

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

CRIMINAL APPEAL NO. 212 OF 2000

The State of Maharashtra

.. **Appellant**

Versus

1. Shivaji s/o Vithoba Mane,
Age 28 yrs, Occ. Mechanic,
2. Digamber s/o Venkat Mane,
Age 28 yrs, Occ. Mechanic,
both r/o Anandwadi, Tq. Nilanga,
Dist. Latur.
3. Gulab s/o Bhaurao Kasture,
Age 40 yrs, Occ. Agriculture,
r/o Bhagatwadi, Tq. Omerga,
Dist. Osmanabad.

.. **Respondents**

Advocate for Appellant /State: Mr. R.V. Dasalkar
Advocate for Respondents : Mr. D.S. Mali for R/1. To 3.

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.
DATE : 11.08.2017**

ORAL JUDGMENT :-

. The accused persons were prosecuted for the offence punishable under Section 498-A, 302, 201 r/w Section 34 of the Indian

Penal Code (for short I.P.C.). All these accused are acquitted by the Sessions Court. The state has filed the present appeal against the accused nos. 1, 2 and 3. The state has not filed any appeal against accused no.4, who was basically prosecuted for the offence punishable under Section 498-A of the I.P.C.

2. The story of the prosecution is that the accused nos. 1, 2 and 3 on or about 05.11.1998 in the evening at about 6 p.m. met the deceased Alka at the Bus Stand and told the deceased Alka that the husband of Alka accused no.4 is waiting for her at AUSA and has called her. Deceased Alka along with accused nos. 1, 2 and 3 came to AUSA by Bus. On alighting at AUSA the deceased did not find her husband accused no.4. It is the further case of the prosecution that the accused nos. 1, 2 and 3 told deceased that they have deliberately said that the accused no.4 would come and further asked deceased to behave properly. The accused nos. 1, 2 and 3 were on two motorcycles. Along with them they took the deceased on the motorcycle through Lamjana road and during the travel through the Lamjana road ahead of AUSA they stopped their vehicles near a bush and one Shivaji Mane i.e. accused no.1 took out the bottle containing poison and by force had made the deceased drink poison. Thereafter, accused no.4 came in a jeep, took her to her

maternal home at Tambarwadi and left. The parents of the deceased Alka took her to the hospital after observing that she was vomiting and deceased subsequently died.

3. To bring home the guilt, the prosecution relied on three written dying declarations and three oral dying declarations. The oral dying declarations were said to have been made to the father, mother and uncle. One dying declaration is in the nature of the F.I.R., another is recorded by the Tahsildar and the third by the Special Executive Magistrate. The viscera was also sent for examination, the C.A. report is received and which does not suggest any presence of poison.

4. Mr. Dasalkar, the learned A.P.P. for the appellant submits that the dying declarations are consistent with each other. There is consistency with regard to the acts attributed to accused nos. 1, 2 and 3, minor variations in the dying declarations would not affect the veracity of it, nor the same would be unsafe to rely. The learned A.P.P. further submits that considering the consistency in all the three dying declarations and the oral dying declarations the offence as alleged against the accused is proved. The evidential value of dying declarations is on higher pedestal. The learned A.P.P. submits that the motive is also writ large. These accused nos. 1, 2 and 3 did not appreciate the inter

caste marriage between the deceased and their brother. In the light of that, the offence ought to have been held to be proved.

5. Mr. Mali, the learned counsel for the accused supports the order.

6. It would be seen that the Panchnamas exhibit 14 and 15 are admitted. The prosecution had examined 12 witnesses. Basically the case of the prosecution revolves around the dying declarations. The deceased had passed B.A.M.S. and she had started her own dispensary at village Kasarshirsi prior to seven months of the alleged incident.

7. It would appear that Sachin the brother of the deceased was present in the house when the deceased had come to her maternal home. Said Sachin ought to have the knowledge that the deceased had administered the poison. The Investigating Officer / PW-12 has admitted in the evidence that during the investigation, it transpired that when deceased came to the house, it was not disclosed by the deceased to her parents that she was administered poison. One of the circumstance brought on record was that in the village itself there was a Rural Hospital, however, the deceased was carried up to a distance of 40 kms. The circumstance do not suggest that the deceased had at any time

disclosed to her parents that the accused persons had administered her poison. The circumstance coupled with the evidence of PW-12 would suggest the same.

8. If there are multiple dying declarations the same have to be consistent. The dying declaration in the form of a F.I.R. recorded by the Police Sub-Inspector, if considered it would be clear that the deceased was narrating the facts to Sarjerao PW-8 and who in turn was dictating to his writer Police Constable. The said PW-8 obtained the endorsement of Medical Officer on the statement of the deceased. Said Dr. Nilkanth PW-10, admitted in the cross-examination that the relatives from the maternal side of the deceased brought her to the hospital and he did not notice any external injuries on the person of the deceased. The original case papers exhibit-41 are totally silent on the point of recording of the dying declaration and endorsement made by PW-10. Prior to recording the statements endorsement was obtained by PW-8. History of the patient was given by the parents, as such, the presence of parents at the time of recording the statement is not ruled out. The nature and type of the language used in the same also does not appear to be of a common person. The another dying declaration exhibit-28 does not bear the endorsement of the Medical Officer regarding the condition of the

deceased. The PW-6 who recorded the dying declaration also does not know the name of the Medical Officer who was present. Whether deceased was in a fit state of mind to make a statement is also not verified by him. On the contrary, PW-6 admitted in his evidence that the condition of the deceased was critical when the statement was recorded. He has also not mentioned the timings of the recording of the said statement.

9. The third dying declaration exhibit-37 recorded by the Special Executive Magistrate is in a printed form. The questions are printed, whereas, the answers are written with the help of a ball pen. The said Special Executive Magistrate admitted that he did not ask any other questions except the printed questions appearing on exhibit-37. The Medical Officer, Dr. G.S. Munde has simply signed it without ascertaining whether the blank space in the medical certificate regarding the condition of the patient had really been filled in. It is also admitted by the said witness that after finishing the statement, he realized that some of the columns remained to be filled in by the Medical Officer. He then brought those columns to the notice of the Medical Officer. The Medical Officer told him that he was busy and has to go for operation and therefore he did not fill in those columns. The testimony of PW-11 Dr. G.S. Munde is

silent that he wanted to go for emergency operation and so he did not fill in the blank spaces. The said Dr. G.S. Munde further admitted in the cross-examination that there is no endorsement in his handwriting at exhibit-45 when he examined the patient at 9.00 am. He also admitted that the certificate at the foot of the statement exhibit-37 is not filled in by him though he signed below it. The statement exhibit-37 suffers from infirmities.

10. There are discrepancies with regard to the act of the individual accused. In exhibit-31 the deceased stated that the accused no.1 Shivaji took one bottle containing poison and administered the same to the deceased forcibly. In exhibit-28, the deceased stated that accused nos.1, 2 and 3 had administered the poison which was brought in white bottle. In exhibit-28, the deceased stated that accused nos. 1, 2 and 3 are residents of Bhagatwadi, whereas, these accused are all residents of Anandwadi. The three dying declarations suffer from inconsistencies more particularly with regard to the disclosure of the facts about the incident, participation of the accused in administering the poison forcibly to the deceased.

11. Over and above that, the viscera was sent for examination, the C.A. report is also received. The said report reads as under:

“Exhibit No.18

DESCRIPTION OF PARCEL/S

--One sealed plastic dabba seals intact and as per copy sent.

DESCRIPTION OF ARTICLES CONTIANED IN PARCEL/S

--Semi solid mass stated to be vomitus in a plastic dabba labelled-'Vomitus'

--Exhibit is also labelled 'Alkabai Yuvraj Mane'

RESULTS OF ANALYSIS

--General and specific Chemical testing done not reveal any poison in the exhibit

Exhibit No.19

DESCRIPTION OF PARCEL/S

--One sealed cardboard box containing, two sealed plastic bottles.

--Seals intact and as per copy sent.

DESCRIPTION OF ARTICLES CONTIANED IN PARCEL/S

1. Viscera in a plastic bottle labelled bottle No.(1).

--Stomach with its contents, small intestine with its contents--

--- large intestine with its contents---

2. Viscera in a plastic bottle labelled-bottle No. (2)

-- A piece of lung. A piece of liver. A piece of spleen.

-- A piece of heart. A piece of brain. A piece of kidney.

-- Exhibit Nos(1) and (2) are also labelled 'Alka Yuvraj Mane'

RESULTS OF ANALYSIS

--General and specific Chemical testing does not reveal any poison in the exhibit nos. (1) and (2)”

12. The C.A. report specifically records about absence of any

poison. The chemical analysis report also does not support the prosecution case that the deceased was administered poison. The very basis of the prosecution case stands negated by medical evidence.

13. Considering the information vis-a-vis in the dying declaration, so also the C.A. Report recording absence of any poison, the Sessions Court has taken a possible view. It is trite that when possible view has been taken and the accused are acquitted, the same need not be interfered in appeal. The appeal is dismissed. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]