

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

CRIMINAL APPEAL NO.522 OF 2001

The State of Maharashtra

.. Appellant

Versus

1. Manjur Mahemood Sayyed
Age-30 years,

.. Respondents

2. Mumtaz Mahemud Sayyed,
Age-48 years,

3. Shaikh Mahemood Sayyed,
Age-28 years,

4. Sayyad Mahemood Sayyad Sardar,
Age-60 years,

5. Ajaj Karim Shaikh,
Age-34 years,

6. Parvin Ajaj Shaikh,
Age-30 years,

Accused Nos. 1 to 4
R/o. Brahmni, Tq. Rahuri,
Dist. Ahmednagar

Accused Nos. 5 and 6
R/o. Zendigate, Ahmednagar

Mr.A.R. Borulkar, APP for the appellant/State
Mr.S.K. Shinde, Advocate for respondent No.1

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.
DATED : 29.06.2017**

J U D G M E N T [PER: S.S. Shinde, J.] :-

. This appeal is filed by the State challenging the judgment and order dated 27.08.2001 passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No.142 of 1998, thereby acquitting all the accused for the offences with which they were charged.

2. The prosecution case, in nutshell, is as under:-

A. It is the case of prosecution that deceased Rizwana was a daughter of Shaikh Karim (PW-2). The marriage of Rizwana took place with accused No.1 in the year 1992. The matrimonial house of late Rizwana situates at village Brahamni, Tq. Rahuri. However, deceased Rizwana was practicing in the Court of Rahuri during her life time.

B. After the marriage she had gone to village Brahmani to her matrimonial house. All the accused nicely treated late Rizwana initially after her marriage with accused No.1. Late Rizwana being a practicing lawyer, she started residing at Rahuri alongwith accused No.1 in a rented house. Rizwana being lawyer always required to have dialogues with her clients and other connected persons to her profession. Accused No.1 therefore, started to suspect the character of late Rizwana, since she was all the while talking with her clients and press reporters etc. It is alleged that on the aforesaid ground often quarrel used to take place between late Rizwana and accused No.1. Accused No.1 also used to beat late Rizwana on the instigation of accused Nos. 2 to 6. It is alleged that on 15.05.1998, in the noon time accused out of the suspicion of the character of deceased firstly beat the deceased with iron rod and then sprinkled petrol on her person and set her on fire. Accused No.1 himself took deceased Rizwana to the private dispensary of Dr. Anil

Athare PW-9. Deceased Rizwana was hospitalized from 16.05.1998 till 22.06.1998 in the hospital of PW-9. On 16.05.1998 her first dying declaration came to be recorded vide Exh.61. The said dying declaration was forwarded to Rahuri Police Station for necessary action by Tophkhana Police. The second dying declaration of Rizwana also came to be recorded on 21.06.1998 vide Exh. 60, and same was forwarded to Rahuri Police Station for information and necessary action. On the basis of dying declaration Exh.60 offence came to be registered bearing C.R. No. 131/1998 under Section 302 and 498-A of IPC against all the accused. Meantime ASI Suresh Haribhau PW-8 recorded the spot panchanama Exh.56 and while doing so, he seized burnt petticoat, gown and bluish blanket and tin container of the petrol. PW-11 received the inquest panchanama, spot panchanama, dying declaration recorded on 16.05.1998 and 21.06.1998. He arrested the accused. PW-10 then sent the seized property to Chemical Analyser, Aurangabad for the analysis and on completion of investigation charge-sheet was filed. Meantime the map

of the scene of offence vide Exh.39 came to be recorded. Medical Officer Dr. Sharad PW-7 conducted the autopsy on the dead body of Rizwana on 22.06.1998 and gave report vide Exh.54 accordingly.

C. The offence being exclusively triable by the Court of Sessions learned Magistrate committed the case to the Court of Sessions.

D. On hearing the prosecution and the accused charge at Exh.27 was framed and explained to all the accused. They all pleaded not guilty and claimed to be tried. The defence of the accused is that of total denial. In addition to this it is their contention that Rizwana caught fire due to burning of the stove while she was cooking.

3. The learned APP appearing for the State invites our attention to the contents of the dying declarations and submits that in both the dying declarations, Rizwana

stated that, husband Respondent No.1 used to suspect on her chastity/character since 1993 and used to abuse her. He used to suspect on account of interacting with her clients. Learned APP submits that it is true that in first dying declaration recorded on 16/05/1998 by the Special Executive Magistrate, Ahmednagar at Exh.61 of Rizwana, she stated that since respondent No.1/accused No.1 used to suspect about her character, therefore, she herself set her ablaze, and in second dying declaration at Exh.60 which was recorded by the same Special Executive Magistrate, Ahmednagar who recorded dying declaration at Exh.61, she stated that her husband poured petrol on her person and set her ablaze, and before setting her ablaze, her husband abused her. However, the main reason for such an incident was the conduct of the husband to suspect the character of Rizwana and to ill-treat her, as a result the said incident had taken place in which she died.

4. The sum and substance of the argument of the

learned APP is that the husband was responsible for the death of Rizwana therefore, the view taken by the trial Court was not plausible. Therefore, he submits that the appeal may be allowed.

5. Learned counsel appearing for the respondents (original accused) invites our attention to the contents of dying declarations (Exh.60 and 61) and submits that the dying declarations suffer from material contradiction, in as much as in first dying declaration (Exh.61) which was recorded by Special Executive Magistrate on 16.05.1998, Rizwana stated that since the accused No.1 Manjur Mahemood Sayyed used to suspect on her character, therefore she herself set her ablaze. However, in second dying declaration which was recorded after gap of about one month i.e. on 21.06.1998, she stated that her husband poured petrol on her person and set her ablaze. Therefore, both the dying declarations do not inspire confidence and therefore keeping in view said material contradictions in two versions, the trial Court

has rightly extended the benefit of doubt in favour of the respondents and acquitted them. It is submitted that in fact respondent Nos. 2 to 6 are concerned, there is no any role assigned to them in both the dying declarations. It is submitted that Bismilla Karim Shaikn (PW-6) mother of Rizwan during her cross-examination admitted that accused No.1 Manjur Mahemood Sayyed husband compelled her daughter i.e. Rizwana to be in the legal practice. Therefore, there was no question of ill-treatment or suspecting the character of Rizwana on account of interacting with the clients. It is submitted that it is well settled that on appreciation of evidence if possible view is taken by the trial Court, in that case though another view may be possible, the same is no ground to interfere in the order of acquittal. Therefore, learned counsel appearing for the respondents prays that appeal may be dismissed.

6. We have given careful consideration to the submissions of the learned APP appearing for the

appellant/State and counsel appearing for the respondents and with their able assistance, we have perused the evidence of the prosecution witnesses, medical evidence and in particular two dying declarations at Exh.61 & 60 of Rizwana. Upon careful perusal of the evidence of Medical Officer in his deposition he stated that he examined the patient. She was admitted in hospital after receiving letter from the Tofkahana Police Station. After treatment on 22.06.1998 Rizwana died. He has also stated about percentage of burn and other details. During his cross-examination he denied suggestion that dying declaration at Exh.61 was not recorded in his presence.

7. The prosecution examined Shaikh Karim Shaikh Usman (PW-2)- father and Bismilla Karim Shaikh (PW-6)- mother of deceased Rizwana. PW-2 Shaikh Karim Shaikh Usman in his deposition stated that accused started suspecting the character of Rizwana since 1993. On suspicion, quarrel used to take place between them. PW-6 Bismilla Karim Shaikh mother of deceased Rizwana also

stated in her examination-in-chief that accused No.1 used to suspect about her character and also used to beat her, and she came to know about the said ill-treatment from her daughter that accused Nos. 2 to 6 used to tease her on petty matters, whenever her daughter visited her parental house she stated about such harassment by respondent Nos. 2 to 6.

The evidence of Shaikh Karim Shaikh Usman (PW-2) and Bismilla Karim Shaikh (PW-6) was recorded so as to prove the charge for the offence punishable under Section 498-A of the IPC. However, the trial Court upon appreciation of their evidence observed that Bismilla Karim Shaikh (PW-6) in her cross-examination stated that she insisted her daughter to quit from the legal profession, but accused No.1 i.e. her husband, compelled Rizwana to be in the legal practice. The trial Court discarded the evidence of both the witnesses on the aspect of ill-treatment and harassment. Admittedly, during the period of six years of the marital tie of

respondent No.1 and deceased Rizwana, nothing is brought on record to suggest that, there was any complaint filed by the Shaikh Karim Shaikh Usman (PW-2) or Bismilla Karim Shaikh (PW-6) or Rizwana making grievance about such alleged ill-treatment or harassment.

8. As already observed, two dying declarations of Rizwana were recorded, one at Exh.61 by the Special Executive Magistrate on 16.05.1998. The said dying declaration was recorded on second day of the incident. While answering question No.10 i.e. "who set you on fire or ablaze?" she replied "my husband suspects on my character and beats me hence I ablaze myself." However, in the said dying declaration in reply to question No.12 that "why she decided to set her ablaze?" She stated that, since her husband used to suspect about her character and used to abuse her, she set herself ablaze. She also stated the date and time of the incident. However, while answering question No.14, she stated that her husband extinguished the fire and also taken her to

the hospital.

. Second dying declaration Exh.60 was recorded on 21.06.1998. In the said dying declaration in reply to question no.14, she stated that her husband extinguished the fire and taken her to hospital. Both the dying declarations are recorded by the same Special Executive Magistrate. Upon careful perusal of the dying declaration at Exh.61, there is endorsement of the Medical Officer that patient was conscious oriented and in position to give the statement. The said endorsement was given on 16.05.1998 at about 02.00 pm. However, upon careful perusal of the dying declaration at Exh.60 there is no endorsement of the Medical Officer that patient i.e. Rizwana was conscious oriented and in position to give the statement. Upon careful perusal of both the dying declarations, the statement of Rizwana so far as the actual incident is concerned, as already observed, in second dying declaration there is substantial improvement. In first dying declaration she stated that

she herself set ablaze. In second dying declaration she stated that her husband poured petrol on her person and set her ablaze. Therefore, there was material improvement. The trial Court upon appreciation of the entire evidence brought on record and in particular the contents of both the dying declarations, reached to the conclusion that the dying declarations do not inspire confidence. So far as respondent Nos. 2 to 6 are concerned, there are no any specific allegations/role assigned in both the dying declarations and therefore, the trial Court granted benefit of doubt to the respondents/accused. Upon independent scrutiny of the evidence brought on record and in particular dying declarations at Exh.61 and 60, we are of the considered view that both the dying declarations do not inspire confidence so as to reverse the order of the acquittal passed by the trial Court and convict the respondents. The dying declaration recorded at Exh.61 was prior in time. The said dying declaration was in question-answer form and was recorded by Special Executive Magistrate and

there is also endorsement by the Medical Officer that Rizwana was conscious, oriented and in position to give the statement. In second dying declaration, the said endorsement of the Medical Officer is not there. Be that, as it may, on scrutiny of contents, both the dying declarations do not inspire confidence.

9. In the light of discussion in forgoing paragraphs, in our considered view, the prosecution has utterly failed to prove the case against the respondents. The view taken by the trial Court is a plausible and in consonance with the evidence brought on record. Even if for a moment it is assumed that, an another view is possible on the strength of evidence brought on record by the prosecution, the same is no ground to interfere in the order of acquittal when plausible view has been taken by the trial Court.

10. In the light of discussion in forgoing paragraphs, an inevitable conclusion is that, the appeal

filed by the State shall fail. Accordingly, the criminal appeal stands dismissed. Bail bonds, if any, shall stand cancelled.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]