

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

Criminal Appeal No. 281 of 2006

* The State of Maharashtra
Through the Police Station Officer
Police Station, Kaij,
District Beed. **.. Appellant.**

Versus

1) Ramesh Sakharam Raut.

2) Sakharam Appa Raut.

(Respondent Nos.1 and 2 are dead.
Appeal is abated as against them)

3) Prakash Sakharam Raut,
Age 35 years,
Occupation : Labour,
R/o. Salegaon, Taluka Kaij,
District Beed. **.. Respondents.**

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for
the appellant.

Shri. Abhijit Choudhary, Advocate, holding for Shri. D.J.
Choudhari, Advocate, for respondent No.3.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 18 January 2018

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

1) The appeal is filed against the judgment and order of Sessions Case No.57/2004 which was pending in the Court of the learned 1st Ad-hoc Additional Sessions Judge, Ambejogai. The respondents are acquitted of the offences punishable under sections 498-A, 302 read with 34 of Indian Penal Code. Both the sides are heard.

2) The facts, in short, leading to the institution of the present proceeding can be stated as under :

3) The deceased Prabhavati was a daughter of Keshav Pawar, who is resident of Dhakephal, Tahsil Kaij, District Beed. She was given in marriage to respondent No.1, Ramesh Raut, who was resident of village Salegaon, Tahsil Kaij, District Beed. Respondent No.2 Sakharam was the father of respondent No.1. Respondent No.3, Prakash is a real brother of Ramesh. During pendency of the present proceeding, the husband of the deceased and her father-in-law, respondent No.1 and 2, died and so the appeal as against them came to be disposed of as abated.

4) Prabhavati was given in marriage prior to 13 to 14 years of the date of incident in question. It is the case of the prosecution that she was treated well for about 3 years by the accused persons but after that she was reached to the house of her parents when she was pregnant. The deceased delivered a female child. It is the case of the prosecution that nobody turned up to take the deceased back to the matrimonial house and the attempts made by relatives on parents' side of the deceased to convince the respondents to accept the deceased back in matrimonial house failed. The deceased had stayed with her parents for about 7 to 8 years after the birth of the issue.

5) About 15 days prior to the date of the incident in question, the husband went to the house of the parents of the deceased for taking the deceased back to the matrimonial house. He gave undertaking to behave well and he took the deceased and the daughter with him to his house. It is the case of the prosecution that the husband did not take the deceased with him to the place of his service but he kept her with his parents and said

that the deceased should bring Rs.10,000 from her parents as he wanted to start a laundry business at Kaij. The deceased expressed that her parents were not in a position to meet this demand and then ill-treatment was started to her. The husband was staying at Pune and he went to Pune.

6) The husband turned to Salegaon, his native place on 11-12-2003 and started harassing the deceased by saying that she was not bringing the amount of Rs.10,000 for starting the business at Kaij. From 11-12-2003 to 13-12-2003 the husband continued to harass her. Ultimately on 12-12-2003, as per the case of the prosecution, the husband picked up quarrel with the deceased and at about 9.00 am he poured kerosene on her person and set fire to her. The neighbours extinguished fire and she was shifted to Government Hospital Ambejogai.

7) On 13-12-2003 police recorded the statement of the deceased in Ambejogai Hospital and she made the aforesaid allegations against the husband. On the basis of

this disclosure made by the deceased, crime came to be registered at No.243/2003 in Kaij Police Station for offences punishable under sections 307, 498-A of the Indian Penal Code against the husband. On 13-12-2003 on the request made by police, Executive Magistrate recorded the statement of the deceased in Government Hospital. In this disclosure, she made allegations against her husband, father-in-law and brother-in-law, the respondents, that all of them had together set fire to her at 9.00 a.m. She died due to burn injuries on 13-12-2003 itself and the crime came to be converted for one punishable under section 302, Indian Penal Code and it was against all the three accused.

8) Post mortem was done on the dead body and the statements of the relatives of the deceased on parents side and also of some neighbours came to be recorded. Charge sheet came to be filed against the respondents for aforesaid offences. Charge was framed. All the accused pleaded not guilty. The prosecution examined in all 12 witnesses. Accused took defence of total denial. The trial Court has held that due to inconsistencies in the two

disclosures made by the deceased and absence of independent witnesses to show that all the three accused were present at home at the relevant time, conviction is not possible on the basis of the aforesaid two disclosures.

9) The first disclosure was made by the deceased at 2.50 p.m. as per the time shown on Exhibit 39 recorded by the Executive Magistrate and the second disclosure was made subsequently when police made inquiry. However, the time mentioned by the doctor under the endorsement shows that the time of examination of the patient was 3.00 p.m. when police recorded the statement and the time of examination of the doctor was 3.40 p.m. when the Executive Magistrate recorded the statement. This inconsistency is material as there is no relevant record like requisition letter given by police to the Executive Magistrate and in the dying declaration recorded by police allegations were made only against the husband by the deceased. The husband is dead now and so this inconsistency is bound to make effect on the case as against the remaining respondent, brother of the husband. Further, the circumstance that Prabhavati died

on the same day and the extent of burns was 100% needs to be kept in mind as that can create doubt about the fitness of the deceased to give the statement.

10) When there are more dying declarations, Court is expected to closely scrutinize both the dying declarations and ordinarily the Court is expected to look for corroboration. Dr. Ashok Kedar (PW-3) is resident of Salegaon, Tahsil Kaij and his hospital is situated near the house of the deceased where the incident took place. He has given evidence that on that day at about 10.00 a.m. he heard noise from the side of the house of the deceased and when he paid attention he saw that there was fire in the house. He has given evidence that he rushed to the house and he noticed that the deceased was in flames. He has given evidence that he extinguished fire by using blanket which is called as "Godhadi" and one Malhari Landge helped him. He has given evidence that the deceased was shifted to Government Hospital in a jeep. His evidence in the cross-examination shows that at that time none of the three accused was present in the house and the husband arrived to the spot subsequently and it is

the husband who shifted the deceased to Ambejogai Hospital. This witness is not declared hostile witness by the prosecution and the evidence of this witness creates doubt about the contents of both the dying declarations. It creates probability that the dying declarations are not truthful. There is similar evidence of Malhari Landge (PW-4) examined by the prosecution.

11) Keshav (PW-10), father of the deceased, has given evidence that on the day of the incident in the morning he learnt about the incident and so he went to Ambejogai Hospital. He has given evidence that the deceased had made a disclosure to him that all the accused set fire to her after pouring kerosene and this was done as the demand of Rs.10,000 made by them was not met with.

12) In the cross-examination of Keshav (PW-10) it is brought on record that he reached the hospital at 11.30 a.m., prior to recording of the dying declaration. In the cross-examination it is brought on the record that in the police statement he had not stated before police that

there was a disclosure as against accused No.3 that even he had given beating to her. This omission is proved in the evidence of the investigating officer. Presence of the father in the hospital prior to the recording of the dying declaration creates probability that there was tutoring if the deceased was really conscious at the relevant time. The mother of the deceased is examined by the prosecution as PW-11. She has given evidence that the deceased disclosed to her that only husband was responsible for the incident and he had set fire to her. Thus there is inconsistency even in the evidence given by parents on oral dying declaration.

13) There are circumstances like deceased had stayed with her parents for more than 7 years and only 15 days prior to the incident she had returned to the matrimonial house. The evidence and the record do not show that the husband had put any condition for taking the deceased back to the matrimonial house. When death takes place due to burn injuries there are three probabilities like (1) suicide, (2) accidental death, or (3) homicide. In the present matter the CA report shows that

kerosene was detected on the clothes of the deceased. Due to the aforesaid circumstances this Court holds that the other two probabilities cannot be ruled out in the present matter and the benefit of that probability needs to be given to the present respondent, brother-in-law of the deceased. Ordinarily he had no reason to give ill-treatment to the deceased as he was not to get any benefit if the demand was met with by the parents of the deceased. This Court holds that the trial Court has not committed any error in acquitting the respondent No.3, brother-in-law of the deceased and this is a possible view. In the result, the appeal stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

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

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