

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 43 OF 2002

01. Dwarkabai W/o Kashiram Pitalewad,
Age : 60 years, Occu. Household,

**[Appeal abated against appellant no.1
vide Court's order dated 20-11-2017]**

02. Kishor S/o Kashiram Pitlewad,
Age : 30 years, Occu. Labour,

Both R/o Deshmukh Galli, Bhokar,
Tq. Bhokar, Dist. Nanded

.. Appellants

VERSUS

The State of Maharashtra

.. Respondent

Mr. G.D. Jain, Advocate (appointed) for appellants

Mrs. Vaishali S. Choudhary, A.P.P. for respondent-State

CORAM : SUNIL P. DESHMUKH &
P.R. BORA, JJ.

DATE : 25-01-2018

JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. First information report was recorded on 20-11-1998 by
Bhimashankar Laxmanrao Bharti - the Assistant Police Inspector of
Bhokar Police Station, District - Nanded, referring to that a medico-

legal case had been registered on 14-11-1998 at Government Hospital, Bhokar requesting to record statement of one Savita Kishor Pitlewad, aged about 24 years, resident of Bhokar suffering 90% burns. As such, Police Head Constable Budhewad had been to Government Hospital at Bhokar and had taken down her statement and, thereafter, for medical treatment, the injured had been sent to Government Hospital at Nanded.

2. A wireless communication for recording her dying declaration had been sent to Police Station, Vazirabad, Nanded. Police Constable Gangadhar Nagorao Bhalerao had presented documents at Police Station, Bhokar and from the same, the FIR had been recorded.

3. It is recorded, Mrs. Savita Kishor Pitlewad in the statement before death, had stated that husband had set her on fire by pouring kerosene, upon having been told by her mother-in-law, since they were suspecting her character. Further in the statement of her mother - Kevalabai Ganpatrao Nagalwad aged 45 years resident of Mukramabad, before Police Head Constable in the hospital as well as at Vazirabad stated that Savita had been questioned by her husband and mother-in-law - Dwakrabai, as to why she had not brought motorcycle from her parents and they had

set her on fire by pouring kerosene on her person igniting by match-stick and she was completely burnt and she died while receiving treatment in Government Hospital, Nanded on 19-11-1998 around 12.20 p.m. and action be taken against them in accordance with law.

4. It was thus recorded that Savita had been set on fire by Kishor - her husband and Dwarkabai - her mother-in-law, suspecting her character and as she did not bring motorcycle from her parental house, by pouring kerosene on her person and lighting her by match-stick. She died while being treated in hospital at Nanded and, therefore, offence was alleged against aforesaid two persons.

5. Statement of Savita had been recorded at Bhokar on 14-11-1998 with endorsements presumably of the doctor, in the beginning and at the end of the recording of statement, that patient had been conscious to give statement, that after returning from parental house - Mukramabad on 04-11-1998, husband and mother-in-law had been abusing her, asking as to why she had stayed in parental house for two months. On 14-11-1998 around 3.00 p.m., there had been quarrel between husband - Kishor and her for the stay at parental house and thereafter, husband - Kishor

went out and around 5.30 p.m., she had poured kerosene on her person and had ignited herself by lighting match-stick from the box. At that time, her mother-in-law was not at home and, thereafter, lot of people from the lane had poured water on her person and had taken her to Hospital in an auto-rickshaw and treatment to her was being given.

6. On 15-11-1998, around 9.00 p.m., statement of Savita was recorded by Special Judicial Magistrate of Nanded that around 6.00 p.m. on 13-11-1998, her husband Kishor had poured kerosene on her person and had set her on fire while her mother-in-law was telling to set her on fire. Husband had set her on fire since he was suspecting her character. The Doctor had endorsed that till the completion of the statement, the patient had been conscious.

7. On 19-11-1998, statement of Kevalabai Ganpatrao Nagalwad - mother of deceased - Savita had been recorded at Hospital Police Chowki, Vazirabad, Nanded. She has stated that she had three daughters, namely, Bharti, Savita, Shanta, all of whom are married. Savita had been married to Kishor Kashiram Pitlewad of Bhokar seven years before as per customs and traditions and from the wedlock, she had four year old daughter and had been pregnant for about five months. Her further statement is that one

Sanjay - younger brother of her son-in-law - Devidas Alnurwad of Mukhed told in the evening of 15-11-1998 that her daughter Savita had caught fire and she has been admitted in Government Hospital at Nanded according to the information received from her other son-in-law - Kishor. Thereafter, she along with one daughter and quite a few other persons had been to Nanded in the night and had asked Savita, as to what had happened. Savita had said to her that she had promised to give motorcycle to her husband and had not given the same to him and, therefore, they had left her at parental home and had taken her back promising a good treatment, however, after coming at matrimonial house, mother-in-law - Dwarkabai and husband - Kishor used to abuse and beat her, asking as to why her mother had not given motorcycle. She was being mentally and physically tortured and they were suspecting her character. For said reasons, on last Saturday i.e. 13-11-1998, in the evening around 6.00 p.m., her husband had poured kerosene on her person and mother-in-law had told him to put her on fire by igniting match-stick. In the circumstances, her limbs, chest, stomach had been burnt. Thereafter, said persons had taken her for treatment to Government Hospital, Bhokar and after giving primary treatment there, she had been admitted to Nanded Government Hospital and while her daughter was being treated, she died on 19-11-1998 around 12.20 p.m.

8. Inquest *panchanama* appears to have been drawn on 19-11-1998 in the presence of witnesses, one of which was Devidas Govindrao Adgulwar - the other son-in-law of Kevalabai - mother of deceased Savita.

9. PW1 - Devidas had been examined at Exhibit-21. In his cross-examination, he purports to refer to that he had been to the hospital in the next morning after admission of Savita in Government hospital and that he along with relatives had been there for about 4-5 days and that after the incident of fire, accused Kishor had brought Savita to hospital at Nanded and that her funeral was performed at Mukaramabad.

10. PW 2 - Mohd. Yousuf is panch witness of the spot.

11. PW 3 - Kevalabai - mother of deceased Savita examined at Exhibit-25, has deposed that since the performance of marriage, accused no. 2 - husband - Kishor used to beat Savita demanding motorcycle and for arranging employment and used to give threat of life to her. Savita used to inform about the ill-treatment and demand of money. After *Pola* till *Diwali*, accused no. 2 - husband - Kishor had compelled Savita to stay in the parental house, however,

after *Diwali*, accused no. 2 came to take Savita with him and, 9 days thereafter, the news of burning of Savita and admission and hospitalization at Nanded had come. In the hospital, she had asked Savita, as to how burning took place and she had told that accused no. 2 had beaten her and poured kerosene on her person and that he had done so because of non-fulfillment of the demand of money. In her cross-examination, she stated that accused no. 1 i.e. mother-in-law of Savita had given a telephonic message to Devidas about her hospitalization at Nanded and, thereafter, she and Devidas and her brother Maroti had been to Government hospital at Nanded and they were there for about 5-6 days till death of Savita. During their stay in hospital, no police official from Police Station, Bhokar had come for enquiry. She purports to state that her brother Maroti and son-in-law were not present with Savita when she had informed her about beating and pouring kerosene on her. She further refers to that Savita had told her that accused no. 2 - husband had rushed her to hospital at Bhokar. She went on to state that Police at Bhokar had recorded her statement 4 days after funeral of Savita had taken place. The complaint had been lodged in Police Station after her death. None of the relatives viz. herself, her brother Maroti and son-in-law Devidas had lodged complaint against accused 1 and 2. Accused no. 1 had been a retired employee and had received huge amount by way of pensionary

benefits. She referred to that Bharatbai, her daughter had many occasions to talk to Savita before her death in the hospital. She purports to deny that while police were recording her statement, Bharatbai had requested her to refrain from making any allegations about cruelty by the accused. It has been elicited in the cross-examination that accused no. 2 had stayed for over 2 days at Mukaramabad in parental house of Savita. In her further cross-examination, she claims that Savita had sent to her a postcard, however, the postcard has been missing for long and that before they could read the postcard, they had rushed to Nanded, as the incident had occurred.

12. PW4 is the Medical Officer Dr. Satyanarayan B. Punpale has been examined at Exhibit-28. He endorsed the post-mortem report about death due to 90% burns.

13. PW5 - Bhimashankar Bharati examined at Exhibit-30 is Police Inspector, L.C.B., Nanded, who refers to having lodged FIR on behalf of the State and also that he had investigated the crime. Spot panchanama had been drawn. Burnt pieces of clothes of deceased and match-box from the spot had been seized. Mudemmal articles were sent to chemical analysis and chargesheet had been sent to the Court. The investigation revealed that there

had been commission of offence punishable under sections 498-A and 306 r/w. section 34 of the Indian Penal Code. In the cross-examination, he stated that from 14-11-1998 to 19-11-1998, Bhokar Police Station had not received any complaint from the relatives of deceased Savita and further that witnesses Mohd. Haroon and Sk. Chand had told him that Savita had set herself on fire by pouring kerosene. The cross-examination further discloses that the Investigating Officer had not visited the hospital at Nanded during 14-11-1998 to 19-11-1998 and had not visited Mukaramabad, although he purports to deny that he had not recorded statement of Kavalabai.

14. PW6 - Nivratti Piraji Shahdeo is the Special Executive Magistrate, who had recorded statement of Savita on 15-11-1998 on being requested by Vazirabad Police Station. He has stated that he had recorded statement of Savita after verification of her condition and about she being conscious. The recorded statement had been read over to patient Savita, who admitted the same to be true and correct and her right hand thumb impression had been taken on the statement. Statement was recorded in the presence of Doctor. The recording was during 9.00 pm. to 9.30 pm. In his cross-examination, it has been elicited that he directly went to the ward where the patient had been admitted and went to the patient

with identification from sister on duty in the hospital and then the Doctor had been called. He purports to explain in the cross-examination that scoring while answering the third question is due to his mistake and not for the reason that patient was making a feeble statement.

15. PW 7 - Maroti Mangilwad, who is examined at Exhibit-48 happens to be maternal uncle of deceased Savita purports to support the statement made by Kevalabai - his sister. He, however, in his statement referred to that while he had arrived in the Government hospital at Nanded, sister - Keavalabai asked Savita as to what had happened to her and purports to state that it had been stated by Savita to them that accused was suspecting her character and poured kerosene on her and told that both the accused had lit her. In his cross-examination, he stated that Savita led a happy married life till she had given birth to child. He also stated to be ignorant about financial condition of Kishor.

16. DW 1 - Mohd. Haroon is examined at Exhibit - 52, who appears to be the landlord and the accused were his tenants. He claims in his statement that Savita had closed door of house and burnt herself by pouring kerosene and stated that Savita and Kishor were leading happy married life till the incident. Savita had not

spoken anything to persons gathered after the incident and also purports to state that he had reached the spot 15 minutes after the incident. His cross-examination he dithered over. While once he said that there were quarrels and on the other, he says that there were no quarrels.

17. There is no eye witness and the case is based on the statements, stated to have made and are considered to be dying declarations at Exhibits 32 and 35.

18. Evidence shows that Savita had been to her parental house at Mukramabad during *Pola* to *Diwali* and had come back to her matrimonial house around 04-11-1998. Savita had been burnt to the extent of 90% in the incident that had taken place around 6.00 pm. on 14-11-1998.

19. Soon thereafter, she had been moved to hospital at Bhokar and with the endorsement of Doctor that she is conscious to give statement, statement had been recorded, which does not impute any allegation against husband or mother-in-law.

20. In her subsequent statement on the next day in the evening, she has referred to that accused had set her on fire,

suspecting her character. She had not stated anything about her harassment and torture over demand of motorcycle or money therefor. Her said statement had been recorded by Special Judicial Magistrate.

21. In the third statement claimed to have been made to her mother, Kevalabai, however, a reference about non-fulfillment of demand of motorcycle and harassment over the same as well as character suspicion have appeared.

22. Statements of Savita were recorded on 14-11-1998 and 15-11-1998 and Kevalabai's statement has been recorded after her death on 19-11-1998.

23. All the statements give different versions and attribute different allegations. Multiple dying declarations with different versions create doubt about truthfulness of the declarations and, as such, must undergo a very close scrutiny.

24. First dying declaration made at Bhokar does not impute allegation against any person. Second one recorded by the Special Judicial Magistrate refers to character suspicion. The third one, however, makes reference to harassment over motorcycle and

passingly character suspicion. It would be required to be taken into account that the third statement imputes harassment over motorcycle all through from marriage. The three statements are not consistent.

25. Decision by Division Bench of this Court, in the case of *Subhash Ratan Chavan and anr. Vs. State of Maharashtra* reported in 2016(2) *Bom.C.R. (Cri.) 412*, may well have to be taken into account while considering the efficacy of inconsistent dying declarations.

26. In the present matter, the person who has recorded dying declaration on 14-11-1998 and the Doctor with whose endorsement, the same had been taken down, none are not examined nor any investigation appears to have been made with them.

27. The deceased had initially made statement at Bhokar taking the blame upon herself, however, at Nanded, her version underwent change. By then, it appears that quite a few relatives had already seen and met her, yet, there is no reference to harassment over money for motorcycle in her statement at Nanded. However, the version underwent further alteration and improvement as claimed by Kevalabai.

28. The witness - other son-in-law of Kevalabai - PW 1, has not supported the prosecution and has not stated anything about the cause of death or for that matter, any statement having been made to him or that him being aware of harassment caused to Savita.

29. As a matter of fact, third dying declaration, if is to be considered as one, allegedly made to her mother by deceased Savita, is also doubtful on one more count. Kevalabai, to whom the statement had been made by deceased Savita, stated that while statements were made, other than herself and Savita, nobody had been present whereas, Kevalabai's brother, however, states that in his presence, statement had been made by Savita.

30. Bharti, the other daughter, who had been along with Kevalabai in the hospital for over 4-5 days, her statement has not been recorded in support of the version of Kevalabai, who could have thrown light corroborating evidence by Kevalabai. It appears that she has not been examined, for in cross, it has emerged Bharti was trying to contain Kevalabai from making statements against the accused.

31. Apart from the inconsistencies in the dying declarations and in the evidence, there is stark absence of examination of proper persons during the course of investigation as well as in the court. None of the neighbouring persons, who may have been immediately present on the scene after the incident, has been examined. Savita in her statements had referred to that the neighbouring persons had poured water on her while she had lit herself. The evidence, to quite a large extent, shows that it is accused no.2, who had taken Savita to hospital at Bhokar immediately after the incident and from there to Nanded. The other prosecution witnesses have thereafter arrived at Nanded.

32. Apart from mother and maternal uncle of deceased no one has imputed any allegations about harassment over demand of money. As a matter of fact, brother-in-law of deceased Savita, who happens to be husband of her other sister, who has been examined does not speak at all about any harassment being caused to the deceased by her husband or mother-in-law. As a matter of fact, the husband himself had informed him about burning of Savita. There is no independent evidence available in respect of harassment being caused to Savita. It does not appear that any person who might have been there after the incident, had informed anything to mother of deceased and her maternal uncle or the

sister or brother-in-law.

33. Although, during the investigation, Kevalabai purportedly had passingly referred to that accused harassed Savita over her character, yet, there is no reference to the same in her examination in the court. Kevalabai has referred to that mother-in-law of Savita had been receiving pension and was a retired employee and had received huge amount by way of pensionary benefits.

34. The chemical analysis report does not support case of the prosecution. No kerosene traces were noticed on the seized clothes of the accused.

35. Mother-in-law appears to be a retired employee and a couple of years before had received sumptuous pensionary benefits. There is no evidence about any other relative being there of accused nos. 1 and 2. Deceased Savita appears to have led a happy matrimonial life for about 7 years and had been carrying for 5 months while the incident had occurred.

36. Credibility of the dying declarations, in the circumstances, gets considerably damaged and lose out on efficacy,

conclusively. Appreciation by the Additional Sessions Judge, in such a case of the evidence, placing reliance on the dying declarations, does not appear to be sustainable.

37. In view of aforesaid, with such quality of evidence, it does not appear that accusations against and the roles imputed to appellants have any sustainable support.

38. Criminal Appeal is, therefore, allowed.

39. Impugned judgment and order dated 08-01-2002 passed by IInd Adhoc Additional Sessions Judge, Nanded in Sessions Case no. 132 of 1999, therefore, is set aside. Bail bonds of the appellants stand cancelled.

40. Appeal against appellant no.1 is already disposed of as abated.

41. Appellant no.1 - Dwarkabai W/o Kashiram Pitlewad is acquitted of the offences punishable under section 302 r/w. 34 of the Indian Penal Code. Appellant no. 2 - Kishor S/o Kashiram Pitlewad is acquitted of the offences punishable under section 302 r/w. 34 of the Indian Penal Code and under section 498-A of the Indian Penal Code.

42. Since Shri G.D. Jain, Advocate was appointed by this Court as *amicus curiae* to defend the case of appellants, his fees quantified at Rs.10,000/-, be paid to him by High Court Legal Services Sub-Committee at Aurangabad.

[P. R. BORA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/