

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 833 of 2002

The State of Maharashtra	...Appellant
Versus	
Vinayak Bhagwat Kamble & Ors.	...Respondents

Mr.Arfan Sait, APP for the Appellant.
Mr.Pramod Pawar for Respondents.

CORAM: A.S.Oka,J
DATED: 16th May 2017

ORAL JUDGMENT:-(Per A.S.Oka,J):-

1. Heard learned APP on behalf of the Appellant and the learned Counsel appearing for the Respondents. By the judgment and order dated 6th April 2002, the learned 11th Additional Sessions Judge, Pune acquitted the Respondents from the charge punishable under Sections 498-A and 306 read with 34 of the Indian Penal Code. The learned Counsel appearing for the Respondents has placed on record a photo copy of the death certificate of the second Respondent issued

by the Pune Municipal Corporation. The same is taken on record and **marked 'X'** for identification which reflects that the second Respondent died on 4th July 2007. Hence, the Appeal stands abated as far as the second Respondent is concerned.

2. The prosecution case in brief is as under:-

Deceased Bharti was the daughter of Smt. Ranjana, the first informant (PW-1). She married to fourth Respondent (Santosh) on 2nd August 2001. The first Respondent is the real brother of the fourth Respondent. The second and third Respondents are the parents of the first and fourth Respondents. The Respondents and PW-1 Ranjana were residents of the same locality and in fact, house of PW-1 was in the close vicinity of the house of the Respondents. According to the case of the prosecution, the fourth Respondent used to consume liquor and used to raise quarrel with the deceased. PW-1 brought this conduct to the notice of the first and third Respondents and requested them to ensure

that fourth Respondent does not subject the deceased to ill-treatment or harassment. It is alleged that first to third Respondents did not pay any heed to the said request and in fact, they used to supply money to the fourth Respondent to consume liquor. It is alleged that the fourth Respondent always used to allege that deceased was a loafer and was having a love affair with another person.

3. 25th October 2001 is the date of the incident. The deceased was pregnant. In the morning, fourth Respondent abused the deceased and quarrelled with her when he was under the influence of alcohol. Thereafter, the deceased proceeded to nearby canal to wash clothes. She returned at about 1.30 p.m and inquired with PW-1 whether she needed any eatables. PW-1 answered in the negative. Thereafter, deceased returned to the matrimonial home. At about 3.30 p.m, PW-1 heard hue and cry raised by the deceased. She had caught fire. One Dadarao and one Janabai extinguished the fire and took the deceased to Sassoon Hospital, Pune. The

deceased was unconscious. After she regained consciousness, she told PW-1 that the fourth Respondent alleged that some one else was the father of a child in her womb. He abused her and raised quarrel. According to the prosecution case, fourth Respondent brought a can full of kerosene and told her that the child in her womb was not his child. He told the deceased that if she is born really from her natural father, she should set herself on fire by pouring kerosene on her person. Therefore, deceased poured kerosene herself on person and set herself on fire. The allegations is that she committed suicide because of ill-treatment and harassment caused to her by the Respondents. She succumbed to the burn injuries. First Information Report was registered on 26th October 2001 by the PW-1.

4. The prosecution has relied upon three dying declarations, the first was oral dying declaration made by the deceased before PW-1 Ranjana. The second one was before PW-2 Ashok (maternal uncle of the deceased). The third dying

declaration is recorded by PW-5 Padmakar Mohan Sade, a police constable attached to Sasson Hospital police Chowki. The said dying declarations bears impression of her left toe. It is at Exhibit 27.

5. Learned APP has taken the Court to the notes of evidence and documentary evidence on record. He submitted that all the three dying declarations are consistent. He submitted that the dying declarations would show that the deceased was very honest. She had not chosen to make any unnecessary allegations against first to third Respondents. Moreover, she avoided temptation to tell that it was the fourth Respondent who poured kerosene on her person. Learned APP pointed out that PW-1, the mother of the deceased who met her before dying declaration at Exhibit 27 was recorded has not made any attempt to tutor her daughter. He pointed out that the dying declaration at Exhibit 27 bears the endorsement of PW-7 Dr.Shankar Kasbe. He pointed out that there is no challenge to the version of Dr.Shankar Kasbe that

Exhibit 27 was recorded in his presence by the police. He submitted that Exhibit 27 was shown to PW-7 to prove the endorsement made thereon by him. He urged that merely because two persons who have allegedly extinguished the fire and taken the deceased to hospital are not examined, no doubt is created about the dying declarations which are consistent with each other. He submitted that the dying declarations are consistent wherein the deceased stated that her husband (fourth Respondent) made serious allegations against her of unchastity and went to the extent of alleging that the child in her womb was of somebody else. His submission is that presumption under Section 113(A) of the Evidence Act, 1872 squarely applies in this case.

6. Inviting my attention to the findings recorded by the learned Sessions Judge, he urged that the same are completely erroneous. He submitted that the version of PW-1 and PW-2 about the dying declaration is hardly subjected to a challenge in the cross-examination. He submitted that when

the incident took place, the Respondents were very much in the matrimonial home of the deceased where the incident took place and therefore, they have a burden to discharge which was not discharged. He submitted that there was no reason for the deceased to tell lie and as stated earlier, her version is honest version which deserves to be believed as she has not made any allegations of any substance against first to third Respondent. He submitted that only one conclusion is possible in the facts of the case that the offence punishable under Section 306 of the Indian Penal Code was committed at least by the fourth Respondent. He urged that even the offence under Section 498-A of the Indian Penal Code was duly established. Learned Counsel appearing for the Respondents supported the impugned judgment and submitted that no interference is called for.

7. I have given careful consideration to the submissions and have perused the record. As stated earlier, the marriage between the deceased and the fourth Respondent

was solemnised on 2nd August 2001 and the incident is of 25th October 2001. PW-1 deposed about the incident of 25th October 2001. Relevant part of her examination reads thus:-

"The accused no.4 again beat her. It was at about 3.30p.m. I heard hue and cry raised by Bharati. I rushed to her house. I saw that Bharati was on fire. The accused no.4, his mother his brother's wives were all there. Accused no.4 was inside of the house while accused no.3 was outside of the house. Dadarao and Janabai extinguished the fire and removed Bharati to Sassoon Hospital, Pune. I also went there by another rickshaw. On inquiry Bharati told me in hospital that the accused No.4 said to her that the child in her womb is not begotten from him and that if you born from your natural father, then you will set yours self on fire, and that the accused no.4 also kept the can of kerosene in front of her. Therefore, according to her she poured kerosene on herself and set herself on fire".

8. In the cross-examination, she admitted that deceased became conscious at about 7 to 7.30 p.m when she met the deceased alongwith maternal aunt of the deceased. She stated that her brother Ashok PW-1 also arrived at hospital at about 6 to 6.30 p.m. She admitted that her husband was charged with offence of murder and committed

suicide about 10 to 12 years back and she had married with one Vilas, who also came to the hospital alongwith PW-2 Ashok.

9. Version of PW-2 Ashok as regards the dying declaration made by the deceased before him is similar. There is only one improvement which is not found in the version of the PW-1. He alleged that the deceased told him that the fourth Respondent told her that if she is really born from her natural father, she would set herself on fire. According to him when the incident took place at about 3.30 p.m., he was sleeping and he was woken up by his wife. In paragraph No.4 of his deposition, he has stated thus:-

"I went to Sassoon Hospital in ward no.27. She was unconscious. After she became conscious on inquiry by me she told that the accused no.4 consumed liquor, told her that you are useless, took suspicion about her character and started beating her. She further told me that accused no.4 told her that the child in her womb is not begotten from him. Accused no .4 also told her that if she is born from her natural father really, then she would set herself on fire and by saying this, he had kept can of

kerosene and match-box in-front of her. Therefore, according to Bharti she set herself on fire. Bharti died in hospital on 2.11.01. Accused are present before the Court".

10. I have perused the vernacular deposition PW-5 Padmakar and found that the English version thereof in the paper book is correct. In paragraph no.1 of his deposition, PW-5 Padmakar has quoted precisely what deceased told him. The relevant portion of his deposition reads thus:-

"I recorded statement of injured Sou.Bharati Kamble she stated before me that:-

"When I returned to home from work, quarrel took place between me and my husband, that my husband told me that the child in your womb, was not begotten from me, and that, therefore I poured kerosene on my person and set myself on fire due to annoyance".

**She further stated before me that:-
"I have no complaints against anybody else".**

11. I have perused the statement of the deceased recorded by PW-5 Padmakar which is at Exhibit 27. PW-5 categorically stated in his deposition that deceased told her

that she had no complaints against anybody else. The said statement is not found in Exhibit 27. Moreover, in Exhibit 27 the deceased has allegedly stated that the 4th Respondent was present in the house alongwith a stick with the intention to assault her and other persons in the house who were present. The fourth Respondent alleged that the deceased had relationship with another boy. The deceased stated that she threatened to set herself on fire. She stated that thereafter, the deceased brought a can containing kerosene and after abusing her, he left. He alleged that the child in her womb was not his child. Further, in Exhibit 27 the deceased allegedly stated that she could not tolerate what was told to her by her husband and while she was angry, she poured kerosene on her person and set herself on fire. She further stated that she set herself on fire due to harassment of the fourth Respondent. Thus, the version in Exhibit 27 is not consistent with the version of the deceased which is specifically recorded in the deposition of PW-5.

12. Coming back to the deposition of PW-1, in her examination-in-chief, she stated that Dadarao and Janabai extinguished the fire and they took her to Sassoon hospital. Thus, even according to the case of the first informant, apart from the members of the family of the deceased (the Respondents herein) Dadarao and Janabai were the only persons who were present in the house of the deceased. A Statement of Dadarao was admittedly recorded as noted by the Investigating officer. However, the statement of Janabai was not recorded. The prosecution has chosen not to examine both the witnesses, who could have told truth before the Court. Both the witnesses reached the spot before deceased could become unconscious. They could have deposed about the presence of the accused at the relevant time.

13. I have already quoted the version of PW-1 regarding dying declaration. Her version is that deceased told her that the fourth Respondent kept a can of kerosene in front of her which was brought by him.

14. I may note here that even taking the version of the three prosecution witnesses as well as the version in Exhibit 27 as correct, there are no allegations made against the first to third Respondents.

15. As far as the role attributed to the fourth Respondent is concerned, on one hand, the interested witnesses have been examined namely, the mother and maternal uncle of the deceased and on the other hand, two witnesses viz.Dadarao and Janabai who could have thrown light and could have told the truth have not been examined. Moreover, in the evidence of PW-1 and PW-2, one of the dying declaration has been brought on record. The version is reduced into writing in Exhibit 27 and the version which is quoted in vernacular language in the examination in chief of PW-5 are different. As stated earlier, the two versions are materially different and therefore,there is a serious doubt about the veracity of evidence of PW-5 Padmakar. There are

three different versions of the dying declarations. The first one is in the deposition of PW-1 and PW-2. The second one is in the deposition of PW-5 and the third one is in the statement at Exhibit 27. The versions of PW-1 and 2, as stated earlier, are the testimonies of interested witnesses and therefore, there is a serious doubt created as regards the truthfulness of their versions. In addition to this, an adverse inference ought to be drawn against the prosecution for non examination of material witnesses.

16. The ultimate conclusion drawn by the learned Sessions Judge that the prosecution has failed to bring home the guilt of the accused is certainly a possible conclusion. Even if I accept the submission of learned APP, at highest, it can be said that the evidence can be appreciated and interpreted in two ways. At highest, it will be mean that another conclusion can be possibly drawn.

17. Hence, in view of the settled legal position, no interference is called for in this appeal against acquittal. Accordingly, I pass the following order:

ORDER

- (i) Appeal stands abated as far as the second Respondent is concerned;
- (ii) As regards the other Respondents, the Appeal stands dismissed.
- (iii) Bail bonds of 1,3 and 4th Respondents stand cancelled.

(A.S.Oka,J)