of anger she set herself on fire. Kusumbai Shinde (D.W.2) whose house is located at 10 ft. away

from the place of incident, has deposed that she extinguished the flames on the body of Pornima and at the time of incident nobody was present in the house of accused no.1. Maheboob Tamboli D.W.3 has deposed that at the time of incident, accused no.3 was working in house. Parmeshwar (D.W.4) has deposed that at the request of Haribhau (D.W.1) he carried Pornima (deceased) to hospital in his autorickshaw and later on she was shifted to Govt.hospital. There is no reason to discard the testimony of these defence witnesses and more particularly in the light of testimony of the investigating officer Sanjay Jadhav as referred above.

10] While analysing the evidence and recording the findings the Judge of the Sessions Court has observed that there is inconsistency and number of improvements in the second dying declaration. In the first dying declaration the deceased has not stated that she and accused no.3 had been to house of Maheboob Tamboli (D.W.3) for breaking tamarind fruit. However, in the second dying declaration, this fact has been stated which is also corroborated. Through testimony of D.W.3 in the first dying declaration the deceased has specifically stated that accused no.1 poured kerosene at her person and he set her ablaze. In the first dying declaration, the deceased has not attributed any role to accused nos.2 to 5 in setting her on fire. She has not attributed any overt act on the part of accused no.3. But in second dying declaration, she has stated that her mother in law i.e. accused no.3 caught her both hands behind her back and tied her hands. In the first dying declaration she has not stated anything against accused no.5. In second dying declaration, she has stated that accused no.5 abused her by calling "*Maru dya re randala maru dya*". In the first dying declaration, she has not stated that accused no.1 inserted cotton cloth in her mouth but in the second dying declaration the deceased has deposed that accused No.1 had put



cotton cloth in her mouth. It is further pertinent to note that in the first dying declaration the deceased has stated that she came out of the house in burnt condition and put off the flames on her body by pouring water. In the second dying declaration, she stated that she came out of house in burnt condition and threw away the saree on her person and put off the flames by pouring water from the water tank outside the house. The spot panchanama depicts that no such water tank was found to be located outside the house of the deceased. It is pertinent to note that both the dying declarations were recorded on 7/4/2009 in the interval of about 2 hours. The improvements which find place in second dying declaration are material. It exposes the tendency on the part of deceased to make exaggeration and to falsely rope in the family members of accused no.1. In such facts and circumstances of the case and evidence on record, it is highly unsafe to place reliance upon such dying declaration to base the conviction. The learned Judge though noted that both the dying declarations are not consistent and there are material improvements still, found the dying declarations to be reliable. There is no corroboration to the dying declarations made to P.W.2 and P.W.6. In absence of the dying declarations found to be truthful, it is unsafe to place reliance on such dying declarations without seeking corroboration. In the instant case, there is no such corroboration to the dying declarations of the deceased. In this view the reasons and findings recorded by the trial Court are not sustainable in law. We are of the view that the trial Court has not properly appreciated the evidence on record and the reasonings and findings recorded are perverse and not sustainable in law. In the result, the appeal should succeed. We pass the following order :

**ORDER**

Appeal is allowed. The impugned judgment and order passed by learned Additional Sessions Judge, Udgir, Dist.Latur on 20/10/2012 in Sessions Case No.37 of 2009 convicting the appellants/accused for offences punishable under Section 302 r.w. 34 of IPC is hereby quashed and set aside. Accused are acquitted. Accused No.1 Parmeshwar @ Balu Namdeo Sonkamble who is in jail, be released forthwith, if not required in any other case. Accused No.2 is on bail. His bail bond stands cancelled."

**(V.L.ACHLIYA,J.)****(A.V.NIRGUDE,J.)**

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