

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

CRIMINAL APPEAL NO. 53 OF 2003

The State of Maharashtra,
Through Police Station,
District Parbhani.

....Appellant

Versus

1. Pandit s/o Waman Dadke,
Age 26 years, Occu. Tailor.
2. Sou. Sakhubai w/o Waman Dadke,
Age 55 years, Occu. Household.
3. Sou. Kamalbai w/o Waman Kausadikar,
Age 30 years, Occu. Household.
4. Sanjay s/o Waman Dadke,
Age 20 years, Occu. Private Service.
5. Dinesh s/o Waman Dadke,
Age 19 years, Occu. Private Service.
6. Waman s/o Ashroba Dadke,
Age 62 years, Occu. Pensioner.

All R/o Parbhani District Parbhani.
At present All R/o Ahilyabai Holkar
Nagar, Inside of MIDC, Koregaon Road
canal, Opp. to school, Parbhani.

...Respondents.

Mr. V.S. Badakh, APP for appellant/state.

Mr. S.S. Rathi Advocate for respondent/State Nos.1 to 6

CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.

DATED : 08/12/2017

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

- 1) The appeal is filed against the judgment and order of Sessions Case No. 133/1999, which was pending in the Court of

learned 1st Ad-hoc Additional Sessions Judge, Parbhani. The Trial Court has acquitted all the accused, present respondents of the offences punishable under sections 498-A, 302 and 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 present proceeding can be stated as follows :-

Deceased Savita was given in marriage to accused No. 1 Pandit about one and a half years prior to the date of incident. She has not left behind any issue from this marriage. Accused Nos. 2 and 6 are parents of accused No. 1. Accused No. 3 is sister of accused No. 1 and accused Nos. 4 and 5 are brothers of accused No. 1.

3) The incident in question took place on 27.10.1998 in the matrimonial house of deceased Savita. She sustained burn injuries in the house and she was shifted to Civil Hospital, Parbhani. When the incident took place at about 12.00 noon, the first statement of this lady came to be recorded on 27.10.1998 at about 2.50 p.m. through Executive Magistrate, Parbhani. In that statement, she gave account of burn injuries as accidental burns. Second statement of Savita came to be recorded on 28.10.1998 at 15.35 hours in which she blamed all the accused by disclosing that there was illtreatment

to her from accused persons. She disclosed that she was frustrated due to illtreatment and so, she had set fire to herself by pouring kerosene on her person. However, she disclosed that she was admitted in the hospital by her husband. The second statement was also recorded by the same Executive Magistrate, who had recorded the first statement.

4) The third statement of Savita came to be recorded on 29.10.1998 and this statement came to be recorded by other Executive Magistrate. In this statement, the deceased disclosed that in the incident, her sister in law had held her, her mother in law also held that, her brother in law had fetched the kerosene and other brother in law was present to help him and then husband had set fire to her by pouring kerosene on her person and the fire was extinguished by neighbours and by her husband when she started shouting.

5) Savita succumbed to injuries on 31.10.1998. On the basis of statement dated 28.10.1998 the crime came to be registered initially for the offence punishable under section 498-A of IPC and after the death of Savita, in view of subsequent dying declaration, the crime came to be registered for other offence like offence punishable under section 302 of IPC also. Section 120-B of

IPC was also used. Inquest panchanama of the dead body was prepared. The spot panchanama was prepared. The doctor, who conducted the P.M. examination, gave opinion that the death took place due to 100% burn injuries due to which septicemia was developed. The death had taken place due to cardio-respiratory failure.

6) Police recorded statements of close relatives of deceased on parents' side. Articles taken over during investigation were sent to C.A. office and the chargesheet was filed for aforesaid offences. The charge was framed for aforesaid offences. The accused pleaded not guilty. The prosecution examined in all nine witnesses. In view of the multiplicity of dying declarations mentioned above and as they were inconsistent with each other, the Trial Court has not placed reliance on the record of dying declarations. Some witnesses examined by the prosecution to give direct evidence are also not believed by the Trial Court.

7) The defence has not disputed that the death took place due to septicemia which was developed due to 100% burn injuries. The P.M. report at Exh. 31 is admitted by the defence. When the death takes place due to burn injuries, it can be accidental, suicidal or homicidal. Thus, only due to the cause of death in the present

matter, it is not possible to infer that it is the case of homicide or suicide.

8) In the first dying declaration dated 27.10.1998, the deceased had disclosed that her clothes had caught fire due to flames of stove and all the persons from the house, accused extinguished the fire and in that incident, even her husband had sustained some burn injuries. She had disclosed that the husband and relatives of husband had shifted her to Government Hospital for treatment and she had no complaint against anybody. As against this first disclosure, in the second disclosure she made allegations of illtreatment against the husband and parents of the husband. She disclosed that her husband was asking her to bring ornaments from her parents and they were teasing her that she was not even able to do the household work. She disclosed that the husband and in laws used to give beating to her. Even when sister in law was not residing there, she made allegations against her that she was instigating her husband to give illtreatment. The name Manisha, other sister in law was taken, but fortunately, she was not made accused by police. She disclosed that her both brothers in law were giving illtreatment and they had assaulted her on 2-3 occasions. She disclosed that on 27.10.1998 due to pressure of husband and in laws she had not given correct account of the incident. She disclosed that on

27.10.1998 she had entered in bathroom and after pouring kerosene on her own person she had set fire to herself. However, she admitted that she was taken to the hospital by her husband and her in laws for treatment.

9) In the third dying declaration dated 29.10.1998 the deceased gave altogether different account. She first disclosed that she had not correctly described the incident on previous two occasions due to pressure of accused. She disclosed that in the incident her two sisters in law like Kamlabai and Manisha had held her legs, her mother in law had held her hands, her one brothers in law Sanjay tied her hands by using rope and other brother in law Dinesh had fetched can of kerosene, her husband had taken her to bathroom where kerosene was poured on her person and then her husband had set fire to her in bathroom. She disclosed that to prevent her from raising shouts, she was gagged by putting cloth in her mouth by her mother in law. She disclosed that after seeing the flames, her neighbours had rushed there and then the fire was extinguished by her husband. Thus, the third disclosure was totally different and totally inconsistent with the first disclosure. Thus, all the three disclosures are inconsistent with each other.

10) The spot panchanama at Exh. 62 is admitted by the

defence. This document shows that it was prepared on 27.10.1998, on the day of incident between 14 hours and 14.30 hours. This document shows that the house consist of four rooms and the room from backside was being used as kitchen. It was having R.C.C. construction. The kitchen was having size of 10 ft. x 10 ft., having floor of tiles. In the kitchen, pieces of partly burnt Sari of deceased were lying. In the courtyard, there was bathroom and one hand pump. The fire had reached up to leaves and stems of the tree and some pieces of Sari were lying there also. No piece of Sari was lying inside of the bathroom. From the kitchen one kerosene stove was collected and the pieces of partly burn Sari were also collected. The circumstances mentioned in the spot panchanama show that the incident had started inside of the kitchen and probably the deceased was taken outside of the kitchen to extinguish the fire. These circumstances are not consistent with the subsequent two declarations made by the deceased, but they are consistent with the first disclosure made on 27.10.1998.

11) The prosecution has examined one Manik Kute (PW 2), a boy living in the vicinity. He has tried to say that by chance, he was present on the terrace of the house on one Jamdadebai and from there, he saw that the legs and hands of Savita were being tied in bath room and he had seen Dinesh, Sanjay, Kamlabai, Shakuntala,

Pandit and Manisha tying the limbs of the deceased. He has deposed that he saw that kerosene was poured by husband in the bathroom, then she was taken outside and then Pandit had set fire to the deceased. He has deposed that when the incident was taking place, Jamdadebai was taking bath in her house. His police statement was recorded on 29.10.1998.

12) Kalawati Jamdade (PW 4) has given evidence that at about 12.30 p.m. on that day when she was taking bath, she saw fire through the door of bath room and so, she came out of bath room and she saw that Savita was in flames. She has deposed that nobody was extinguishing the fire and so, she raised shouts. She has deposed that Pandit, Dinesh, Sakhubai, Manisha, Kamal were watching from their house that Savita was burning. However, she has tried to say that husband was pushing the deceased towards the side of hand pump. She has given evidence that her son Vishnu extinguished the fire. Vishnu is not examined. Her police statement was recorded on 29.10.1998.

13) There is no explanation from these two witnesses or police as to why the statements of these two witnesses were not recorded immediately. Further, their versions are not explaining as to how the pieces of partly burnt Sari were found in the kitchen. Due to

these circumstances, this Court holds that these two witnesses cannot be believed.

14) The prosecution has examined other witnesses like Suresh Ingale (PW 3), brother of the deceased, Radhabai (PW 5) mother of the deceased and they have given evidence on the illtreatment against the accused. They have given evidence that on trivial grounds, the accused were harassing the deceased and they were saying that the deceased was not able to do even household work. The mother has tried to say that the conduct of the accused showed that they were not satisfied with the dowry of Rs.50,000/- given to the accused at the time of marriage. The evidence of mother, however, shows that the deceased used to visit the house of her parents on the occasions of festivals and the husband used to take back the deceased without complaining of anything.

15) In the first disclosure, the deceased had specifically mentioned that she had no complaint against anybody. In the second disclosure, she had made complaint against the accused that they were harassing her by saying that she did not know the household work. She had disclosed that husband was saying that her parents were not giving ornaments and money to him but that is not the case of close relatives of deceased in direct evidence. The

statements of these witnesses were not recorded immediately and they gave statements on 29.10.1998. If they had really some grievance against the accused of aforesaid nature, they would have given complaint to police immediately on 27th. It can be said that only after their arrival, the third disclosure dated 29.10.1998 was recorded by police. There is clear possibility of tutoring from the close relatives and due to that, the third disclosure of aforesaid nature was made. Due to these circumstances, this Court holds that close relatives of the deceased cannot be believed. The conduct of the accused persons was not consistent with the guilt. Even when one sister in law, who was made accused was not living there, she was made accused and there is no convincing evidence to show that she had come to the house of parents on that day. In dying declaration, allegations were made even against second sister in law, but she is not made accused and no reason is given for the same by the prosecution. In view of these circumstances, this Court holds that the view taken by the Trial Court is a possible view and it is not possible to interfere in the decision given by the Trial Court in favour of the accused persons. In the result, the appeal stands dismissed.

[ARUN M. DHAVALA, J.]

[T.V. NALAWADE, J.]

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