

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

CRIMINAL APPEAL NO.184 OF 2002

Dhanraj Baburao Patil (died),

THROUGH LRs
Rahul s/o Dhanraj Patil,
Age 20 yrs., Occu:Education,
R/o Vichkheda, Tq. Chopda,
Dist. Jalgaon, at Present
R/o. Dhupe, Tq. Chopda,
Dist. Jalgaon.

(substituted as per Court
order dated 24/08/2015 in
Cri. Application No.1420/2015)

...APPELLANT

VERSUS

State of Maharashtra.

...RESPONDENT

...
Mr. R.M.Deshmukh, Advocate, for the appellant.
Mr. K.D.Mundhe, APP for respondent State.

...
CORAM: P.R. BORA, J.

DATE : March 22nd, 2018

ORAL JUDGMENT:

1. Present appeal was filed by Dhanraj Baburao Patil against the judgment and order passed by the Additional Sessions Judge, Dhule, in Sessions Case No.10/1999 decided on 4th of March, 2002.

2. Appellant Dhanraj was convicted vide the impugned judgment for the offense punishable under Section 498 (A) of IPC and was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-; in default, to suffer further rigorous imprisonment for three months. It is a matter of record that during pendency of the appeal before this Court, Appellant Dhanraj died and the legal representatives of Dhanraj have prosecuted the appeal further by taking leave of the Court. Original appellant Dhanraj is hereinafter referred to as the accused.

3. Shri R.M.Deshmukh, learned Counsel appearing for legal representatives of deceased appellant Dhanraj, submitted that despite there being any cogent and sufficient evidence, the learned Additional Sessions Judge had held deceased Dhanraj guilty for the offense punishable under Section 498 (A) of the IPC. As against it, the learned A.P.P. has supported the

impugned judgment and order.

4. The material on record reveals that deceased Nirmala and Dhanraj had married prior to about eight years of the alleged incident. The alleged incident occurred on 2nd of July, 1998. As is revealing from the prosecution papers, in between 11 to 12 in the morning of 2nd of July, 1998, deceased Nirmala got burnt and was admitted to Cottage Hospital at Shirpur. While she was in the hospital, her dying declaration was recorded by the Executive Magistrate, wherein she implicated the name of her husband i.e. Dhanraj and alleged that he poured kerosene on her person and set her on fire. On such report being lodged by deceased Nirmala, the offense was registered against Dhanraj and the investigation was set in motion. Since Nirmala, thereafter, succumbed to the burn injuries, the offense was converted into offense under Section 302 of IPC. The material on record further shows that one more dying declaration was recorded of deceased Nirmala by the Police person. After death of Nirmala, usual formalities like preparing inquest panchnama, spot panchnama, getting post mortem done, etc. were performed and the statements of necessary witnesses were also recorded by the investigating officer. After the investigation was completed, chargesheet

was filed against the accused for the offense punishable under Section 302 of IPC as well as under Section 498 (A) of IPC since, during the course of investigation, it was also revealed that deceased Nirmala was subjected to cruelty by the accused.

5. In order to prove the guilt of the accused, eight witnesses were examined before the Sessions Court. The learned Sessions Judge, after having considered the oral and documentary evidence brought on record, acquitted deceased Dhanraj from the offense under Section 302 of IPC, however, convicted him for the offense punishable under Section 498 (A) of IPC and sentenced him to suffer punishment as noted above. Aggrieved thereby, appeal was filed by Dhanraj and as noted earlier, after his death, legal representatives of deceased Dhanraj have prosecuted the appeal further.

6. The thrust of the learned Counsel, Shri. Deshmukh was on the point that except the evidence of the father of deceased Nirmala, there is no other evidence showing that deceased Nirmala was subjected to cruelty by deceased Dhanraj. Learned Counsel further submitted that in view of the fact that two altogether different versions have come on record by way of two dying declarations of the deceased, the

entire prosecution case has become doubtful and conviction of the accused could not have been based on such doubtful evidence. Learned Counsel further pointed out that whatever was stated by the father of deceased Nirmala, namely, Jijabrao Sandu Patil, PW 1, as about the ill-treatment to deceased Nirmala, was by way of omission. Learned Counsel pointed out that the facts as were deposed by the said witness before the Court were not stated by him in his Police statement. Learned Counsel further pointed out that in the evidence of the investigating officer also, all these omissions are correctly taken on record. It was, therefore, the contention of the learned Counsel that merely on the basis of the statement of father of deceased Nirmala, the learned Trial Judge could not have recorded any such finding holding the accused guilty for the offense under Section 498 (A) of IPC. Learned Counsel further submitted that even the evidence of Police Patil also could not have been relied upon having regard to the fact that nothing was, in fact, eye witnessed by the said witness and there is no corroboration to the facts as were deposed by him in his testimony before the Court.

7. Opposing the submissions made by the learned Counsel, learned A.P.P. Shri. Mundhe submitted that if the

dying declaration of deceased Nirmala recorded by the Police at Exh.19, testimony of father of deceased Nirmala and evidence of Police Patil is conjointly read, it has been undoubtedly proved by the prosecution that Nirmala was subjected to cruelty by her husband Dhanraj. Learned A.P.P. pointed out that in the evidence of all these witnesses, it has specifically come on record that Dhanraj was suspecting character of deceased Nirmala and that was the reason that she was being subjected to cruelty by him. Learned A.P.P. further pointed out that it has also come on record through the evidence of all these witnesses that Dhanraj was addicted to liquor and, under the influence of liquor he used to harass deceased Nirmala. Learned A.P.P. further submitted that though initially there was no certainty as about the fact whether deceased Nirmala suffered homicidal death or she committed suicide, the offense was registered even under Section 302 of IPC. However, during the course of the trial, it has amply come on record that deceased Nirmala committed suicide being fed up with the ill-treatment suffered by her at the hands of the accused. Learned A.P.P. submitted that in such circumstances, the finding arrived at by the learned Additional Sessions Judge holding the accused guilty for the offense under Section 498 (A) of IPC is based on sound reasons and does not require any interference.

8. It appears that since two dying declarations were on record and were suggesting two different stories, the learned Additional Sessions Judge found it safe to frame both the charges against the accused; one for offense under Section 302 of IPC and another, for the offense under Section 498 (A) of IPC. However, at the end of the trial, the learned Sessions Judge has reached to the finding that it was the case of suicidal death and not homicidal.

9. I have considered the submissions made by the learned Counsel appearing for the appellant and the learned A.P.P. appearing for the State. I have perused the impugned judgment and the evidence on record. Admittedly, two dying declarations were recorded of deceased Nirmala; one was recorded by the Executive Magistrate; whereas, the other was recorded by the Police Head Constable. In the dying declaration recorded by the Executive Magistrate, namely, Gambhir Khandu Mangale (PW 2), deceased Nirmala has stated that after she had completed the cooking, her husband came and he was fully under the influence of liquor. He poured kerosene on her person and set her on fire. In the dying declaration recorded by Police Head Constable Chandrashekhar Hari Kulkarni (PW 8), deceased Nirmala, however, has stated

that her husband used to suspect her character and used to beat her on that account. She has further stated that on 2/7/1998 also, he quarreled with her. She has further stated that fed up with the constant harassment and torture by her husband, and since he was suspecting her character, she herself poured kerosene on her person and set her ablaze.

10 The entire thrust of Shri Deshmukh, learned Counsel appearing for the accused was on the point that when two dying declarations have come on record, providing two different stories inconsistent with each other, the learned trial Court could not have relied upon any one of such dying declaration to base the conviction of the accused. To buttress his argument, the learned Counsel relied upon the judgment of the Honourable Apex Court in the case of ***State of Punjab Vs. Parveen Kumar (2004 AIR SCW 6897)***. Learned Counsel submitted that in the aforesaid matter also, an argument was advanced by the State that though there may be two different dying declarations having different versions, since in both the dying declarations the person who was named as culprit was common, the trial Court as well as the High Court should not have outrightly rejected the evidence in the form of dying declarations; however, the Hon'ble Apex Court rejected the said

argument of the State and confirmed the order of acquittal.

11. As against the argument so made by Shri Deshmukh, it was the contention of Shri K.D.Mundhe, learned APP that in the aforesaid matter, the finding of acquittal was confirmed by the Honourable Apex Court not only on the ground that there were two different dying declarations having two different versions but, mainly for the reason that there was no corroborative evidence available on record to corroborate the facts stated in either of the said dying declarations. The learned A.P.P., placing reliance on the judgment of the Honourable Apex Court in the case of ***Ashabai and another Vs. State of Maharashtra ((2013) 2 SCC 224*** submitted that in the instant matter even though there may be two dying declarations, each dying declaration has to be separately assessed and evaluated and should be assessed independently on its own merit.

12. I find substance in the argument so made by the learned A.P.P. In the case of ***State of Punjab Vs. Parveen Kumar*** (cited supra), the Honourable Apex Court in paragraph no.10 of the said judgment has observed thus:

" While appreciating the credibility of the evidence produced before the Court, the Court must view evidence

as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declaration. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. The High Court while considering the evidence on record has rightly applied the principles laid down by this Court in *Thurukanni Pompiah and another v. State of Mysore*, AIR 1965 SC 939, and *Khusal Rao v. State of Bombay*, 1958 SCR 552."

From the observations as above made by the Honourable Apex Court, it is evident that the evidence in the form of dying declarations was not relied upon by the Honourable Apex Court mainly for the reason that there was no other corroborative evidence available on the basis of which truthfulness in the facts as were stated in the dying declarations could have been tested.

13. In the instant matter, though there are two dying declarations on record, and though the facts as are appearing in the dying declaration recorded by PW 2 Gambhir Mangale,

which is at Exh.19, have not been corroborated by any other evidence on record, the facts which are appearing in the dying declaration recorded by Police Head Constable Chandrashekhar Hari Kulkarni (PW 8), which is at Exh. 38, have been sufficiently corroborated by PW 1 Jijabao Sandu Patil, and PW 4 Poonamchand Ramdeo Chaudhari, the Police Patil of Village Babhalaj.

14. In absence of any corroboration to the facts as are appearing in the dying declaration recorded by the Executive Magistrate, the said dying declaration is no doubt liable to be discarded and cannot be relied upon. However, in view of the law laid down by the Honourable Apex Court in the case of *Ashabai and another vs. State of Maharashtra (cited supra)*, the dying declaration recorded by the Police Head Constable will have to be assessed and evaluated independently on its own merit. In the aforesaid dying declaration (Exh.38), deceased Nirmala has narrated that her husband every day used to consume liquor and then under the influence of liquor used to beat her. She has also narrated that her husband used to suspect her character. Thereafter, she has stated that on 2nd of July, 1998 also her husband quarreled with her. She has further stated that being fed up with the wild allegations made

by her husband about her character and the day-to-day torture and beating by her husband, she ultimately poured kerosene on her person and set herself on fire.

15. In his testimony before the Court, Head Constable Chandrashekhar Kulkarni (PW 8) has testified that before recording statement of deceased Nirmala, he had obtained the opinion of Medical Officer there about fitness of deceased Nirmala to give her statement and, accordingly, the concerned Medical Officer had told him that deceased Nirmala was in a position to give her statement. PW 8 has also deposed that, thereafter, he recorded the statement of deceased Nirmala strictly as narrated by her and the same was read over to her and, thereafter, her thumb impression was obtained below the said statement. I have perused the said statement at Exh.38. It bears an endorsement at Exh.28 recorded by Dr. Rakesh Ratilal Patel (PW 5). In his testimony before the Court, Dr. Rakesh Patel has reiterated the said facts. Though, it was sought to be contended that it was not specifically endorsed by the concerned Medical Officer that the declarant was in a fit physical and mental state, and hence, it cannot be held that the deceased was capable of giving her statement and, as such, consequently, the said statement cannot be relied upon, it has

to be stated that there is no such requirement of law and the endorsement as was appearing at Exh.28 was sufficient to hold that the declarant was in a position to give her statement. The objection raised by the learned Counsel for the appellant has, therefore, to be rejected.

16. As was pointed out by the learned A.P.P., the facts as were stated by deceased Nirmala in her dying declaration at Exh.38 are fully corroborated by PW 1 Jijabrao Sandu Patil and PW 4 Punamchand Ramdeo Chaudhari. PW 1 Jijabrao is the father of deceased Nirmala. It has come on record through his evidence that on 2nd of July, 1998, after receiving the message that Nirmala had got burnt and admitted in the hospital, he had been to the said hospital and met deceased Nirmala. PW 1 has also deposed that in the hospital, he asked Nirmala about the incident whereupon, he was told by deceased Nirmala that accused was constantly harassing her and so she was annoyed. PW 1 has further deposed that deceased Nirmala also disclosed to her that she herself poured kerosene on her person and set her ablaze. In the earlier part of his evidence, PW 1 has specifically deposed that the accused used to suspect the character of her daughter Nirmala and Nirmala had disclosed the said fact to him also.

17. PW 4 Punamchand Ramdeo Chaudhari was the Police Patil of village Babhalaj. The alleged incident had occurred at village Babhalaj. His evidence, therefore, assumes vital importance. PW 4 in his testimony before the Court has stated that on 2nd of July, 1998, at about 12 noon, an information was received to him that the wife of accused Dhanraj had caught fire and he, therefore, immediately rushed to the said spot i.e. towards the house of the accused. PW 4 has further deposed that when he reached there, he saw that wife of accused Dhanraj i.e. deceased Nirmala was lying in the middle room of the house of the accused in a burnt condition. PW 4 has further deposed that on his making enquiry with deceased Nirmala, she disclosed to him that she was being ill-treated by her husband i.e. accused Dhanraj. She also told to him that accused used to beat her after consuming liquor. She also told to him that on the day of the incident also, there was quarrel between her and the accused. She also told that the accused used to suspect her character and she, therefore, poured kerosene on her person and set herself on fire.

18. Even, if it is assumed that PW 1 Jijabrao was an interested witness being father of deceased Nirmala, there seems no reason to disbelieve or discard the facts as are stated

by PW 4 Punamchand in his testimony before the Court. PW 4 is an independent witness and most importantly was the Police Patil of the village at the relevant time. Moreover, nothing has been brought on record in his cross-examination, so as to disbelieve his testimony. The learned trial Judge has, therefore, rightly relied upon the aforesaid evidence and has rightly held the accused guilty for an offense punishable under Section 498 (A) of IPC.

19. As has been noted by me hereinabove, the ratio laid down in the judgment of the Apex Court in the case of *State of Punjab Vs. Parveen Kumar* would not apply to the facts of the present case. On the contrary, the law laid down by the Apex Court in the case of *Ashabai and another vs. State of Maharashtra (cited supra)*, perfectly applies to the facts in the present case. The learned trial Judge has rightly relied upon the dying declaration recorded by Police Head Constable Chandrashekhar Hari Kulkarni, since the facts as were stated by deceased Nirmala in the said dying declaration have been fully corroborated by PW 1 and PW 4.

20. It was also sought to be contended by the learned Counsel for the appellant that the alleged ill-treatment at the

hands of the accused may not amount to cruelty as defined under Section 498 (A) of IPC. It was his contention that to make some allegations under the influence of liquor may not amount to cruelty as defined under Section 498 (A) of IPC. To buttress his contention, learned Counsel relied upon the judgment of this Court in the case of Pannalal Vs. State of Maharashtra (2007 ALL MR (Cri) 1349). The argument so made by the learned Counsel is liable to be rejected at the threshold. To suspect the character of the wife cannot be, in any case, be held to be normal wear and tear of married life. In the case of Pannalal (cited supra), the instances which were narrated were about mother-in-law and sister-in-law, finding faults in performance of household chores, whereas in the present case the accused was suspecting the character of deceased Nirmala. To suspect the character of the wife and to constantly torture her on that account, would certainly amount to cruelty as defined under Section 498 (A) of IPC. It, therefore, does not appear to me that any error has been committed by the learned trial Court in holding the accused guilty for an offense punishable under Section 498 (A) of IPC.

21. After having considered the entire evidence on record, it does not appear to me that the trial Court has

committed any error in convicting the accused for the aforesaid offense. Criminal Appeal (No.184/2002) being devoid of substance, deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

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