

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

Criminal Revision Application No. 198 of 2004

* Mangalabai Dinesh Shirsath
(Deceased)
Through father Bhatu Pundlik Patil,
Age 49 years,
Occupation : Agriculturist,
R/o. At/Post Lonkhedi,
Taluka & District Dhule. **.. Petitioner.**

Versus

- 1) The State of Maharashtra.
- 2) Dinesh Popat Shirsath,
Age 27 years,
Occupation: Tempo Driver,
R/o Mahir, Taluka Sakri,
District Dhule.
- 3) Bharat Popat Shirsath,
Age 25 years,
Occupation: Agriculturist
R/o Mahir, Taluka Sakri,
District Dhule.
- 4) Raosaheb Popat Shirsath,
Age 23 years,
Occupation: Agriculturist
R/o Mahir, Taluka Sakri,
District Dhule.
- 5) Popat Fakira Shirsath,
Age 48 years,
Occupation: Agriculturist
R/o Mahir, Taluka Sakri,
District Dhule.

- 6) Vimalbai Popat Shirsath,
Age 45 years,
Occupation: Household,
R/o Mahir, Taluka Sakri,
District Dhule.

.. Respondents.

Shri. N.L. Chaudhari, Advocate, for petitioner.

Miss. S.S. Raut, Additional Public Prosecutor, for
respondent No.1.

Shri. Joydeep Chatterji, Advocate, for respondent Nos.2 to
6.

CORAM: T.V. NALAWADE, J.

DATE : 19 JANUARY 2017

JUDGMENT:

1) The revision is filed against the judgment and order of Sessions Case No.78/2002 which was pending in the Court of learned 3rd Additional Sessions Judge, Dhule. Respondents are acquitted by the Sessions Court of the offences punishable under sections 498-A, 302 read with section 34 of the Indian Penal Code. Both sides are heard.

2) The deceased Mangalabai was daughter of present petitioner. She was given in marriage to respondent No.1 Dinesh on 20-2-2002. Accused Nos.2 and

3 are younger brothers of respondent No.1 and accused Nos.4 and 5 are the parents of respondent No.1. No issue is born out of this wedlock. Prior to the marriage, accused No.1 was working in a company from Udhana, Gujarat, and there he started cohabiting with Mangalabai. When he lost the job he was given work by husband of sister of Mangalabai viz. Bhaskar Patil by employing him as a driver on his tempo.

3) There are allegations that after the marriage, Mangalabai started disclosing that her husband and parents of the husband were asking her to sell her ornament, *Mangalpot*, as they wanted some money for taking well in their field. When she refused to handover the ornament, they asked her to bring Rs.10,000/- from her parents. Mangalabai disclosed that when she refused to bring money, ill-treatment was started to her. She started disclosing that the husband was even giving beating to her. Then another demand was made of Rs.30,000/- by saying that accused No.1 wanted to purchase a tempo for doing transport business. This demand was made even to Bhaskar by accused No.1.

Bhaskar Patil had promised accused No.1 to purchase one tempo after one to two years.

4) On 20-4-2002 there was function of "*Jaawal*" of the issue of Bhaskar at place Bhadane, Tahsil Dhule. Invitation was given to accused No.1 and to Mangalabai of this function. Accused No.1 sent Mangalabai ahead and he promised to come later on. From Surat Mangalabai went for the function and she reached there on 18-4-2002. On the day of the function accused No.1 did not turn up and his other relatives also did not turn up for the function.

5) On 21-4-2002 and 22-4-2002 accused No.1 called Bhaskar Patil on phone and informed that he had reached to Sakri and he wanted to return to Surat. He asked Bhaskar Patil as to whether he was returning to Surat and whether he was bringing Mangalabai to Surat. Bhaskar Patil informed that on 22-4-2002 they would leave at 9.00 a.m. for Surat.

6) Bhaskar Patil went to Sakri in a jeep with Mangalabai. He saw that Dinesh was present at S.T. Stand Sakri. Dinesh took Mangalabai to some distance to have a talk with her and there he started assaulting Mangalabai. When Bhaskar Patil tried to intervene, Dinesh said that he was husband of Mangalabai and Bhaskar should not intervene in the incident. Mangalabai then disclosed to Bhaskar Patil that Dinesh had become angry as no money was brought for taking well from the parents. Mangalabai was then taken to Mahir from that place by accused No.1 Dinesh. Bhaskar Patil then went to Surat from Sakri.

7) The incident in question took place on 22-4-2002 in the house of accused persons at Mahir, Tahsil Sakri, District Dhule and at about 12.30 p.m. Mangalabai sustained burn injuries. She was shifted to Rural Hospital Sakri. There her statement was recorded by Executive Magistrate. From this place Mangalabai was shifted to Civil Hospital Dhule for further treatment. On 22-4-2002 one more dying declaration of Mangalabai was recorded by Executive Magistrate in Civil Hospital Dhule. Present

petitioner, father of Mangalabai, gave application to Superintending of Police Dhule on 23-4-2002 and he requested for recording one more dying declaration of Mangalabai. He contended that the previous dying declarations were given under pressure of husband and his relatives.

8) In view of the aforesaid application given by the father of the deceased one more dying declaration came to be recorded on 23-4-2002. In this dying declaration Mangalabai disclosed that the incident had taken place between 12 noon and 1.00 p.m. on 22-4-2002 and at the time of the incident quarrel was picked up with her by her father-in-law, Popat, her mother-in-law Vimalbai, brother-in-law Bharat and brother-in-law Raosaheb and then all these persons had held her and after that her husband Dinesh had poured kerosene on her person and she was set on fire. She had disclosed that she then ran out of the house and when she came out, the persons of her lane, neighbours extinguished the fire. She disclosed that the members of her family, the accused and the neighbours then shifted her to Rural Hospital Sakri and from there

she was shifted to Civil Hospital Dhule. She disclosed that initially she had not disclosed the incident correctly as her husband had pressurized her not to disclose the incident. She disclosed that after the arrival of her parents she was disclosing the incident correctly. She died on 25-4-2002. She had sustained 89% burn injuries and she died due to septicemia following thermal burn.

9) On the basis of the dying declaration given on 23-4-2002 crime was registered at CR No.50/2002 in Sakri Police Station for offences punishable under sections 307, 498-A, 34 of the Indian Penal Code. Statements of the relatives of Mangalabai came to be recorded. Spot panchanama was prepared on 22-4-2002 itself. Police collected record like post mortem report and filed charge sheet for aforesaid offences. The case came to be committed to the Court of Session. Charge was framed for the aforesaid offences. Accused pleaded not guilty.

10) The prosecution examined in all 11 witnesses who include present petitioner, father of Mangalabai and other relatives of Mangalabai, doctor Chavan, who had

signed on the dying declaration for giving fitness certificate. All the three dying declarations are proved by the prosecution.

11) In the statement under section 313 of the Code of Criminal Procedure the accused have denied the allegations of ill-treatment given to Mangalabai by them and they have denied the contents of the third dying declaration. They contended that at the relevant time they were not at home and they had gone to the field and they rushed to the spot only after learning the incident and then they went to Civil Hospital Dhule where Mangalabai was shifted.

12) Learned Additional Sessions Judge has considered some admissions given by the witnesses like Bhaskar (PW 4), Chatur (PW 5) and has held that these persons were present in the Civil Hospital when the second dying declaration was record by the Executive Magistrate in which the deceased Mangalabai had not blamed anybody and she had given the account of accidental burn injuries. The evidence of car driver,

Sharad (PW 7) is given importance and it is held that at the time of the incident accused persons were not present in the house and only the neighbours had rushed to the spot and they had extinguished the fire. Due to inconsistency in the third dying declaration and the aforesaid circumstances the learned Judge of the trial Court has acquitted the accused persons.

13) Learned counsel for the petitioner submitted that when there was explanation in the third dying declaration, which was the last, that the previous dying declarations were given under pressure, the trial Court ought to have placed reliance on the third dying declaration. He submitted that when there was evidence of the relatives of Mangalabai on cruelty, there was disclosure of the ill-treatment in the third dying declaration, it was not possible to acquit the accused persons for offence punishable under section 498-A of the Indian Penal Code.

14) In view of the contents of the dying declarations, this Court has carefully gone through the

spot panchanama which is at Exhibit 23. This document was not disputed and the panchanama was prepared on 22-4-2002 itself between 16 p.m. and 17 p.m. As this document was prepared prior to registration of the crime, necessary weight needs to be given to the contents of this document. This document and the map of the scene of offence which is on record show that there was no sign of incident in the kitchen. There was electrical stove in the house but there was also traditional fire place, *choolah*. There were pieces of burnt matchstick and there were some pieces of broken bangles. Partly burnt saree was found outside of the house, at a distance of 7 feet from the entrance door. The pieces of burnt clothes of the deceased and earth sample was collected from the place situated outside of the house. On those articles, found in courtyard, kerosene was detected. In the dying declaration the place where she was set on fire was not disclosed by the deceased and she had only informed that the incident took place inside of the house and she ran out of the house. If kerosene was poured inside of the house there would have been certainly some stains of kerosene or smell of kerosene but that was not noticed by police. All these

circumstances described in the spot panchanama dated 22-4-2002 are not consistent with the contents of the third dying declaration dated 23-4-2002.

15) Bhatu Patil, present petitioner, has given evidence on the ill-treatment by saying that 15 to 20 days after the marriage, quarrel was picked up by saying that customary articles like utensils were not gifted in the marriage. He has given evidence that when first time after the marriage, after short cohabitation, Mangalabai returned to parents house, she disclosed that the accused were asking her to handover her ornament *Mangalpot* as they wanted to take a well by selling the ornament. He has deposed that Mangalabai then told that the accused were saying that alternatively she should bring Rs.10,000/- from her parents. The marriage took place on 20-2-2001 and the incident in question took place in April 2002. Though attempt is made by the father of the deceased and other witnesses to say that this demand was continued till the end, the evidence on the record shows that there are suspicious circumstances about this evidence. Admittedly financial condition of the accused was far better than the

financial condition of the parents of Mangalabai. The marriage had taken place at the place of the accused viz. Mahir and it shows that the accused persons had spent for the marriage. Thus, the prosecution case that ornament was demanded for collecting money to take well does not appear to be probable in nature.

16) Bhatu (PW 3) has given evidence that accused No.1, husband then made demand of Rs.30,000/- as he wanted to purchase a tempo. There is vagueness in this evidence. Similar evidence is given by Chatur Patil (PW 5). Evidence of Bhaskar (PW 4), who is husband of sister of the deceased, further shows that accused No.1 was driving tempo at Udhana, Gujarat and he was demanding money for taking a well. It can be said that when it was not possible for the parents of Mangalabai to meet the first demand, there was no question of making demand of more amount by the husband of Mangalabai. In second dying declaration also there is no whisper about demand of Rs.30,000/- for purchasing tempo. These circumstances show that the witnesses have exaggerated the things.

17) The evidence of Bhaskar (PW 4) and Chatur (PW 5) shows that they had reached the Civil Hospital much prior to the recording of the 2nd dying declaration. The 2nd dying declaration was recorded after 6 pm of 22-4-2002. The evidence of Bhatu (PW 3) shows that on the date of the incident i.e. on 22-4-2002 he reached Civil Hospital Dhule at about 5.00 p.m. and he immediately met Mangalabai in the Civil Hospital. His wife reached there at about 6 to 6.30 p.m. on 22-4-2002. Thus it does not look probable that even after reaching of these witnesses to Civil Hospital, accused No.1 was in a position to pressurise the deceased to give the account of incident as accident. These circumstances are considered by the trial Court.

18) It appears that even after one year of the marriage, the deceased had not conceived child. Though Bhatu has given evidence in respect of one incident of 22-4-2002, there is no support to his version in the dying declaration lastly recorded. The evidence of Bhaskar shows that he went to Dhule on 24-4-2002, after the death of Mangalabai. If Mangalabai was to be taken to Surat by

this witness on 22-4-2002 itself, it does not look probable that accused No.1 who was at his native place, Mahir, had asked Bhaskar to take only Mangalabai to Gujarat. The evidence on record shows that for attending one function in the family of Bhaskar, Mangalabai was sent by accused No.1 to her parents house. The evidence also shows that accused No.1 had promised to come afterward and he accordingly reached to the native place. In ordinary course he would have taken Mangalabai with him back to Udhana, District Surat, Gujarat State. There is no independent witness to corroborate the version of Bhaskar that at ST Bus Stand of Sakri accused had assaulted Mangalabai and he had taken Mangalabai to his house from Mahir. Thus the evidence on so called ill-treatment is given only by close relatives of the deceased from her parents side. There is also similar evidence of Surekha, sister of Mangalabai who is wife of Bhaskar. Her evidence shows that she has also tried to say that she witnessed the incident which took place at Sakri S.T. Bus Stand. For the same reason this Court holds that the sister also cannot be believed.

19) Evidence of Sharad (PW 7) a driver of taxi shows that he had shifted Mangalabai to Rural Hospital Sakri from the place of incident. In the cross examination he has given evidence that the lady had given the account of the incident as accident to the persons who were carrying her to the hospital.

20) When the three dying declarations were recorded the medical officer was there. It needs to be presumed that the Executive Magistrate had taken care to see that the relatives of her husband side or other persons were not there when the first two dying declarations were recorded. For the reasons already given it can be said that at the time of second dying declaration in which the account of accident was given, the parents of Mangalabai were there in the Civil Hospital and so it does not look probable that the second dying declaration giving account of accidental injuries was given under pressure of the husband. It is already observed that the spot panchanama is not consistent with the account given in the third dying declaration. Though it can be said that due to presence of kerosene on the pieces of clothes it can be said that saree

did not catch fire due to electric stove but due to these inconsistencies it is not possible to infer that it is only homicidal death. The death can be suicidal also. The other evidence on the record shows that the neighbours had shifted Mangalabai to the Rural Hospital and the accused were not present in the house, it was necessary for the prosecution to examine some neighbours who had shifted Mangalabai to the Rural Hospital. The first dying declaration was made there. That was not done by the prosecution and due to that inference can be drawn that the said evidence would have been against the prosecution. Thus, the evidence on record shows that it was not convincing. There is no sufficient evidence to draw inference that it is homicidal death. Thus the view taken by the learned Judge is a possible view. Considering the scope of the revision, this Court holds that it is not possible to interfere in the decision given by the Sessions Court. In the result, the revision is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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