

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

CRIMINAL APPEAL NO. 176 OF 2003

The State of Maharashtra,
Through Police Station,
Nardana, Dist. Dhule.

....Appellant.

Versus

1. Nagraj alias Nandu Bandu Patil (Bhamre),
Age 31 years, Occu. Service,
2. Smt. Parvatabai w/o. Bandu Patil (Bhamre),
Age 65 years, Occu. Household,

Both resident of village Sarve,
Tahsil Sindkheda, Dist. Dhule.

3. Mrs. Sunanda w/o. Girdhar Patil
(Bhamre), Age 40 years,
Occu. Household,
4. Girdhar Bandu Patil (Bhamre),
Age 48 years, Occu. Service,

Both resident of 28, Room No. 7,
Mangesh Apartment, Dutta Colony,
Deopur, Dhule.

....Respondents.

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

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

DATED : November 7, 2017

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

- 1) The appeal is filed against judgment and order of Sessions Case No. 45/2002, which was pending before the learned

Ind Additional Sessions Judge, Dhule. The Trial Court has acquitted the present respondents of the offences punishable under sections 304-B, 306, 498-A and 34 of Indian Penal Code ('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 Jayshri was daughter of Ratilal Patil, who is resident of Sindkheda. She was given in marriage to accused No. 1 Nagraj on 17.12.1997 and after the marriage the deceased started cohabiting with accused No. 1 in village Sarve, Tahsil Sindkheda. Accused No. 2 Parvatibai is mother of accused No. 1, accused No. 4 is brother of accused No. 1 and accused No. 3 is wife of accused No. 4.

3) The incident in question took place on 16.12.2002 at about 10.00 a.m. in the matrimonial house. The deceased set fire to herself after pouring kerosene on her own person. After starting of fire, the neighbourers gathered, but it is the husband who shifted her to Government Hospital Dhule for the treatment. Her statement was first recorded by police and then by Executive Magistrate. In the statements, she blamed husband, mother in law, brother in law and wife of brother in law by disclosing that there was illtreatment to her

and on that day, her husband and her mother in law had quarreled with her and due to that, she had set fire to herself. On the basis of dying declaration recorded by Executive Magistrate, the crime was registered first in Dhule City Police Station at zero number. The dying declaration was sent to Nardana Police Station where the crime came to be registered at C.R. No. 72/2001 for the offences punishable under sections 498-A, 324, 504, 34 etc. of IPC. She died at about 7.00 a.m. on 17.12.2001 in Government Hospital.

4) The post mortem was conducted on the dead body. The death took place due to burn injuries. The spot panchanama was prepared and the statements of witnesses who include the father and other relatives on the side of father came to be recorded. Chargesheet was filed against all the respondents. Charge was framed for aforesaid offences and all the accused pleaded not guilty. Prosecution examined in all seven witnesses to prove the offences. The accused took the defence of total denial. The Trial Court has not believed the disclosures made by the deceased and has held that there is discrepancy in the disclosures made by the deceased and the evidence given by her father. The Trial Court has held that the possibility that the deceased was not fit to give statement is there and benefit of doubt is given to the respondents.

5) It is not disputed that the incident took place in the house where the deceased was cohabiting with her husband. The spot of incident was shown by accused No. 1 and the spot panchanama at Exh. 23 is not seriously disputed by the defence. Can containing kerosene and two partly burnt matchsticks were lying on the spot. The pieces of partly burnt clothes of deceased were lying in the kitchen where the incident had taken place. The spot panchanama shows that the fire had started inside of the kitchen, but the deceased was taken outside of the kitchen. There was smell of kerosene inside of the kitchen and outside of the kitchen, the platform situated outside of the kitchen.

6) Even if other things are ignored regarding fitness of deceased to give statements, bare reading of the two dying declarations which are at Exhs. 31 and 37 shows that there are inconsistencies on many points in the two dying declarations. Ramesh Fulpagare (PW 6) recorded the first dying declaration after receiving information from the hospital. He was directed by P.S.O. to go to the hospital and that direction is produced at Exh. 36. In his evidence, the statement of deceased is proved as Exh. 37. He has deposed that before recording statement, he had requested the doctor to remain in his company and doctor had come with him to the place where the deceased was kept. He has given evidence that

after obtaining permission of doctor that the deceased was fit to give statement, he recorded the dying declaration. On Exh. 37, there is no such endorsement of doctor and no doctor is examined to prove that his opinion, certificate was obtained by Fulpagare (PW 6) for recording dying declaration. Exh. 37 does not bear the time of recording of dying declaration. In Exh. 37, the deceased had disclosed that on that day at about 10.30 a.m. there was quarrel which was picked up by her husband and mother in law with her. She disclosed that there was illtreatment to her as she had not conceived even after four years of the marriage. She disclosed that as she became angry due to the quarrel, she poured kerosene on her person and set fire to herself. She disclosed that after starting of fire, the husband and mother in law ran out and the neighbourers extinguished the fire. However, she disclosed that her husband admitted her in Civil Hospital Dhule for the treatment. In the disclosure, even when there was no allegation made with regard to the incident and with regard to the illtreatment against accused Nos. 3 and 4, she mentioned their names as the persons against whom she had complaint. She disclosed that all the accused were living in joint family.

7) The second dying declaration is proved in the evidence of Sardar (PW 4), Executive Magistrate. The requisition letter at Exh.

29 was given to him by police and it was received at 1.40 p.m. He has deposed that he took doctor with him in the ward where Jayshri was admitted. He has deposed that doctor found that patient was conscious and in fit condition to give statement and he gave such certificate on the statement. He has deposed that he also verified that Jayshri was in fit condition to give the statement. In his evidence the statement recorded by him is proved as Exh. 31. The time of recording statement is shown as 2.05 p.m.

8) The contents of Exh. 31 show that the deceased disclosed that accused Nos. 3 and 4 were giving instigation to her husband to give illtreatment to her and due to that, the husband was not discharging his marital obligations. She disclosed that she had not conceived even after five years of the marriage. She disclosed that on the day of incident in the morning time the husband and mother in law picked up quarrel with her and beating was given to her. She disclosed that due to this quarrel, she became frustrated and then she poured kerosene on her own person and set fire to her at about 10.00 a.m. She disclosed that her mother in law, husband ran away when fire started and the neighbourers had gathered there when she started shouting. She disclosed that her husband admitted her in the hospital.

9) The common thing in the two dying declaration appears to be circumstance that she had not conceived even after many years of the marriage. In the first dying declaration, she had not disclosed that the husband was not discharging marital obligations, but in the second dying declaration she made such allegation against the husband. In the first dying declaration, she had not made specific allegation against accused Nos. 3 and 4, but in the second dying declaration, she made specific allegations against accused Nos. 3 and 4.

10) The record shows that the husband admitted her in the hospital at 12.15 p.m. of 16.12.2001 and at that time, she was unconscious. Exh. 29 is the correspondence made by police with Executive Magistrate for recording dying declaration in which there is specific mention that deceased was unconscious. The bed head ticket at Exh. 23 shows that vague disclosure was made that due to harassment of the husband, she had set fire to herself. Thus, in three documents which contain dying declarations, the versions were different. The bed head ticket does not show that she was unconscious when she was admitted and on the contrary, it shows that she was conscious when she was admitted. In the first disclosure, which can be seen in bed head ticket, she blamed only to husband, but in subsequent disclosures she added other persons as

accused. She died within 24 hours of her admission in the hospital and these circumstances need to be kept in mind for giving finding on her mental condition. The Trial Court has given finding that she was not probably fit.

11) Ratilal (PW 1), father of the deceased has given different version on motive. He has deposed that at the time of marriage, the husband had demanded two wheeler from him and he had agreed to give two wheeler. He has deposed that as he could not meet the demand, illtreatment was given to the deceased by husband of the deceased. His evidence shows that the disclosures were made by the deceased mainly against husband that he used to abuse her and he used to give beating to her. He has given evidence that after learning about the incident, he visited the hospital and made inquiry with the deceased. He has deposed that she disclosed that on that day, her husband and mother in law picked up quarrel with her, they had assaulted her and due to that she had set fire to herself. His evidence shows that accused Nos. 3 and 4 were living at different place, Dhule as accused No. 4 was in service there. Thus, there was no reason for deceased to implicate accused Nos. 3 and 4, but in both the dying declarations recorded by police and Executive Magistrate, she blamed them also for the incident.

12) If the evidence of father of deceased and other relatives like Motilal Patil (PW 3), brother of Ratilal (PW 1) is compared with each other, it can be said that Motilal has given different version than Ratilal and he has given evidence that the deceased used to disclose about the illtreatment and she used to make complaint against all the four accused. He has, however, deposed that the husband had demanded motorcycle from the parents of the deceased and on that count, illtreatment was given. He has given evidence on oral dying declaration also by deposing that in the hospital the deceased disclosed that on the day of incident there was quarrel between the husband and the deceased and after the quarrel, she had set fire to herself.

13) When there is dying declaration, in case like present one, the motive plays important role. It is admitted that she could not conceive even after four years of the marriage. It is also admitted that it is the husband who had admitted her in the hospital when she sustained burn injuries. Though the deceased disclosed that her neighbours extinguished fire in one dying declaration, no such neighbour is examined by the prosecution. It is clear that it is the husband who extinguished the fire and who shifted the deceased to the hospital. There is possibility that the deceased set fire to herself to commit suicide, but the reason given by her is not true. For

convicting the accused under section 306 or 304-B of IPC, it was necessary for prosecution to prove that there was 'illtreatment' as defined in section 498-A of IPC or there was demand of 'dowry' as defined under Dowry Prohibition Act and on that count, there was illtreatment to the deceased. The contents of the dying declarations and the versions given by the two close relatives of deceased on parent side show that there was probably no demand of dowry or any gift article. Thus, there was no question of convicting any accused for offence punishable under section 304-B of IPC. Allegations of cruel treatment are very vague. The allegations which can be found in dying declaration show that there was probably some dispute as the deceased had not conceived even after four years of the marriage. There is also probability that she was not happy with the life as she did not conceive. In view of these circumstances, this Court holds that the prosecution has not proved the offence punishable under section 498-A of IPC. Due to these circumstances, it is not possible to draw presumption under section 113-A or 113-B of Evidence Act.

14) The circumstance that the deceased probably tried to falsely implicate accused Nos. 3 and 4 creates probability that she wanted to implicate others as she was not happy in the life as she had not conceived. In one dying declaration, she disclosed that

out of anger she set fire to herself. Due to all these circumstances, this Court holds that the prosecution has failed to prove any offence for which charge was framed against the accused. This Court holds that the Trial Court has not committed any error in acquitting all the accused. In the result, the appeal stands dismissed.

[ARUN M. DHAVALA, J.]

[T.V. NALAWADE, J.]

ssc/