

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

CRIMINAL APPEAL NO. 352 OF 2002

Shankar S/o Bapurao Bhange,
Age : 30 years, Occu. Service,
R/o. Wadhavana, Tq. Udgir,
District : Latur.

... Appellant

VERSUS

The State of Maharashtra

... Respondent

.....
Mr Satej S. Jadhav, Advocate for the appellant
Mr R. V. Dasalkar, APP for respondent/State
.....

CORAM : A. M. DHAVAL, J.
DATE : 10TH NOVEMBER, 2017.

ORAL JUDGMENT:

1. The appellant-husband has been convicted for subjecting his wife to cruelty and abetting her to commit suicide and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default, RI for three months u/s 498A IPC and rigorous imprisonment for three years and fine of Rs. 1,000/-, in default, RI for three months u/s 306 IPC, by judgment delivered by 1st Adhoc Additional Sessions Judge, Jalna on 19.06.2002 in Sessions Case No. 81 of 1999. Being aggrieved, the appellant has preferred this appeal.

2. The prosecution is launched on the basis of crime registered at C.R. No. I-32/97 at Ambad Police Station on the basis of the dying declaration of the deceased wife Nanda on 05.06.97. It was recorded by PW4 Naib Tahsildar Shamrao Nandedkar. It shows that, deceased Nanda aged 21 years was married to the accused about one year before the incident. She is resident of Ahmedpur, which is about 200 km away from the spot. After the marriage, she had started cohabiting with her husband at Rani Unchegaon, Tq. Ambad, Dist. Jalna. Her dying declaration shows that, her husband was interested in marrying to daughter of his maternal uncle by name Varsha and there was engagement also, but his father did not allow him to marry to her. Her husband was serving as a teacher at Shevgal, Tq. Ghansavangi, but was residing at Rani Unchegaon. About two months before the incident, she had given birth to a male child. On 02.06.97, at about 9:00 to 9.30 p.m., there was a quarrel between Nanda and her husband. On 03.06.97 at 8:00 to 8:30 a.m. again there was a quarrel between Nanda and her husband. She told her husband that, she would prepare tea and he should fetch water. Her husband got annoyed and he poured 2 and 2½ ltrs. of kerosene from a can of 5 ltrs. on her person. In view of the daily quarrels, Nanda lit a match stick and set herself on fire. She sustained burns to her hands, legs, back, neck and face. Her husband himself

wrapped her up in a towel and doused the fire. People gathered poured water. That time, her parents-in-law were present. Her husband brought her to the hospital at Ambad and thereafter to the Civil Hospital at Jalna. She stated that, for four days before the incident, her husband was regularly beating her. She also alleged that, her husband had thrown a matchbox towards her. This dying declaration was recorded after obtaining medical certificate from the Medical Officer that she was conscious to give statement. Before registration of the crime, A.D. case was registered and spot panchanama was drawn on 06.06.97. Subsequently, on 21.06.97, Nanda succumbed to 72% burn injuries. Thereafter, the Investigating Officer has recorded statements of material witnesses. The inquest panchanama was drawn and postmortem was conducted. After completion of investigation, charge-sheet was submitted in the Court.

3. In due course, the case was committed to the Court of Sessions. The ld. Ad-hoc Addl. Sessions Judge framed charge against the accused u/s 306, 498A of IPC. The accused pleaded not guilty. The prosecution examined nine witnesses. It is the defence of the accused that, Nanda was suffering from TB and therefore she has committed suicide. He has not abetted the commission of suicide nor subjected her to ill-treatment in any form. The ld. Sessions Judge convicted the accused as referred to above. Hence, this appeal.

4. Shri. Satej Jadhav, Id. Counsel has taken me through the entire evidence on record and made following submissions.

- (i) There was one dying declaration recorded by Head Constable - Hiwale showing that the deceased committed suicide. The said dying declaration has been suppressed by the prosecution.
- (ii) The present dying declaration was not read over to the deponent and there is no endorsement that she admitted it to be correct before taking her thumb impression. Besides, Nanda was studied upto 10th std. There is no explanation why her signature was not taken.
- (iii) Evidence of previous ill-treatment led by father, brother and uncle of the deceased is extremely vague and inconsistent with each other as well as the contents of dying declaration.
- (iv) It was the accused who had extinguished the fire and taken his wife to the hospital. He himself had also sustained burn injuries and was required to undergo treatment.
- (v) The evidence of PW1 Namdeo, PW5 father Baburao and PW7 Balkrishna is not cogent, consistent and reliable. Similarly, the evidence of Naib Tahsildar

PW4 is also not reliable. He has not immediately forwarded the dying declaration to the Police Station and the FIR has been registered quite late on 17.6.97. The evidence does not inspire the confidence and therefore the ld. trial Judge erred in relying upon it to convict the appellant.

(vii) In **Shivaji Tukaram Patdukhe Vs. State of Maharashtra 2004 ALL MR (Cri) 3220**, a dying declaration before the head constable was not brought on record and the dying declaration relied upon was not read over to the deponent and no endorsement to that effect was made. These were found to be material discrepancies resulting into acquittal of the accused.

5. Per contra, ld. APP Shri. R. V. Dasalkar submitted that the dying declaration is recorded by Naib Tahsildar, who is independent person, after obtaining the opinion of the Medical Officer about fitness of the patient. Nanda thereafter survived upto 21.06.97 i.e. for 16 days. There is no reason why the accused would have been falsely implicated. There is evidence to show that she was subjected to ill-treatment and dowry demands prior to the incident and hence there is no scope for interfering with the judgment of conviction.

6. The points for my consideration with my findings thereon are as follows :

Sr. No.	Points	Findings
1	Whether the accused had subjected the deceased to cruelty and dowry demands?	In the negative.
2	Whether the deceased Nanda committed suicide?	In the affirmative.
3	Whether the accused has abetted the commission of suicide by Nanda?	Not proved.
4	What order?	The appeal is allowed. The accused is acquitted of the charges.

REASONS

7. The prosecution has led following evidence.

[I] **Dying Declaration :**

- [i] PW4 Naib Tahsildar – Nandedkar has recorded dying declaration Exh. 25.
- [ii] There is oral dying declaration before PW1 Namdeo (uncle).
- [iii] PW5 Baburao, father.
- [iv] PW7 - Balkrishna.
- [v] PW6 – Laxmibai.

[II] **Evidence of Previous Ill-treatment :**

- [i] PW1 – Namdeo
- [ii] PW5 - Baburao
- [iii] PW7 – Balkrishna.
- [iv] PW6 – Laxmibai.

[III] **Other Evidence :**

- [i] PW2 – Asaram, the landlord, turned hostile.
- [ii] PW3 – Pandurang, neighbour, turned hostile.
- [iii] Head Constable – Rode, who recorded the statements of witnesses.
- [iv] PW9 PI Pawar, who carried out further investigation and submitted charge-sheet.

8. The prosecution has not examined Medical Officer as the PM notes Exh. 19 are admitted by the witnesses. Those show that deceased Nanda, aged 21 years, had sustained 72% burns. Her entire chest, back and upper parts of the body were burnt. It is not disputed that, Nanda attempted to commit suicide on 03.06.97 at her matrimonial place and died on 21.06.97 in the hospital due to burn injuries.

9. Undisputed evidence on record shows that, Nanda daughter of PW5 & PW6 from Ahmedpur, married to the accused in 1996. The accused was teacher at Shevgal, Tq. Ghansawangi but was residing at Rani Unchegaon. After the marriage, Nanda cohabited with her husband and she gave birth to a male child within one year. It was about two months before the incident. It is not in dispute that, on 03.06.97, in the morning, Nanda sustained burns and her husband – accused brought her to the hospital at Ambad and thereafter to

Civil Hospital at Jalna. She was taking treatment in Civil Hospital at Jalna and later she died.

10. The admitted evidence shows that, during the cohabitation period of one year, Nanda visited her house only once that too for delivery purpose. The evidence of PW5 Baburao (father) and PW6 Laxmibai (mother) does not show that, during her stay at her maternal house, she made any complaint against the accused about ill-treatment or dowry demands. Both of them stated that, after the marriage their son Balkrishna had gone to the house of Nandabai and after returning from her house, he disclosed that there was demand of cupboard, cot and other articles from Nandabai and therefore she was subjected to ill-treatment. PW7 Balkrishna himself stated that, about 1½ months after the marriage, he had gone to matrimonial house of Nandabai. She complained that, the accused was complaining that he has not received proper dowry as per his will and the accused was ill-treating her. She used to disclose this fact to her parents. PW1 Namdeo, uncle of Nanda, has stated that when Nanda was burnt and was in Civil Hospital at Jalna, that time Nanda told him that she was subjected to ill-treatment by the accused and therefore she set herself on fire. This is the entire evidence regarding previous ill-treatment by the accused and the alleged intimations by Nanda about ill-treatment.

11. In the first place, the allegations are extremely vague. No date, time, place, manner and the nature of ill-treatment has been deposed. Besides, on listening to it the reaction of brother and parents is not natural. They did not take any steps to see that Nanda would not be subjected to ill-treatment. There is no evidence that, they tried to persuade the accused or took the help of mediators or Nanda was brought to maternal house due to the ill-treatment meted out to her. Such vague evidence will not be of any use. It is pertinent to note that Nanda succumbed to the burn injuries on 03.06.97 and her maternal relatives did not make any complaint till her death on 21.06.97. Their statements are recorded about one month after the incident on 03.06.1997. I find that the evidence of uncle/PW1 Namdeo, PW5-father, PW6-mother & brother/PW7-Balkrishna on the point of previous ill-treatment by the accused to Nanda is not trustworthy and reliable.

12. It is also pertinent to note that the dying declaration on which reliance is placed is silent with respect to the alleged dowry demands. There is a vague statement that her husband used to assault her after every 4-5 days. There is nothing to show that Nanda had sustained any serious injuries and was required to be hospitalized before the main incident of burning. I therefore discard evidence on the point of previous ill-treatment and dowry demands.

13. As far as dying declaration is concerned, PW4 Shamrao Nandedkar has deposed that he received one letter from Kadim Jalna Police Station on 05.06.97 for recording dying declaration of Nanda and thereafter he visited Civil Hospital at Jalna at 6:00 p.m. He met the doctors present and saw the burnt patient. He stated that, while recording her dying declaration, Nanda told him that on 02.06.97, he had a quarrel with her husband because her husband wanted to marry with one Varsha, daughter of his maternal uncle. Even there was engagement, which was broken due to objection of father of the accused. Again on the next day, there was a quarrel in between Nanda and her husband. Nanda told PW4 that, she had told her husband that she would prepare tea and he should fetch water. She told that, the accused got annoyed and had poured 2½ ltrs. kerosene on the person of deceased as disclosed in A.D. This dying declaration is deposed in detail by PW4. He stated that, Nanda told him that her husband poured kerosene on her body. He further deposed that, she told him that she herself took the matchstick and set herself on fire. He also deposed about the complaint of ill-treatment and assault made by Nanda and her dying declaration. Evidence of PW4 shows that, it was the accused who wrapped Nanda in towel and he along with the help of others extinguished the fire and took her to the hospital at Ambad. The dying declaration is at Exh. 25. PW4 deposed

that, it bears thumb impression of Nanda and his signature but he did not state that the dying declaration was read over to Nanda, she admitted it to be correct and thereafter her thumb impression was taken. He did not state that Nanda was unable to make signature on the dying declaration.

14. It is certain that, this dying declaration was not made basis for registration of crime on the same day. The crime is registered on 17.06.97 i.e. 12 days after recording of dying declaration. Letter Exh.27 written by Police discloses that the police were aware about the recording of dying declaration by PW4. However, the spot panchanama dt. 06.06.97 shows that it was drawn in a Crime No.115/97 u/s 309 IPC. The spot panchanama discloses different story that Nanda was suffering from illness and therefore she herself poured kerosene on her person and set herself ablaze.

15. Though the contents of the spot panchanama cannot be treated as substantive evidence, it is certain that the prosecution is suppressing the material facts. The cross-examination of Investigating Officer PI Pawar shows that, one Head Constable – Hiwale had recorded the statement of Nanda at Ambad, on the basis of which crime C.R. No. 115/97 was recorded u/s 309 of IPC. If at all her husband had abetted her by pouring kerosene on her person by

providing her matchstick the offence could have been registered against her husband and not against her. There is no proper explanation why the dying declaration Exh. 25 was not immediately sent to the police station by PW4 and why the crime was not registered immediately. There was a long delay upto 17.06.97 for registration of crime.

16. It is pertinent to note that, after the incident of burning, the parents, brother and uncle of the deceased Nanda would have immediately reported to the police about the alleged oral dying declaration given by Nanda to them but they have not disclosed anything to the police for a period of one month. The delay is highly suspicious and it creates doubt about the truthfulness of the evidence of these witnesses. In this regard, I rely upon **Sanju Samson Vs State of Maharashtra AIR 2002 SC 1998.**

17. The story narrated in dying declaration itself appears to be doubtful. If the accused would have poured kerosene on the person of Nanda, she would have run away. The accused could not have tried to extinguish the fire and got himself burn. PW9 has admitted that, as per first dying declaration, Nanda was suffering from TB and therefore she attempted to commit suicide. The accused himself had sustained burn injuries and he had admitted her in Civil Hospital at

Ambad. There is no dispute that he had taken Nanda for medical treatment. The conduct of the accused is not consistent with the allegations in the dying declaration that he poured kerosene on her person and provided her matchstick.

18. Pertinently, I find that there was no occasion for the accused to take such a drastic step and abet Nanda to commit suicide. The marriage was hardly one year old. The cross in the dying declaration regarding interest of the accused in his maternal cousin is not disclosed by Nanda to any of the maternal relations as PW1, PW5, PW6, PW7 have not deposed about this angle of the allegations. Nanda had given birth to a son just two months before the incident. Nanda had made no complaint to her maternal relatives during her stay at her maternal house at the time of delivery. When all these facts are taken together, there are grave doubts created in my mind about truthfulness of dying declaration. Ld. Advocate Shri.Satej S. Jadhav has rightly argued that PW4 ought to have read over the dying declaration to the patient and after getting admission about correctness, then only he should have obtained her thumb impression. Besides, he should have tried to obtain her signature and in case she was unable to sign, then only her thumb impression should have been taken.

19. Mr Satej Jadhav relied on **Girdhar Tawade Vs State of Maharashtra AIR 2002 SC 2078**, wherein it is held that the acquittal of the accused u/s 306 would not necessarily entail the acquittal u/s 498A, but there should be cogent evidence to bring home the charge u/s 498A. He also relied on **Sanju Samson Vs State of Maharashtra AIR 2002 SC 1998** wherein relying upon Ramesh Kumar v. State of Chhattisgarh (2001) 9 SCC 618, it is held that, "a word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

20. It is well settled that, the conviction can be based on uncorroborated dying declaration, however, such dying declaration should be cogent, reliable, trustworthy and should inspire confidence. It should be consistent with the other factual aspects. I find that, the present dying declaration does not inspire confidence in my mind.

21. The ld. trial Judge has not paid proper attention to the discrepancies, variances and lacunae in the prosecution case and has arrived at incorrect findings which are not sustainable. Hence, the appeal deserves to be allowed and the appellant deserves to be acquitted.

22. The appeal is allowed. The conviction of the accused is set aside. The accused is acquitted of all the charges. His bail bonds stand cancelled. He shall furnish P.R. bond of Rs. 20,000/- u/s. 437A of Cr.P.C. within fifteen days.

[A. M. DHAVALE]
JUDGE

sgp