

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

Criminal Appeal No. 642 of 2008

* The State of Maharashtra
Through PSI CIDCO Police
Station, Aurangabad. **.. Appellant.**

Versus

- 1) Chandrakant s/o Abaji Mahindrakar,
Age 54 years,
Occupation : Business,
R./o M-2, 37/6, N-6,
CIDCO, Aurangabad.
- 2) Shantabai w/o Chandrakant Mahindrakar,
Age 50 years,
Occupation: Household,
R/o As above.
- 3) Ajay s/o Chandrakant Mahindrakar,
Age 28 years,
Occupation: Private Service,
R/o As above. **.. Respondents.**

Shri. P.G. Borade, Additional Public Prosecutor, for the
appellant.

Shri. Joydeep Chatterjee, Advocate, for respondent No.2.

Appeal is abated as against respondent Nos.1 and 3.

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

Date: 27 APRIL 2018

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

1) The appeal is filed against the judgment and order of Sessions Case No.75/2006 which was pending in the Court of learned Ad-hoc Additional Sessions Judge Aurangabad. The trial court has acquitted the respondents of all the offences punishable under sections 498-A, 302 read with 34 of Indian Penal Code. It appears that the accused No.1, father-in-law of the deceased and accused No.3, husband of the deceased are dead and so the proceeding as against them is already abated. The appeal is heard which is against respondent No.2, Shantabai, mother-in-law of the deceased.

2) In short, the facts leading to the institution of the present proceeding can be stated as follows :-

3) Deceased Archana was the daughter of Chandrakant Bulbule, who is resident of Nanded. Archana was given in marriage to original accused No.3, Ajay on 10-3-2002. After the marriage, Archana cohabited with Ajay in Aurangabad. Ajay was living with his parents, accused Nos.1 and 2.

4) It is the case of the prosecution that for 5 to 6 months there was no trouble but after that the accused started taking suspicion about character of Archana and they were not allowing Archana even to see the neighbours. It is the case the prosecution that the accused used to give beating to Archana. The incident in question took place on 6-11-2005 in the house of the accused. Archana sustained burn injuries and she was admitted in Government Hospital. On that date statement of Archana was recorded. After learning about the incident, Chandrakant and other relatives on parents side rushed to Aurangabad. Chandrakant had grievance about the statement already recorded of Archana on 6-11-2005 and so he made complaint to higher authorities of police and more dying declarations of Archana were recorded and they were recorded on 10-11-2005 and 11-11-2005. Archana died on 5-1-2006, after about 2 months of the date of incident.

5) Crime was registered on the basis of one dying declaration for aforesaid offences. During investigation police prepared spot panchanama. After the death of

Archana post mortem was conducted. She died due to burn injuries. Charge-sheet was filed against all the three accused for the aforesaid offences. They pleaded not guilty. Prosecution examined in all 12 witnesses to prove the offences. Accused took defence of total denial. Dying declarations recorded on 10-11-2005 and 11-11-2005 were produced along with charge-sheet. When it transpired that dying declaration was recorded on 6-11-2005 also, steps were taken to recall witnesses and the dying declaration recorded on 6-11-2005 was also proved as Exhibit 81. The trial court has not believed the relatives of the deceased on parents side. As there are many dying declarations which are not consistent with each other and as the account of the accidental burn was given in the first disclosure by the deceased, the trial court has given acquittal.

6) Exhibit 81 is the first dying declaration of Archana recorded on 6-11-2005. In this dying declaration she disclosed that in some portion of the house she was cohabiting with the husband. The incident took place at 7 to 7.30 a.m. She disclosed that for preparing food for the

tiffin of the husband she was trying to use kerosene stove and accidentally her clothes caught fire. She disclosed that her husband and in-laws extinguished the fire and they shifted her to Government Hospital Aurangabad. She disclosed before police that she had no complaint against anybody and she had good relations with husband and parents of the husband. On the basis of this statement, the police officer who had made arrangement to record the dying declaration gave report to police and in the station diary of Aurangabad CIDCO Police Station entry was made of case of accidental burns.

7) The evidence of Chandrakant (PW-2) shows that in the hospital he learnt that statement of Archana was recorded by police. There is one statement dated 10-11-2005 and there are two statements dated 11-11-2005. One statement dated 10-11-2005 is having time of recording. This statement is proved in the evidence of Subhash, A.P.I. (PW-3), who recorded it. In this dying declaration the deceased disclosed that on that date she had quarrel with her husband. She disclosed that after the quarrel the husband brought a can of kerosene, stove and one pot on

the first floor where she was living with her husband. In the past, she and her husband were living with her in-laws but due to the quarrel on that day the husband brought these articles to first floor to show that they were to live separate from his parents. She disclosed that when she was attempting to put on kerosene stove, the in-laws came to the first floor, they poured kerosene on her person and they set fire to her. She disclosed that she had not seen as to whether the father-in-law or the mother-in-law had set fire to her but either of them had set fire to her. She disclosed that at the relevant time her husband was in bathroom and he rushed to the spot and extinguished the fire. She disclosed that thereafter her husband and the mother-in-law, present respondent No.2, Shantabai shifted her to Government Hospital for treatment. The evidence of Subhash (PW-3) who recorded the dying declaration shows that he had requested the doctor in charge to give opinion as to whether Archana was fit to give statement and that letter is proved at Exhibit 23. His evidence does not show that opinion was actually obtained before recording the statement.

8) One dying declaration dated 11-11-2005 shown to be recorded by Special Judicial Magistrate Aurangabad which is not bearing time shows that she disclosed that when she was attempting to put on kerosene stove her mother-in-law and father-in-law came there and after that she caught fire. She did not make allegation that they were responsible for this fire.

9) Another dying declaration recorded on 11-11-2005 shows that she disclosed before police officer that her father-in-law and mother-in-law poured kerosene on her person and they set fire to her. She disclosed that her husband was present in bath room, he rushed to the spot and extinguished the fire.

10) The aforesaid recorded dying declaration shows that up to 11-11-2005 there was no grievance from anybody. The evidence of the father of the deceased shows that he had reached the hospital on 6-11-2005 itself. In ordinary course the deceased must have disclosed to him the incident. The circumstance that he did not approach police for recording one more dying declaration

immediately, on 6-11-2005 itself, shows that initially he had no grievance. He did not approach police on his own to give report if he had complaint that there was ill-treatment to the deceased from the husband and the in-laws. His evidence shows that he had knowledge about the dying declaration recorded by police on 6-11-2005.

11) The spot panchanama was prepared on 6-11-2005 and it also shows that the account of accidental fire was given by the husband. Panchanama of the room where the husband and the deceased were living was prepared. They had a kid who was of more than 2 years old. In the disclosure the deceased had mentioned that she had taken out the kid of this room. This circumstance needs to be kept in mind as no injury was sustained by the kid and apparently the kid was not present in the room when the fire started. It is not disclosed in the incriminating dying declaration that the in-laws or the husband had taken out the kid before starting of the incident.

12) The circumstances mentioned in the spot panchanama cannot be called as consistent with the incriminating dying declaration. It can be said that in one dying declaration specific allegations were made against father-in-law and mother-in-law but in one dying declaration there were no such specific allegations. In the earlier disclosure nobody was blamed by the deceased for the incident and she had given account of accidental fire. In the dying declaration she had not disclosed that her husband and his parents had doubt about her character and due to that there was harassment to her. The father of the deceased has given such evidence but that evidence has no support of the contents of the dying declarations. Further, the father gave statement to police belatedly. These circumstances have created reasonable doubt about the version given by the relatives of the deceased in the Court. The inconsistencies in aforesaid dying declarations have also created a serious doubt about the case of the prosecution. There is possibility that it was accidental fire or there is possibility that due to quarrel with the husband she had set fire to herself. The evidence is not sufficient to infer that the in-laws had set fire to her after pouring

kerosene on her person after coming to the first floor of the building. This Court holds that it is not possible to interfere in the decision given by the trial court. The reasoning given by the trial court also shows that the investigating agency did not act fairly. The dying declarations in which account of accidental fire was given were not produced along with the charge sheet. In the result, the appeal stands dismissed.

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

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

rs1