

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 189 OF 2004

Janardhan s/o Gunaji Pithle,
Age 50 years, Occupation Service
at Marathwada Krishi University,
Parbhani R/o Raipur Dist. Parbhani.
(Since Deceased)

Laxman s/o Janardhan Pithle,
Age 29 years, Occupation Agri.
R/o Raipur Tq. Dist. Parbhani.
(Son of the petitioner)

.. Applicant

VS.

- 1) The State of Maharashtra.
- 2) Rawan s/o Keshav Sarange,
Age 27 years, Occupation labour,
- 3) Keshav s/o Ashroba Sarange,
Age 52 years, Occupation labour,
- 4) Kushawartabai w/o Keshav Sarange,
Age 47 years, Occupation household,
- 5) Prayagbai w/o Kondiba Sarange,
Age 17 years, Occupation household,

All R/o Kawaddhan Tq. Sailu
District Parbhani.

.. Respondents

Mr. R. N. Chavan, Advocate holding for Mr. Vijay Sharma,
Advocate for the applicant.

Mr. S. W. Mundhe, Addl. Public Prosecutor for respondent
No.1/ State.

Mr. Nitin Jagdale, Advocate holding for Mr. V. D. Salunke,
Advocate for respondents No.2 to 5.

CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the Judgment : 18th January, 2018.**

**Date of pronouncing
the Judgment : March, 2018.**

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Present revision has been filed by the original informant challenging the acquittal of the respondents No. 2 to 5 (original accused No. 1 to 4) from the offence punishable under Sec. 498-A, 306 r/w. 34 of Indian Penal Code in Sessions Case No. 64 of 2002 by 4th Additional Sessions Judge, Parbhani on 27-01-2004.

2. Before considering the case of the prosecution, I would like to put some admitted facts, as they emerge from the record. Deceased Ashamati was the daughter of Janardhan Pithale. She got married to accused No. 1 about 3 years prior to 20-09-2000 at Raipur, Tal. & Dist. Parbhani. After marriage she started residing with accused persons at Kawaddhan, Tal. Sailu, Dist. Parbhani. Accused No. 2 is her father-in-law, accused No. 3 is her mother-in-law and accused No. 4 is her cousin mother-in-law.

3. The prosecution had come with a case that all the accused persons treated deceased Ashamati properly for about 2 years after the marriage. However, thereafter they started harassing deceased Ashamati on the

ground that she has not begotten child. Accused No. 2 was looking at the deceased with ill-intention and was asked her to massage his legs and hands on certain occasions. Ashamati had disclosed the said fact to her mother, when she had come to meet her parents. She had stayed with her parents for about 6-7 months at that time. Thereafter, some relatives of the accused took her back, by pacifying her. Accused No. 3 then started saying that Ashamati is not able to do the work properly, she is of dark complexion. Ashamati was harassed on this ground. When she used to tell about the same to accused No. 1, he used to beat her. Ashamati got fed up with the harassment of the accused persons and therefore, ablaze her on 19-09-2000 by pouring kerosene upon her.

4. It is the further prosecution story that Ashamati was admitted with burn injuries at Civil Hospital, Parbhani. Her statement came to be recorded by A. S. I. Radhakishan Katare on 20-09-2000 and the same has been registered as First Information Report. Offence came to be registered on the basis of said FIR for the offence punishable under Sec. 498-A, 323 r/w. 34 of Indian Penal Code. Thereafter, her statement has also been recorded by Special Executive Magistrate. Ashamati expired undergoing treatment on 2-10-2000.

5. Investigation was undertaken, after the crime was registered. Panchnama of the scene of offence has been executed with the help of

panchas. Certain articles have been seized at the time of execution of panchnama. Statement of the witnesses has been recorded. Accused persons came to be arrested. After death of Ashamati, inquest panchnama was executed and her dead body was sent for postmortem. After the postmortem was over, the report has been collected. Offence punishable under Sec. 306 of Indian Penal Code came to be added. After the completion of investigation, charge-sheet was filed.

6. Case was committed to the Court of Sessions. All the accused persons appeared before Sessions Judge. Charge was framed against all of them for the offence punishable under Sec. 498-A, 306 r/w. 34 of IPC. Contents of the charge were read over and explained to the accused persons in vernacular. They all have pleaded not guilty. Trial has been conducted.

7. After considering the evidence and hearing both sides, the learned trial Court has acquitted all the accused persons from the charges. This acquittal is under challenge in this revision. Original revision applicant was the father of the deceased Ashamati. He expired during the pendency of revision. He has been substituted by his son to continue the prosecution of the revision application.

8. Heard learned Advocate Shri. Rajendra Chavan holding for

Advocate Shri. Vijay Sharma appearing for revision applicant, learned APP Shri. S. W. Munde for respondent No. 1 – State and Advocate Shri. Nitin Jagdale holding for Advocate Shri. V. D. Salunkhe appearing for respondent No. 2 to 5. Perused the record and proceeding. Following points arise for determination. Findings and reasons for the same are as follows:

POINTS:

1. Whether the prosecution has proved that deceased Ashamati had committed suicide on 19-09-2000 around 5.00 p. m. in the house of accused in Kawaddhan, Tal. Sailu, Dist. Parbhani and the said suicide was abated by accused persons, in furtherance of their common intention?
2. Whether the prosecution has proved that deceased Ashamati was ill-treated and harassed by accused No. 1 – husband and other accused persons – relatives of husband, since two years prior to 19-09-2000, by subjecting her cruelty by saying that she is of black complexion and unable to do any work?

FINDINGS:

1. In the negative.
2. In the negative.

REASONS

POINT NO. 1 AND 2 :

9. It has been vehemently submitted on behalf of revision applicant that the learned Trial Court did not appreciate the evidence properly. Trial Court failed to see that death of Ashamati was within 7 years of her

marriage and it was unnatural. Therefore, the presumption under Sec. 113-B of Indian Evidence Act was attracted and it was for the accused persons to rebut the said presumption. Accused persons have not led any evidence in rebuttal. The prosecution case was based on two dying declarations and they were duly proved by the prosecution. Ashamati had committed suicide due to the instigation of the accused persons on account of ill-treatment. Learned Trial Court unnecessarily went on to observe that the dying declarations have been recorded in the presence of parents of the deceased. Presence of the parents will not reduce the evidentiary value of the declarations. It was not necessary for the prosecution to examine the independent witnesses. No neighbour would get himself or herself involved in the domestic dispute of the neighbour. Discloser of ill-treatment by Ashamati to her parents was but natural. Much stress has been given on the history of 'accidental death' given to the hospital authority. However, learned Trial Court failed to consider that the said history might have been given by the accused persons. Therefore, when in spite of sufficient and cogent evidence beyond reasonable doubt was adduced by prosecution, the said evidence ought to have been properly considered for convicting the accused persons.

10. Per contra, it has been submitted on behalf of respondent no. 2 to 5/ original accused persons that the learned Trial Court has appreciated

the evidence properly and the judgment of the acquittal has been rightly pronounced. The case of the prosecution is based on two dying declarations. Those dying declarations are inconsistent with each other. There is substantial improvement in the second dying declaration. Both the declarations have been recorded after the arrival of the parents. Therefore, possibility of tutoring the same can not be ruled out. There was no direct evidence of alleged ill-treatment by the accused persons. No person residing near to the house of the accused has been examined. There is no evidence of abatement of suicide. Death was accidental. It is admitted in the cross by the prosecution witness that there is no electricity in the house of accused. They depend on the lamp. Ashamati caught fire accidentally due to the lamp. Accused persons had brought her hospital after the incident. This shows the conduct of the accused persons immediately after the incident. Specific role was not attributed to each of the accused. Therefore, the acquittal of the accused persons is correct.

11. Prosecution has come with a case that death of Ashamati was suicidal. The testimony of PW 1 Dr. Limngaonkar shows that he had performed postmortem on the dead body of Ashamati on 2-10-2000. He has given the probable reason for her death as 'Cardio Respiratory arrest due to Septicemia with shock'. In his cross, he has admitted that he was

the treating doctor also. History was noted at the time of admission of the patient. The record of the hospital shows that the history was given as injuries due to accidental burn. The witness has also admitted that the symptoms noted by him in postmortem report may appear in accidental burn. Thus, it can be seen that a possibility has been created by the accused to show that the injuries sustained by the deceased might have been caused due to accident. No doubt, at the time of admission of the deceased in the hospital; only accused persons were present. However, when such a possibility has been created by the defence, then it was for the prosecution to rule out that possibility. Unless that possibility has been removed, it can not be concluded beyond doubt that the injuries were suicidal only. The testimony of this witness therefore, does not prove the said fact beyond reasonable doubt. Though the death of Ashamati is admittedly unnatural, yet unless it is proved that it was due to ill-treatment or harassment as alleged, we can not invoke the presumption under Sec. 113-B of Indian Evidence Act. The burden will not shift on the accused to prove anything.

12. Prosecution has relied on the two dying declarations of Ashamati in order to prove that her death was suicidal. It is therefore required to be seen as to whether this piece of evidence proves prosecution story. PW 7 ASI Katare had recorded the first dying declaration. He has stated that he

had received information about admission of Ashamati at about 4.00 p. m. on 20-09-2000. He was directed to record dying declaration, hence he went to the ward. After obtaining the permission of Medical Officer on duty, he recorded statement of Ashamati. Medical Officer had opined that Ashamati was in a state to give statement. After the statement, he has obtained Thumb Impression of Ashamati. The dying declaration recorded by him is at Ex.46.

13. Perusal of dying declaration Ex. 46 would show that there is no endorsement of the Medical Officer at the beginning. Endorsement at the end states that patient was conscious at the time of recording statement. The said endorsement has been given at 6-20 p. m. The Medical Officer who has given that endorsement has not been examined by the prosecution. Ex. 46 has been treated as FIR. It is also to be noted that it has not been mentioned Thumb Impression of which hand of Ashamati has been taken on it and it has not been attested.

14. Prosecution has also come with a case that PW 3 Kamal Moholkar had recorded another dying declaration. The said dying declaration is at Exhibit 38. In order to prove the said document, prosecution has examined PW 3 Moholkar and PW 2 Dr. Vidya Ghadge. Both the witnesses have come with a case that Ex.38 was recorded in between 12-15 to 12-30 p. m. on 20-09-2000. If this is to be accepted, the question

arises why it was not treated as FIR ? Exhibit 46 was taken after 4.00 p. m. and was completed around 6.20 p. m. It is hard to believe that PW 3 Moholkar would not have forwarded the dying declaration Exhibit 38 till 6.30 p. m. Prosecution has not given any explanation in respect of the same. This creates doubt.

15. The thumb impression on Ex.38 has also not been attested and PW 3 Moholkar does not give any explanation for the same. If we see the contents of both the dying declarations, then it can be seen that they are giving totally different stories. The reason why she set herself to fire, narrated in both the dying declarations is different. When there are two inconsistent dying declarations then such prosecution story can not be believed. In ***Vithal v/s. State of Maharashtra [(2006) 13 SCC 54 : (2008) 1 SCC (Cri) 91]*** it has been held that,

“ In cases where there are more than one dying declarations, the court should consider whether they are consistent with each other. If there are inconsistencies, the nature of the inconsistencies must be examined as to whether they are material or not. In cases where there are more than one dying declarations, it is the duty of the court to consider each one of them and satisfy itself as to the voluntariness and reliability of the declarations”.

After applying all parameters of proof of dying declarations, it can be seen that both of them are not reliable at all. PW 2 Dr. Ghadge has not

given the details of health situation of Ashamati when she had examined her around 12-15 p. m. and at the end of the statement. Mere statement that patient was conscious was not sufficient. It was necessary to bring on record that at the time of dying declarations, deceased was in a fit state of mind to give statement. If she would have been in a fit state, then there would not have been inconsistency in the reason for ablaze by deceased. The second dying declaration Exhibit 46 does not state that one dying declaration was already recorded and then she want to give fresh or different story for some reasons. Non-explanation by the prosecution about not treating Ex. 38 as FIR also goes to the root of the case. Ashamati was alive till 1-10-2000. There was no attempt on the part of the investigating agency to record a proper and legal dying declaration at later point of time. Hence, both the dying declarations are required to be discarded.

16. Prosecution has also come with a case that accused persons had harassed deceased, which prompted her to commit suicide. Since both the dying declarations are required to be discarded, we can not read the contents of the same as evidence in respect of alleged harassment by the accused persons. The oral evidence on this point consists of testimony of the father of the deceased/ informant PW 4 Janardhan. He has deposed as per his FIR. However, if his cross-examination is perused then it can be

seen that his examination-in-chief has been shattered. He has stated that after the first Diwali, Ashamati had stayed at his house for about 6-7 months. He has not given reason for the same. He does not say in clear terms that due to the ill-treatment given by accused persons his daughter did not go to her matrimonial home. Prior to that Ashamati had gone somewhere and could not be found for three days. PW 4 had not lodged any missing report at that time. Thereafter he had attended the functions in the family of the accused, thereby indicating that the relationship was cordial. When Ashamati had come to his house at the time of Panchami, she had told him that she is happy at her matrimonial home. PW 4 Janardhan was not aware that Ashamati and accused No. 1 went to reside at Pune just prior to her death. Prosecution has tried to rely on the oral dying declaration of Ashamati given to her father. However, the conduct of the father is required to be considered. He had not attempted to lodge FIR on the basis of oral dying declaration, nor tried to get his statement recorded by police when he was in the hospital.

17. PW 5 Rahi is the sister of the deceased. She has tried to support her father. However, her cross would indicate that whatever complaints were made by Ashamati were not taken seriously by her father and relatives. Now they are making asset of those facts and want to connect it with the unfortunate death of Ashamati.

18. Another factor to be noted is that whatever informant and her sister were deposing, was on the basis of alleged statements made by deceased before him. Such kind of evidence is very weak evidence. Though it may be stated that prosecution story can not be disbelieved only on the ground of non-examination of neighbouring witnesses; yet the quality of the evidence adduced in such cases is required to be considered on the basis of entire evidence and conduct of the witnesses. I therefore, agree with the reasons given by the learned Trial Judge for acquitting the accused persons. There was no cogent and material evidence to prove that accused persons had harassed deceased and the said harassment was of such a nature that she committed suicide. It appears that the death was accidental and due to sudden death of the daughter, informant gave the report in annoyance. We can not therefore, invoke the presumption under Sec. 113-B of Evidence Act in this case.

19. There is no merit in the present revision. It deserves to be dismissed. For the afore-said reasons, I proceed to pass following order.

ORDER

- 1) Criminal Revision is hereby dismissed.
- 2) Bail bonds of the respondents stand cancelled.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.