

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 227 OF 2003

The State of Maharashtra,
Through Police Sub Inspector,
Police Station Pishor, Tq. Kannad,
Dist. Aurangabad.

... APPELLANT
(Ori. Complainant)

VERSUS

1. Nivrutti Laxman Paighan,
Age 23 yrs, Occu. Agri.,
R/o. Pishor, Tq. Kannad,
Dist. Aurangabad.
2. Laxman Yamnaji Paighan,
Age 60 yrs., Occ. & r/o as above.
3. Kasabai w/o Prabhu Paighan
Age 25 yrs, Occ. Household and
Agri., r/o as above.

4. Sau. Mandabai w/o Laxman Paighan,
Age 55 yrs., Occu. & r/o as above.

... RESPONDENTS
(Ori. Accused)

...
Mr. P. G. Borade, APP for Appellant / State.
Mr. A. D. Sugdare, Advocate for Respondents.
...

WITH

CRIMINAL REVISION APPLICATION NO. 44 OF 2003

Bhagubai w/o Kailas Mokashe,
Age: 41 years, Occ: Labourer,
R/o : Shafepur, Pishor, Tq. Kannad,
Dist. Aurangabad.

... PETITIONER

VERSUS

[1] Nivrutti s/o Laxman Paighan,
Age : 23 years, Occ : Agri.,
R/o : Pishor, Tq. Kannad,
Dist. Aurangabad.

[2] Laxman s/o Yamnaji Paighan,
Age : 60 years, Occ : Agri.,
R/o : Pishor, Tq. Kannad,
Dist. Aurangabad.

[3] Kasabai w/o Prabhu Paighan,
Age : 25 years, Occ : Household,
R/o : Pishor, Tq. Kannad,
Dist. Aurangabad.

[4] Sau. Mandabai w/o Laxman Paighan,
Age : 55 years., Occ : Household,
R/o : Pishor, Tq. Kannad,
Dist. Aurangabad.

[5] The State of Maharashtra.

... **RESPONDENTS**

...

Ms. S. V. Salunke, h/f Mr. V. D. Salunke, Advocate for Petitioner.

Mr. A. D. Sugdare, Advocate for Respondent Nos.1 to 4.

Mr. P. G. Borade, APP for Respondent No.5 / State.

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**CORAM : T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 06th June, 2018.

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

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Both the proceedings are filed against the judgment and order

of Sessions Case No.352 of 2002, which was pending in the Court of Ist Adhoc Additional Sessions Judge, Aurangabad. The Trial Court has acquitted the Respondents of both proceedings of the offence punishable under Section 302 read with 34 of the Indian Penal Code. The learned counsel for Respondents produced copies of death certificates in respect of Laxman (Accused No.2) and Mandabai (Accused No.4). The learned counsel for the original Complainant did not dispute that these two Accused are dead and so the case against them is disposed of as abated. Proceedings are heard as against the remaining two Accused.

2 The learned APP for the State, the learned counsel for Accused and the learned counsel for original Complainant are heard extensively.

3 In short, the facts leading to institution of present two proceedings can be stated as follows:

Deceased Sangita Paighan was the wife of Accused No.1 Nivrutti. The parents of Sangita hail from village Shafepur Pishor, Taluka Kannad and Accused persons are the residents of Pishor. Sangita was given in marriage about 14 months prior to the date of incident in question. She has left behind one son and the son was about 4 months at the relevant time.

4 There was ill-treatment to Sangita from her husband and the relatives of the husband, who are made Accused on petty counts. The incident in question took place on 12th July, 2002 at about 08:30 am in the matrimonial house. All the Accused were present in the house. Accused Nos.2 and 4 were the parents of the husband and Accused No.3 is the married sister of the husband. Accused No.3 was living with her husband in Pishor.

5 On the day of incident, quarrel started at about 08:30 am on petty counts and then Kasabai virtually dragged Sangita from the courtyard where Sangita was washing utensils. Accused No.4 (mother in-law) poured kerosene on the person of Sangita. Laxman (father in-law) brought a matchbox and handed it over to the husband of Sangita. The husband of Sangita then set fire to Sangita by using this matchbox. Sangita started shouting for help. Some persons living in the vicinity, rushed to the house of Accused. Sangita was shifted to Government Hospital. On 12th July, 2002 itself, the dying declaration of Sangita came to be recorded through the Executing Magistrate. Police Officer of Pishor Police Station also recorded the statement of Sangita and on the basis of the statement of Sangita, crime was initially registered at C.R No.18/2002 at 10:30 am for the offences punishable under Sections 307 and 504 read with 34 of the Indian Penal Code.

6 During the course of investigation, Panchanama of spot of offence was prepared. Police recorded the statements of the relatives on parents side of Sangita and also some persons, who were living in the vicinity of the spot of offence and of the driver, who had helped in shifting Sangita to the hospital. Sangita died due to burn injuries after about 14 days of the incident in Civil Hospital, Aurangabad. After completion of investigation, charge-sheet came to be filed for the aforesaid offence. In the sample of earth collected from the spot of offence and also on the clothes of deceased, kerosene was detected.

7 When the charge was framed, all the Accused pleaded not guilty. Prosecution examined in all 10 witnesses for proving the offence. Evidence was given on the recorded dying declarations and also on oral dying declaration. The Trial Court has disbelieved the record of dying declarations and also other witnesses.

8 Prosecution is relying on the dying declarations given by Sangita and on the circumstances that the death has took within 14 months of marriage. However, there is other circumstance like one issue was born to Sangita during this short span and there are many circumstances creating doubt about the voluntariness and truthfulness of the dying declaration.

9 Smt. Bhagubai (PW-1) is the mother of deceased. She has deposed that she learnt about the incident at about 08:30 am that Sangita had sustained burn injuries and she was shifted to Pishor Hospital. She has given evidence that she immediately went to Pishor Hospital and there she had a talk with Sangita. She has given evidence on oral dying declaration made to her. In the cross-examination, she has admitted that her parents are also residents of Pishor and all the relatives on parents side of Sangita had immediately rushed to Pishor hospital. She has tried to avoid to admit many things when suggestions were given to her that the persons of neighbourhood of Accused were present in the hospital and deceased was shifted to hospital by her husband and his relatives. It is suggested to her that only husband was living in the house where the incident took place with deceased and others were not living there. PW-1 has denied that suggestion. She has denied the suggestion that Accused No.3 sister of the husband was cohabiting with her husband and she was living in different house though in Pishor. In the recorded dying declaration, there is allegation that Accused No.3 was living with her parents though she was married. Similar is the evidence of Gangaram (PW-2), who is grand father of deceased and father of PW-1. His evidence also shows that information was given to him about the incident immediately after the incident and he had rushed to the hospital from Pishor.

10 In the cross-examination of Gangaram (PW-2), he has admitted that Laxman, father of the husband and Nivrutti, other son of Laxman are having separate houses in the village. He has admitted that Accused No.3, sister of the husband was cohabiting with her husband and she had children from the husband. He, however, tried to say that Accused No.1 husband and his parents were living together. No record is produced to show that they were living in one family when there is an admission that Accused No.2 Laxman was having separate house and his son Nivrutti was living separate from Accused No.1, husband of deceased.

11 Both PW-1 and PW-2 have tried to say that after reaching the hospital, they had made inquiry with Sangita and Sangita had disclosed the incident to them and it was as per the case of prosecution. This circumstance is important as the dying declaration was recorded by Executive Magistrate only after making correspondence with him by police and crime was registered by the police on the basis of the statement recorded by them at 10:30 am. There is clear probability that before recording of the statement of Sangita by police, the mother and grand father of deceased had a talk with her. No record is produced to show that they approached police to give report against the Accused. Only after recording of statement of Sangita by police, the police had requested the Executive Magistrate to record the dying declaration.

12 The dying declaration recorded by police is at Exhibit 36 and the dying declaration recorded by Executive Magistrate is at Exhibit 34. On both the documents, time of recording of dying declarations is not there and the certificate regarding fitness of patient is also not there. It appear that the certificate was obtained by police on separate paper. Both the dying declarations are identical in nature and the oral dying declarations allegedly given to PW-1 and PW-2 were also similar. This evidence is as per the case of prosecution.

13 In the dying declarations, there is no mention as to who extinguished the fire. There is a mention that persons like Gokul and Pandurang shifted Sangita to hospital from Pishor. Gokul (PW-4) is the driver of the jeep and he has given evidence that the husband of deceased had virtually lifted the deceased and he had brought the deceased upto his jeep. Thus, this evidence shows that it is the husband of deceased, who had taken the deceased to Pishor Hospital. This person acted as a Panch witness on the Panchanama of seizure of clothes of deceased also and that Panchanama is proved at Exhibit 22. He is an independent witness and his evidence does not show that the conduct of the husband after the incident was showing that he was involved in the incident.

14 Shankar (PW-6) has a house which is situated in front of the house of Accused No.1. He has given evidence that at about 08:30 am when he was present in his house, he noticed that there was fire in the house of Accused No.1 and Sangita was in flames. He has given evidence in examination-in-chief that he was having bucket of water and he rushed towards the deceased and he poured water on her person. He has given evidence that deceased was shifted to hospital and she was virtually lifted on the back by her husband from the spot of incident. He has given evidence that deceased was taken in the jeep of Gokul and one Pandurang was also present in their company. In the cross-examination, he has admitted that he had noticed that Accused No.1 husband was trying to extinguish the fire with the help of *Chaddar*. He has admitted that at the relevant time, at the house of Accused No.1, the remaining Accused were not present. He is the witness of prosecution and there is no explanation to this evidence given by Shankar (PW-6), which is virtually in favour of the Accused.

15 In the evidence of Suryakant (PW-3), spot Panchanama is produced at Exhibit 20. The spot Panchanama shows that the floor of the room where the incident had taken place, was wet and there was a plastic can having some kerosene. One matchbox was also lying there and it had become wet. Smell of kerosene was there. Earth sample was collected

from this room. Thus, the spot Panchanama also shows that water was poured inside the house to extinguish the fire. There is no mention about extinguishing of fire by anybody in the recorded dying declarations or in oral dying declaration.

16 In the recorded dying declarations, there is vague contention that there was ill-treatment from the Accused to the deceased. The reason for the ill-treatment is not mentioned in the recorded dying declarations. Bhagubai (PW-1), mother has tried to say that there was ill-treatment as the husband had suspicious about the character of deceased. However, the evidence of Bhagubai shows that such disclosure was made by Sangita in the hospital after sustaining the burn injuries. Thus, prior to the date of incident, there was virtually no disclosure to the mother about the ill-treatment. In the recorded dying declarations, there is no mention that the husband had suspicious about the character of Sangita. Other witnesses have also not given reason for ill-treatment if there was any ill-treatment. Tulshiram (PW-8) is the brother of Bhagubai (PW-1) and his evidence is similar to PW-1. His evidence does not show that at any time prior to the incident, deceased had disclosed that there was ill-treatment to her. Even with reference to the oral dying declaration, he has not given evidence that deceased had disclosed that there was ill-treatment to her. Thus, there is no evidence on motive from the witnesses and the reason for the incident

given in the recorded dying declaration is also not that convincing.

17 The conduct of Accused No.1 was not consistent with guilt. He had attempted to extinguish the fire and he had shifted Sangita to the hospital. Information must have been given by Accused No.1 to the relatives on parents side of the deceased about the incident. There is no serious allegations against him even in the recorded dying declaration.

18 The aforesaid circumstances have created probability that the dying declaration, if any, was given by deceased, was not voluntarily given. Further, there is no corroboration to the contents of dying declaration. Most part of the dying declaration like involvement of other Accused is apparently not proved. The dying declaration is required to pass two tests viz test of voluntariness and the test of truthfulness. The dying declarations have failed on both the tests.

19 It is already observed that the opinion of doctor regarding fitness of patient was not obtained on the dying declaration itself. Dr.Vaijinath (PW-5) was working in the Rural Hospital, Pishor. He had informed the police about the admission of Sangita in the hospital. There is separate letter, opinion Exhibit 25 given by this doctor and the request was made by PSI. There is a mention that the patient was fit to give statement. Thus, there is no record to show that the Executive Magistrate had

requested the doctor to give opinion and further the opinion was not obtained on the record of dying declaration. In view of the other aforesaid circumstances, this circumstance has also created serious doubt about the fitness of patient. The neighbour of Accused No.1 has given evidence that deceased had become unconscious.

20 In view of aforesaid circumstances and the reasons, this Court holds that the Trial Court has not committed any error in giving decision of acquittal in favour of the Accused. The view taken by the Trial Court is possible view and there is no possibility of interference in the decision of the Trial Court. In the result, both the appeal and revision stand dismissed.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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