

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

Criminal Appeal No. 65 of 2003

The State of Maharashtra
Through Police Station Officer
Police Station, Ashti,
Taluka Ashti, District Beed.

.. Appellant.

Versus

Tukaram s/o Kisan Wanve,
Age 50 years,
Occupation : Agriculture,
R/o Wanviewadi, Taluka Ashti,
District Beed.

.. Respondent.

Shri. S.J. Salgare, Additional Public Prosecutor, for
appellant.

Shri. V.M. Chate, Advocate, for respondent.

**Coram: T.V. NALAWADE &
A.M. DHAVAL, JJ.**

Date: 3 November 2017

JUDGMENT (Per T.V. Nalawade, J.):

1) The appeal is filed against the judgment and order of Sessions Case No.3/2002 which was pending in the Court of the learned 2nd Ad-hoc Additional Sessions

Judge Beed. Present respondent Tukaram and his son Vithal were tried for offences punishable under sections 302, 498-A, 504, 506, 509 read with 34 of the Indian Penal Code. Both the accused are acquitted by the trial Court. The appeal is filed against only present respondent by the State. Both the sides are heard.

2) In short, the facts leading to the institution of the present appeal are as under :

3) The deceased Ashabai was daughter of Gorakh Andhale who is resident Andhlyachiwadi, District Beed. She was given in marriage to Vithal, son of the respondent, 3 to 4 months prior to the date of the incident in question. It is the case of the prosecution that, the respondent is addicted to liquor and after consuming liquor he used to pick up quarrels with the deceased. The deceased used to disclose about the behaviour of the respondent to her parents during her visits to the house of her parents. She was cohabiting with Vithal in Village Wanvewadi, Tahsil Ashti, District Beed. The incident in question took place at 7 to 8 p.m. of 30-9-2001 in the

house of the husband of the deceased. The deceased sustained burn injuries and she was shifted first to Government Hospital Ashti and then to Civil Hospital Ahmednagar. In the Civil Hospital Ahmednagar on 1-10-2001 her statement came to be recorded by police of Kotwali Police Station Ahmednagar in which she gave the account of attempt of suicide. Her dying declaration came to be recorded by the Special Executive Magistrate on 2-10-2001 in Civil Hospital Ahmednagar. In this second dying declaration she blamed the respondent Tukaram by disclosing that he had set fire to her after pouring kerosene on her person. She disclosed that both, her husband and father-in-law were responsible for causing her burn injuries. She disclosed the incident to her father and mother. On the basis of the dying declaration recorded by the Magistrate, the crime came to be registered. She died in the hospital after about 4 days of the incident. Post mortem was conducted on the dead body and the doctor gave opinion about cause of death as due to 90% burn injuries. Both, the husband and the father-in-law came to be arrested. They had also sustained burn injuries and they were referred for medical

examination. After completion of investigation, charge sheet came to be filed against both, the husband and the father-in-law.

4) Charge was framed for the aforesaid offences and plea was recorded. Both the accused pleaded not guilty. The prosecution examined in all six witnesses. The accused took defence of total denial. No defence evidence is given.

5) The prosecution has produced on record the two recorded dying declarations. The first dying declaration dated 1-10-2001 at Exhibit 21 shows that she gave account of attempt of suicide but she had blamed present respondent by saying that on that evening after taking liquor respondent had given abuses in filthy language and so she had taken such step. However, she had disclosed that the persons from the house of the respondent had shifted her first to Ashti Government Hospital and then to Civil Hospital Ahmednagar. She had not blamed the husband for the incident. In the second dying declaration which is proved in the evidence of the

Magistrate, she disclosed that on that evening when she was present in the house, respondent - Tukaram poured kerosene on her person and set fire to her. She disclosed that her husband was also there and so both of them are responsible for the burn injuries.

6) Gorakh (PW 2), father, has given evidence that when he made inquiry with the deceased in the Civil Hospital Ahmednagar she disclosed that on that evening respondent Tukaram returned home and he was under influence of liquor. He has deposed that the deceased disclosed that Tukaram picked up quarrel as the deceased had asked him to request her mother-in-law for serving the food. He has deposed that during quarrel the respondent virtually caught hold of the deceased and gave thereat that he would pour kerosene on her and he would even take sexual intercourse with her and then he poured kerosene on her person and set fire to her. Thus, according to him, the deceased did not disclose that her husband was present in the house at the time of the incident. Similar version is given by Gayabai (PW 3), mother of the deceased. Both of them tried to say that

respondent Tukaram had evil eye on the deceased.

7) In the dying declarations recorded by police and the Executive Magistrate the deceased had not disclosed that Tukaram had evil eye on her. Her grievance was that respondent was giving her abuses after taking liquor. There is evidence of the investigating officer (PW 5) Shankar on one of the dying declarations but the so called dying declaration recorded by this witness is not produced on the record. His evidence on the last dying declaration is similar to the evidence given by PW 2 and PW 3.

8) In view of the aforesaid inconsistencies in the evidence given by the prosecution witnesses, the spot panchanama needs to be seen.

9) The spot panchanama (Exhibit 23) is proved in the evidence of panch witness Garje (PW 1). His evidence and the document show that the incident took place in a room where there were all household articles. In that room there was kerosene stove which was in use and there was a match box. The fire had reached to almost

everything which was there in the room. There were pieces of partly burnt saree and they were taken over. By the side of this room some arrangement was made for cooking the food. By the side of this place there was place of one Dnyandeo Wanve. Unfortunately the pieces of the saree which were taken over by police under panchanama were not sent to CA office to ascertain as to whether there was kerosene on the pieces. Bed-head ticket of the hospital is produced on record which was prepared in the hospital. The father-in-law had given history that the clothes had caught fire due to flames of the stove.

10) The evidence of the father of the deceased shows that present respondent had come with a jeep to take him to the hospital after the incident. This conduct of the accused person was not consistent with the guilt. Further, the evidence on the record shows that both the accused had sustained burn injuries. The extent of burn of present respondent was 10% and the extent of burn of the husband was 2%. The burn injuries were mainly on the hands and face. It is not disputed that these persons had shifted the deceased first to Ashti Government Hospital

and then to Civil Hospital Ahmednagar. This conduct was also not consistent with the guilt.

11) No evidence is adduced on motive and there may be many reasons for Indian lady to commit suicide. There are inconsistent versions on the disclosures made by the deceased. Evidence on the record does not make out case of ill-treatment as defined under section 498-A of Indian Penal Code. There was charge for offence of murder and the evidence on the record shows that there are other probabilities also. Due to all these circumstances the trial Court has given benefit of doubt in favour of the respondent. The circumstance that when in the dying declaration recorded by the Executive Magistrate the deceased had blamed both the husband and the father-in-law but the State preferred to file appeal only against the father-in-law cannot be ignored. Due to all these circumstances also this Court holds that the appeal cannot be allowed. In the result, the appeal stands dismissed.

Sd/-
(A.M. DHAVAL, J.)

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

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