

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 384 OF 2000

The State of Maharashtra
(through P.S.O. Police Station
Shirpur, Dist. Dhule)

....Appellant.

Versus

1. Dnyaneshwar Chudaman Koli,
Age 28 years,
2. Sumanbai Chudaman Koli,
Age 55 years,
3. Nandlal Chudaman Koli,
Age 23 years,
4. Chudaman Bandu Koli,
Age 60 years,
5. Kalpanabai w/o. Nandlal Koli,
(Savale), Age Adult,

All R/o. Khamkheda, Pre-Ambe,
Tq. Shirpur, Dist. Dhule.

....Respondents.

Mr. S.W. Munde, APP for appellant/State.

Mr. Raj S. Devdhe h/f. Mr. S.P. Brahme, Advocate for respondents.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : AUGUST 01, 2017

JUDGMENT : [PER T.V. NALAWADE, J.]

. The appeal is filed by the State to challenge the judgment and order of acquittal delivered by the learned Additional Sessions Judge, Dhule in Sessions Case No. 103/1999. The

respondents are acquitted of the offences punishable under sections 302, 498-A r/w. 34 of Indian Penal Code (hereinafter referred to as 'IPC' for short). Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

Deceased Ratnabai was the wife of respondent Dnyaneshwar. Respondent Sumanbai is the mother of Dnyaneshwar. Respondent Nandlal is the brother of respondent Dnyaneshwar. Respondent Chudman is the father of Dnyaneshwar. The accused are residents of Khamkheda. The parents of deceased hail from Pungaon, Tahsil Chopda.

3) The deceased was given in marriage to accused Dnyaneshwar two years prior to the date of incident. There was some dispute in family and due to that, accused persons had reached the deceased to the house of mediator Baburao Koli, resident of Jalod. She stayed there for about one and half months. As the accused persons did not show interest to take her back to matrimonial house, on her own she returned to the matrimonial house and that was happened prior to five days from the date of incident. She has left behind daughter.

4) The accused persons were not happy with her due to her return to matrimonial house, they became angry. They started giving beating to her every day. Ultimately, on 22.7.1999, the day of incident, at about 2.00 to 2.30 p.m. all the accused started giving beating to her and then in the incident, mother in law of deceased Sumanbai poured kerosene which on her person and kerosene was present in one bottle and lantern was used. The brother of the husband held the deceased. The wife of brother of husband Kalpana started giving instigations to others to finish the deceased. Similar instigation was given by father in law. Then husband of the deceased used match stick and set fire to the deceased. When she was set on fire, she ran out of the house and she extinguished the fire herself by lying on the ground. The persons like Shravan and Omkar from that locality rushed to the spot and they shifted her to Shirpur Government Hospital and accused like husband, mother in law also went with them to the hospital.

5) On the same day, at about 6.05 p.m. the statement of the deceased was recorded by police in presence of Medical Officer and on that basis, the crime at C.R. No. 163/1999 came to be registered for the offences punishable under sections 307, 498-A, 34 etc. of IPC in Shirpur Police Station. Police gave requisition to the Executive Magistrate for recording dying declaration and on the

same day, at about 5.40 p.m., dying declaration of the deceased came to be recorded. She gave similar account in the dying declaration recorded by the Executive Magistrate. Ratnabai succumbed to the injuries on 27.7.1999. Post mortem was conducted on the dead body and doctor gave opinion that the death had taken place due to cardiorespiratory failure due to hypothalamic and septicemic shock and that was due to 75% burns.

6) Statements of neighbours of the accused came to be recorded. Statements of parent and relatives of deceased from parents side also came to be recorded. The chargesheet came to be filed for aforesaid offences and the charge was also framed for aforesaid offences. There was charge for offence under section 109 of IPC also as against the father in law and wife of brother in law. Prosecution examined in all 14 witnesses. Accused took the defence of total denial. Dnyaneshwar gave written submission when his statement was recorded under section 313 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short). He contended that the deceased did not want to cohabit with him and so, she had left the matrimonial house. He contended that they had fear in the mind that she would do something with her life, if she was compelled to cohabit with him. He contended that even after such behaviour of the deceased, the deceased was left forcibly against her

will to the matrimonial house by the husband of her sister and due to that, she probably set fire to herself. He contended that on that day, he was not present in the house at the relevant time and he had gone to bank for withdrawing the cash amount of cheque given to him by his society. He contended that when he learnt in the bank at about 3.00 p.m. about the incident, he rushed to the house and then he went to hospital.

7) It is not disputed that the death took place due to 75% burn injuries. Inquest panchanama at Exh. 16 is also not disputed by the accused persons. It needs to be ascertained as to whether the accused set fire to the deceased.

8) The spot panchanama at Exh. 19 is also admitted by the defence. This document shows that it was prepared in presence of panch witnesses on 22.7.1999 between 19.40 hours and 20.45 hours. The spot panchanama shows that the incident in question took place in the house of accused. The house consist of three rooms and there is separate bathroom. Kitchen was situated in the separate room. In the kitchen, the articles like kerosene lantern and glass bottle in which kerosene was kept were noticed. The spot panchanama was shown by Pandharinath and he had also shown one quilt which was used for extinguishing the fire. It was found in the

front room of the house. Pieces of partly burnt clothes of the deceased were found inside of the house. Pandharinath then showed another spot to the police which was at the distance of 40 feet from the house of accused. His house is adjacent to the house of accused. In the courtyard of the house of Pandharinath, the pieces of burnt clothes of the deceased were lying. The houses of Pralhad Koli and Chudaman Koli were adjacent to this house. Similarly, in the vicinity of the said house, there were houses of Tukaram Koli and Chandrabhaga.

9) C.A report at Exh. 21 shows that in the empty lantern and kerosene bottle, which were taken over from the aforesaid spot, kerosene residues were detected. Similarly, on partially burnt clothes of the deceased and on the quilt, which were taken over from the spot, kerosene was detected. No kerosene was detected on match box.

10) The aforesaid circumstances show that the deceased caught fire inside of the house, but she ran outside and probably the fire was extinguished outside of the house. In the dying declarations, she had mentioned the names of two persons like Shravan and Omkar, who had taken her to the hospital, but she had not mentioned the name of the person who had extinguished the fire.

She had disclosed to police and Executive Magistrate that she herself had extinguished the fire. The dying declaration given before Executive Magistrate is proved by examining the Executive Magistrate Arun (PW 1). His evidence shows that after obtaining the opinion of doctor regarding condition of the patient, the dying declaration was recorded. There is endorsement which is also proved as patient was conscious to give the statement. Brijlal (PW 12), Police Head Constable is examined to prove the dying declaration recorded by him which is at Exh. 42. He had also obtained opinion of the Medical Officer regarding fitness of the deceased before recording the dying declaration. The contents of this dying declaration are almost similar to the contents of other dying declaration recorded by the Executive Magistrate.

11) Dr. Purushottam (PW 11) has given evidence that at about 4.55 p.m. Executive Magistrate had requested him to give opinion regarding fitness of the deceased to make the declaration and accordingly, he gave opinion that she was physically fit and mentally conscious to make the statement. He has deposed that this opinion was given in writing after examining the patient. He has identified that opinion appearing on Exh. 24. In the cross examination, he has given evidence that he remained present by the side of deceased when Executive Magistrate was recording the dying

declaration. He could not say as to whether the contents recorded in the dying declaration were read over to the deceased before obtaining her thumb impression on it.

12) There is record of two dying declarations made by the deceased. But there are also other circumstances showing that she was not ready to disclose as to who had extinguished the fire. On one hand, she disclosed that the relatives of the husband had shifted her to hospital, but on the other hand, she also disclosed that some persons whose names were not known to her were also there for taking her to Government Hospital. Her disclosure that she had lived in the house of Baburao Koli for about one and half month prior to the date of incident and she had returned to matrimonial house on her own needs to be checked to ascertain as to whether the stand taken by the husband is true or the disclosure made was true. The Trial Court has disbelieved the dying declarations on other counts. But, in view of the allegations made against many persons and the circumstances that the deceased could run out of the house when she caught fire and people learnt about the incident as she was shouting, the evidence of neighbours needs to be considered to ascertain the truth. If there was the intention to finish her by setting fire to her, persons setting fire would not have kept the door open to allow her to run out of the house.

13) Shraavan (PW 3), whose name is mentioned in dying declaration is examined by the prosecution. His house is situated at the distance of around 50 ft. from the house of accused. He has deposed that he was sleeping in the house, he heard the shouting and due to that he came out and he noticed that the deceased had come out of the house of accused and there was fire on her clothes. He has given evidence that he himself tried to extinguish the fire and then he took her back to the house of accused. He has given evidence that she was shifted to hospital in tractor. In the Trial Court, he was declared as hostile witness as on so called alleged disclosures made by the deceased to him, he had not given evidence. The fact remains that his name was taken by the deceased in dying declaration and due to that, entire evidence of Shraavan cannot be thrown away only because learned APP preferred to cross examine him. In dying declaration itself, she had not disclosed that she had narrated the incident to two persons whose names are mentioned in the dying declaration.

14) Pandharinath (PW 4), whose name appears in the spot panchanama, has given evidence that after hearing shouting of the deceased, he came out and then by using quilt, he extinguished the fire. His evidence is similar to the evidence of Shraavan (PW 3).

Pandharinath was also declared as hostile witness by the prosecution as he has not given expected evidence on the so called disclosures made by the deceased to him. It needs to be mentioned here that name of Pandharinath is not there in both the dying declarations and so, not much weight could have been given to his evidence even if he had given evidence on oral dying declarations. As police believe that he was involved in extinguishing fire to some extent, his evidence needs to be believed and inference can be drawn that he and others were involved in extinguishing the fire. The evidence of these witnesses further shows that they had not seen the husband and his relatives in the house at the relevant time. Similar evidence is given by Omkar (PW 5), but he is not declared as hostile. His evidence shows that mother in law of deceased was available in the house and she had come to the hospital when they had shifted the deceased to the hospital. There is the evidence of other neighbour Tirinabai (PW 6), but that is of no help to the prosecution and she is also declared as hostile.

15) Prosecution has examined Vaijayantabai (PW 7), mother of the deceased. Her evidence shows that during the visits of the deceased to the parents' house, she was disclosing that there was illtreatment to her. Accused No. 1 - Dnyaneshwar was already married. Her evidence shows that after the death of father, the

deceased had expressed desire to return to the matrimonial house. Thus, she admits that she was living with her parents for the period which was not normal.

16) Vaijayantabai (PW 7) has given evidence that she learnt about the incident after three days and then she went to the cottage hospital after three days of the incident and there oral disclosure was made by the deceased to her against the accused of the aforesaid incident. It needs to be mentioned that there is no medical evidence like bed head ticket of the deceased to ascertain as to whether on that day, she was conscious or not conscious. Further, the evidence of so called disclosure given by this lady is not consistent with particulars mentioned in the recorded dying declaration.

17) Vaijayantabai (PW 7) has given evidence that the fact of previous marriage of accused No. 1 - Dnyaneshwar was not known to the deceased. She admits that even when it was the first delivery of the deceased, the delivery had taken place in the house of accused. She has given evidence that there was suspicion about her character to accused No. 1 and due to that there was illtreatment. She has admitted that the deceased did not like to cohabit with accused No. 1. In recorded dying declaration deceased had not

disclosed that accused had suspicion about her character. Thus, the evidence of mother of the deceased shows that deceased had no intention to resume cohabitation and this circumstance is not consistent with the contents of the recorded dying declaration.

18) Apparently, there was no reason for which accused could have given illtreatment to the deceased. Such reason is also not mentioned in the recorded dying declaration. Evidence is also given by Dinkar (PW 8), brother of the deceased. His evidence is vague on the illtreatment and also on disclosure was made by the deceased to him. His evidence is similar to the evidence of mother of deceased about the so called disclosures made by the deceased three days after the incident. His evidence is also not that convincing.

19) Bhaskar (PW 9) is the mediator, whose name is mentioned in dying declaration, has given evidence that about one month prior to the date of incident, accused had reached the deceased to his house. He has given evidence that accused used to suspect about her character and they used to give beating to her. His evidence shows that they were questioning about the first marriage of the deceased. Thus, it appears that it was also second marriage of the deceased. He has given more evidence by saying that accused were asking divorce from the deceased and they were ready to give

Rs.60,000/- to the deceased. He has given evidence that deceased had refused to do so. In the statement given to police, he had stated that he had reached the deceased to the matrimonial house immediately on the next day when she was reached to his house by accused. This circumstance is admitted by him. He admitted that he had not stated before police that accused were asking the deceased as to why her first marriage was broken. The mother of the deceased has not supported the version of this witness as she has not given evidence that accused were asking divorce from the deceased and there was such talk. His evidence is not consistent with the evidence of mother of deceased as mother has admitted that the deceased had no desire to return to matrimonial house.

20) Prosecution has examined one Joharlal (PW 10) to show that the husband was asking for divorce from deceased and he was ready to pay Rs.60,000/-. He has deposed that he was taken by the husband of deceased with him when he had gone to the deceased to give such proposal. His evidence does not show as to whether he knew that the deceased had stayed in the house of Bhaskar Koli for more than one month. He is not relative of the accused or the deceased.

21) The aforesaid evidence shows that the evidence of third

persons is not consistent with the evidence of close relatives of the deceased. It was second marriage for both accused No. 1 and the deceased. There was apparently some dispute between accused No. 1 and the deceased. But, on the basis of aforesaid evidence, it cannot be inferred that there was illtreatment to the deceased from the accused as mentioned in section 498-A of IPC.

22) There was some dispute and the evidence shows that third persons, not the husband and father of the husband, shifted the deceased to the hospital. It was noon time. Though accused No. 1 has tried to take the defence of *alibi*, the initial burden was on the prosecution to prove that all the accused were present in the house at the relevant time. When no neighbour is saying so, it is difficult to believe that except mother in law, other persons were present in the matrimonial house of the deceased. There can be many reasons for a lady to set fire to herself. There is no circumstance to show that the accused had the intention to finish her and with that intention, they had used force against her and then set fire to her. Due to these circumstances, this Court holds that it is difficult to believe that the accused persons had set fire to the deceased and the incident had taken place as narrated in the recorded dying declarations.

23) The learned counsel for accused placed reliance on the observations made by the Apex Court in the case reported as **AIR 1987 SC 1083 [Tota Singh Vs. State of Punjab]** and submitted that the probability which is accepted by the Trial Court was there and so, it is not possible to interfere in the decision given by the Trial Court. The learned counsel submitted that the evidence is properly appreciated by the Trial Court and there are reasons for not relying upon the recorded dying declarations. The learned counsel placed reliance on other case reported as **1999 (Supp.1) Bom.C.R. 215 (Bombay High Court) [Manohar Dadarao Landge Vs. State of Maharashtra]**. This Court has observed that when there is no corroboration to the recorded dying declaration and when some improbabilities are appearing in the dying declaration itself, the Court may hold that the dying declaration is not reliable. There cannot be dispute over this proposition. This Court holds that in view of the reasons given by the Trial Court and the material discussed by this Court, it is not possible to interfere in the decision of acquittal given by the Trial Court. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]