

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 864 OF 1998

Surendra Dhulappa Mane	)	
age 38 years, R/o. Railway Colony	)	
Building No.4, Room No.103,Solapur.	) ...	Appellant
Vs.		(Orig. Accused)
The State of Maharashtra	...	Respondent

Mr.Satyavrat Joshi, Court appointed Advocate for the appellant.
Mr. S.R.Agarkar,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th May, 2017.

ORAL JUDGMENT :

This is an appeal through jail. Advocate Ms. Sindha Shreedharan had been appointed to espouse the case of the appellant. The appeal is old. The appointed Advocate is not present and hence, this Court has requested Advocate Mr. Satyavrat Joshi to go through the records and espouse the case of the appellant. He has graciously accepted. Hence, this Court proceeds to hear the appeal.

2. The appellant herein is convicted for the offence punishable under section 498A of the Indian Penal Code and is sentenced to undergo

R.I. for one year and fine of Rs.3,000/- in default R.I. for six months. He is also convicted for the offence punishable under Section 306 of IPC and is sentenced to undergo R.I. for three years and fine of Rs.10,000/- in default further R.I. for six months by II Additional Sessions Judge, Solapur in Sessions case No.32 of 1995 vide judgment and order dated 5.12.1995. Such of the facts necessary for the decision of this appeal are as follows :-

That on 25.12.1994, Vimal, wife of the appellant, was admitted in the hospital with history of burn injuries. Since it appeared to be a medico-legal case, the hospital had informed the police about the same. That on 25.12.1994 itself the father of Vimal had lodged a report at the police station alleging therein that his daughter was married to the present appellant 7 years prior to 25.12.1994. That he was working in the Railway Department. That he was demanding money from Vimal and coercing her to fetch money from her father who had retired. That his son-in-law was addicted to alcohol. He used to assault and ill-treat his wife under the influence of Alcohol. On 25.12.1994, in the afternoon at about 2.30 p.m., he was informed that his daughter Vimal had sustained burn injuries. he rushed to the house of the appellant where he found that his daughter was lying in burn condition and therefore, she was admitted in Civil Hospital.

According to him, his daughter was fed up of the harassment and ill-treatment meted out to her at the hands of the appellant and therefore she had immolated herself. On the basis of the said report, Crime No.337 of 1994 was registered against the appellant at Sadar Bazar Police Station for the offences punishable under Section 498A of IPC. In the hospital, statement of the injured was recorded by the Executive Magistrate. She had mentioned before the Magistrate that she was married to the appellant. That she is mother of two sons. That her husband used to assault her under the influence of alcohol. On the date of the incident, at about 2 p.m., he came for lunch. There was a quarrel between the couple and at the end of the quarrel, she had poured kerosene and set herself ablaze. According to her, she was rescued by her neighbours and that she was taken to the hospital by her neighbour. The said dying declaration is marked as Exhibit 21. It appears that the said dying declaration was recorded between 3.45 p.m. to 4 p.m. The injured Vimal had sustained 96% burn injuries. Vimal had succumbed to the burn injuries on 27.12.1994. hence, after completion of investigation, charge-sheet was filed against the accused for the offences punishable under Sections 498A and 306 of IPC. The prosecution has examined as many as 11 witnesses to bring home the guilt of the accused. The prosecution has also examined the minor son of the accused-appellant

as PW-6.

3. PW-1 Bharat Bagade happens to be the neighbour of the appellant and the deceased. He has deposed before the Court that the accused was addicted to alcohol and that was the cause of quarrel between the couple. That PW-1 had intervened in their quarrels. He has further deposed that on 25.12.1994, it was Sunday. He had heard cries from the house of the accused. He saw the wife of the accused-appellant in flames. The accused was also present. PW-1 attempted to save her. The accused had extinguished flames by covering her with a quilt. At that time, the relatives were also present. He has specifically deposed that he along with the accused and relatives of Vimal had taken her inside the house. Upon arrival by the parents, an Ambulance was called and Vimal was taken to the hospital. He has admitted in the cross-examination that the accused had received burn injuries in the course of attempting to save his wife. He has admitted in the cross-examination that he was never present at the time when there were quarrels between the deceased and the accused.

4. PW-1 was confronted with his statement. He has admitted the omissions and contradictions. He has also admitted that he had no talk with the accused.

5. PW-2 Bhimsha Bansode happens to be the father of the

deceased Vimal. According to him, the accused was addicted to alcohol and was demanding money and coercing Vimal to fetch money from him. According to him, he had filed a complaint to the police station against the accused on the earlier occasion and the police had warned him, that he may lose his job. On 25.12.1994, he was informed that Vimal has sustained burn injuries. Therefore, he rushed to the house.

6. It is pertinent to note that PW-2 has categorically admitted that when he reached the house of the accused, Vimal was unconscious. He called for an Ambulance and took her to a hospital. According to him, his daughter had regained consciousness at about 5 to 6 p.m. The witness has stated that Vimal was admitted in the hospital by him at about 2.15 to 2.20 p.m. The doctor started treatment and then she started speaking. The statement of Vimal was recorded by the Constable and soon thereafter a lady Magistrate had recorded the statement of Vimal. According to him, the constable had recorded his statement in the premises of Civil Hospital. The contents of the said statement are true. It is marked as Exhibit 19. According to him, in the evening his daughter requested him to look after her children and informed him that being fed up of the harassment, she had taken this extreme step. There are inconsistencies in the statement of PW-2. He has admitted that he had not filed a complaint in writing to the police

station. He had also not stated to the police that his daughter started speaking, instead the police had informed him that he intends to record her statement. He has admitted in the cross-examination that the police had not recorded his statement and made any enquiry with him after 25.12.1994. That police had recorded his statement at 6 p.m. in the evening. He has also admitted that his daughter had asked him to look after her children on 27th prior to her death. However, he has not informed about the same to the police. It is reiterated in the cross-examination in the following words :-

“It is not true that I am deposing falsely that my daughter regained consciousness at about 5.00 to 6.00 p.m. and started speaking thereupon police and a lady magistrate recorded her statement in our absence.”

7. This Court has perused the deposition of PW-2. The above portion is correctly recorded. The Court has recorded the observation that throughout recording of substantive evidence, the witness was found to be in a belligerent mood and the Court as well as the APP had to intervene to pacify the witness and direct him to give proper answers.

8. PW-3 Bhagirathi Mhamane is the Special Executive Magistrate who had recorded the statement of Vimal on 25.12.1994. She has deposed before the Court that the police had issued a request letter to her to record

the statement of Vimal. Accordingly, she had been to Civil Hospital. The doctor had informed her that Vimal is in a position to give statement and has also endorsed accordingly. She has recorded the statement of Vimal in question and answer form. She has stated tha she had read over the statement of Vimal and after she had admitted the contents thereof, she had obtained her thumb impression. In the course of examination, she has specifically admitted as follows :-

“It is correct to say that both hands of Vimal had received burn injury. Vimal had not stated before me anything especially that the4 accused used to harass her under influence of liquor, as well as on that day at about 2.00 p.m. accused beat hr hence she had put herself on fire.”

She has also admitted that she had got printed the form of dying declaration in question and answer form. The dying declaration is at Ex.21.

9. It is to be noted that the dying declaration was recorded between 3.45 to 4.00 p.m. on 25.12.1994 in the Burn Ward. The endorsement is typed on the dying declaration as recorded between “3.45 to 4 p.m”. On perusal of the original dying declaration, it is seen that the thumb impression of Vimal is not attested by the Executive Magistrate. All the ridges and curves of the hand can be seen.

One cannot be oblivious of the fact that the post-mortem notes show that she had sustained 96% burn injuries, including 100% burns on her hands, palms and fingers.

10. PW-4 Arunkumar Deshmukh is the Registrar of General Hospital. he had given the endorsement of consciousness on the dying declaration. he has identified his signature on the dying declaration. Zhe has categorically admitted in the cross-examination that “fingers are burns impression of the said is not possible”

11. It would be pertinent to note that the Special Executive Magistrate has not deposed before the Court the contents of the dying declaration in the words of the deceased Vimal. Hence, all that is that a statement was recorded. This aspect will have to be in consonance with the deposition of PW-2 who has specifically stated that his daughter had regained consciousness between 5 to 6 p.m., whereas the dying declaration was recorded between 3.45 p.m. to 4 p.m. Questions Nos. 26, 27 and 28 pertain to Exhibit 21 and no question was put as to whether Vimal has disclosed to the Executive Magistrate that because of the ill0treatment meted out to her at the hands of the accused, she had committed suicide. In question No.41, the question that is framed is about disclosure made by Vimal to the Executive Magistrate. It appears that the learned Sessions

Judge had read the statement in evidence and admitted it.

12. PW-5 is Shrikant Bansode who happens to be the brother of the deceased Vimal. He has denied the suggestion as to whether the accused had also sustained burn injuries in the said incident.

13. PW-6 Premasagar mane happens to be the son of the appellant. He has specifically stated that his father used to drink liquor after coming from work in the evening. That he has admitted that his father along with the neighbours had extinguished flames by covering Vimal with a quilt and that his father sustained burn injuries. He has further stated before the Court that he is staying with his grandparents. His paternal grandparents are also residing in the same area. However, he was not allowed to meet them. He has also admitted that his father used to love him very much, but his mother used to be angry. He did not know the meaning of 'retired'. He has stated that he had not seen liquor nor he knew what was meant by liquor. He has specifically admitted that his mother used to raise quarrel. He has lastly admitted that he has deposed before the Court at the instance of his maternal uncle that his father used to drink liquor, beat mother and demand money. It is, therefore, clear that he is a tutored witness.

14. PW-7 Vasant Patil was attached to Sadar Bazar Police Station. He was on duty at Civil Hospital as Entry Hawaldar from 2.00 p.m. to 9.00

p.m. He was informed by CMO Shri Yadav that Vimal had been admitted to Civil Hospital with 96% burn injuries. He had immediately deputed constable to request the Executive magistrate since he found that the patient was in a serious condition but he proceeded to record her statement after taking an endorsement from the doctor. He had recorded the statement in question and answer form. He had obtained her thumb impression. The statement was recorded between 2.45 to 3 p.m. and is marked as Ex.26. He has admitted in the cross that he has not recorded statement of the victim. It is clear that the statement is recorded on a printed proforma which is similar to Ex.21. He has also denied that he has not attested the thumb impression.

15. Upon perusal of the statement at Ex.26, it is clear that it is the same proforma which is used by Special Executive Magistrate. PW-8 Shrirang Chougule is the Police Officer who was on duty at Sadar Bazar Police Station. He had referred the matter for investigation to PSI Patil. The witness was confronted with the station diary entry No.42 dated 25.12.11994 which shows that the accused had given information to the police. His notes were taken and the accused had shown the notes to the police. The station diary is duly proved and is marked as Ex.35. He has also admitted that he had no communication with PSI Patil at the relevant time. he had informed his senior about the incident at 7.00 to 7.30 p.m.

He has admitted that PSI Patil had not come to the police station but had gone directly to the Civil Hospital.

16. PW-9 Dr. Sunil Yadav. He is M.C.H. in neuro surgery at Civil Hospital. According to him, he had recorded the statement of the victim at the time of admission and she has reported that she was being harassed and therefore she had immolated herself. He has admitted that however there is overwriting as far as the time is concerned.

17. PW-10 Pandurang Patil is the PSI. According to him, while he was on the road, he had seen a mob at the house of the accused. He learnt about the incident and had also learnt that the patient is admitted in the hospital and therefore had proceeded to the Hospital directly. He has admitted that he has stated about the incident on the basis of his memory. He has proved the omissions and contradictions of the witnesses.

18. PW-11 Babasaheb Shaikh had completed the investigation and filed charge sheet. he had recorded the statement of PW-6 Premsagar in the house of PW-2 on 12.1.1995 as the children were out of station.

19. The case rests upon two dying declarations which are at Exhibits 21 and 26. Needless to reiterate that both the dying declarations are recorded on similar proformas which are kept with the Special Executive Magistrate.

20. It is pertinent to note that PW-2 has categorically admitted before the Court that Vimal had regained consciousness at about 5.00 to 6.00 p.m., whereas the first dying declaration is recorded between 2.45 to 3 p.m. and the second dying declaration which is at Ex.21 is recorded between 3.45 to 4.00 p.m.

21. The learned appointed Advocate rightly submits that both the dying declarations are clear and similar. both the thumb impressions were not attested by the persons who recorded the statements. All this is to be read in consonance with the fact that when Vimal was shifted to the hospital, she was unconscious. It is incumbent upon the prosecution to bring on record, on the basis of the medical case papers as to when the victim had regained consciousness. PW-2 has admitted that she had regained consciousness at about 5 to 6 p.m. Hence, it is clear that the very recording of dying declaration is shrouded with mystery.

22. To place implicit reliance upon a dying declaration it should necessarily be truthful, voluntary and should inspire confidence of the Court. Since the deponent is not alive, the said statement cannot be subjected to cross-examination and therefore, the evidence in the form of dying declaration necessarily has to be of a sterling nature.

23. It is in these circumstances and for the reasons mentioned above, the Appeal deserves to be allowed.

ORDER

- (i) The Appeal is allowed.
- (ii) The conviction and sentences under Sections 498A and 306 of the Indian Penal Code are quashed and set aside. The appellant is acquitted of all the charges levelled against him.
- (iii) Bail bonds stand cancelled.

24. Mr. Satyavrat Joshi, Advocate appointed for the appellant has graciously submitted that he would request the office to pay his legal remuneration to the Advocates Library in the Bombay High Court. Accordingly, his legal remuneration be paid by the office to the Advocates Library within six months from the date of this order.

25. This Court cannot part with this Judgment without recording appreciation of sincere efforts taken by Shri Joshi, Advocate.

26. Office to inform the appellant about this Judgment and order forthwith.

(SMT. SADHANA S.JADHAV, J.)