

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

CRIMINAL APPEAL NO.222 OF 2003

The State of Maharashtra,
through Police Station
Officer, Police Station, ...Appellant
Georai, Dist. Beed. (Ori.Complainant)

Versus

- 1) Ram s/o Kachru Soundarmal,
Age: 22 years, Occ. Service,
R/o.: Gevrai, Dist. Beed.
- 2) Dhondabai w/o Kachru
Soundarmal, Age: 66 years,
Occ.Household, R/o.: Gevrai, ...Respondents
Dist. Beed. (Ori. Accused)

Mrs. D.S. Jape, learned APP for Appellant/State
Mr. S.J. Salunke, learned Advocate for respondent
Nos.1 and 2

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATE : 15-06-2018**

JUDGMENT (PER : K.L. WADANE, J.)

The Appellant/State preferred this appeal
against the judgment and order passed by the
learned Sessions Judge, Beed in Sessions Case No.
90 of 2000, by which both the accused
persons/respondents are acquitted for the offence

punishable under Sections 498-A, 302 and 201 read with Section 34 of the Indian Penal Code.

2. The brief facts of the case may be stated as follows:

(I) Vishwanath Sakharam Sable (PW-1) lodged complaint to the Police Station, Georai Dist.Beed on 3rd July, 2000, alleging that deceased Sarika was his daughter. She was given in the marriage at Georai to accused No.1 and their marriage was performed before one year. Accused No.2 is her mother-in-law. Accused Nos.1 and 2 are residing jointly at Georai. In-laws of this PW-1 are also from Georai, so his daughter Sarika used to visit the the house of his mother-in-law namely, Kaushallyabai.

(II) On 29-06-2000 at about 08.00 a.m., his younger brother-in-law - Anil came to Ambad and informed that accused Nos.1 and 2 have set on fire Sarika therefore, she was taken to Hospital at Beed. On the information, this

witness Vishwanath Sable, his wife Sanjivani and two sons namely Ranjit and Sandeep arrived at Beed in the Hospital. They met with Sarika and inquired about the incident, on which she disclosed that accused No.2 - Dhondabai poured Kerosene on her person and accused No.1 - Ram set her on fire by lightening matchstick in the midnight. Before 10 - 11 days, his mother-in-law - Kaushallyabai had been to Ambad and informed that accused Nos.1 and 2 were demanding Rs.15,000/- for the purpose of purchasing a motor-cycle, on which he informed to the Kaushallyabai that he is in difficulty. Within 4-8 days, he will arrange the money. Since the money was not paid, both the accused persons have committed the murder of Sarika by setting her on fire.

3. On the basis of information given by Vishwanath (PW-1), the offence came to be registered bearing CR No.73 of 2000 with Police Station, Georai, initially for committing the

offence punishable under Sections 307 and 498-A read with Section 34 of the Indian Penal code and after the death of Sarika on 3rd July, 2000, the offence was converted for the offence punishable under Section 302 of the Indian Penal Code. After registration of the crime, investigating officer (PW-14) Tanaji Yeshwant Jagdale visited the spot and prepared the spot panchanama. He also prepared the inquest panchanama. The investigating officer recorded the statements of witnesses, including statement of PW-1 Vishwanath Sakharam Sable, PW-4 Kaushallyabai Eknath Surwase (grand mother of the deceased), PW-6 Arun Eknath Surwase (maternal uncle of the deceased), PW-7 Shaikh Jamil Shaikh Babu (driver) and PW-12 Rekhabei Babasaheb Jadhav (neighbour) and PW-17 Venkatesh Chandrayya Bhandari (clerk from Municipal Council, Georai). The investigating officer also prepared the spot panchanama (Exh.55) in presence of Kailas Baburao Mate (PW-5). During the investigation, the dying declaration of the deceased was recorded by the police officer, who was on duty, at Exh.46 so also

the second dying declaration recorded by PW-9 Ganpat, naib tahsildar at Exh.51. After carrying as usual investigation, the investigating officer submitted the charge-sheet against the accused persons in the Court of Judicial Magistrate First Class, Georai, Dist. Beed, who committed the case to the Sessions Court at Beed for its trial. The charge (Exh.9) was framed and its contents were read over and explained to the accused, to which the accused persons have not pleaded guilty and claimed to be tried. In order to establish the offences levelled against the accused persons, the prosecution has examined in all, 18 witnesses.

4. The sum and substance of the allegations are that, accused No.1 was demanding money for purchasing the motor-cycle and on account of the same, there was ill-treatment to Sarika. The second allegation is that on the date of incident at about 11.00 p.m., accused No.2 - Dhondabai poured Kerosene on the person of Sarika and accused No.1 - Ram set her on fire by lightening the matchstick; and thirdly, the accused persons

have tried to destroy the evidence. After recording the evidence of all the witnesses and after hearing both the sides, the learned Sessions Judge, Beed acquitted both the accused from the charges, levelled against them.

5. We have heard the arguments of learned APP Mrs. D.S.Jape for the Appellant/State and Mr. S.J. Salunke, learned Advocate for respondent Nos.1 and 2/accused. Considering the evidence on record and upon hearing both the sides, it is necessary to scrutinize the evidence to know whether, the prosecution has succeeded in establishing the charges levelled against the accused persons.

6. In order to establish the charge of the ill-treatment punishable under Section 498-A, the prosecution has mainly relied upon the evidence of PW-1 Vishwanath Sable, PW-4 Kaushallyabai Surwase and PW-6 Arun Surwase. Kaushallyabai (PW-4) deposed that, Sarika was once driven out of house by the accused persons for not bringing the amount of Rs.15,000/- from her parents. Arun (PW-6)

deposed that on 20-06-2000, Sarika was driven out of the house and stayed for 5-6 days at his place. Vishwanath (PW-1), however, has not deposed anything about this incident. If at all the accused persons were ill-treating Sarika on account of illegal demand, none of the above witnesses complained to the police. This is one aspect. Even the aforesaid witnesses have not disclosed to other relatives about the ill-treatment given by the accused persons to Sarika, till her death.

7. Complainant - Vishwanath (PW-1) admitted in the cross-examination that, accused No.1 along with Sarika had been to his place and thereafter, they returned to matrimonial home willingly and happily. Not only this but he went on saying that he had told Sarika that trifling quarrels are routine phenomena between mother-in-law and daughter-in-law, she should ignore these things and continue to lead matrimonial life.

8. Kaushallyabai Surwase (PW-4) also stated in

her cross-examination that quarrels between mother-in-law and daughter-in-law are the common phenomena on trifling reasons and she advised Sarika to pull on whenever, she used to come to her place. Considering the admissions given by the witnesses, it cannot be said that the prosecution has established the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code against the accused persons.

9. To establish the offence of murder, the prosecution has mostly relied upon the oral evidence of Kaushallyabai Surwase (PW-4), Arun Surwase (PW-6) and Shaikh Jamil Shaikh Babu (PW-7), to whom Sarika has made dying declaration. In addition to that, the prosecution has relied upon the oral evidence of Narayan Sadashiv Takankhar (PW-8) at Exh.43 and dying declaration Exh.46 and oral evidence of Ganpat Dhondiram Yedke (PW-9) and the dying declaration Exh.53.

10. On perusal of the evidence on record, it appears that, when Sarika received burn injuries,

she was taken in the jeep from Georai to Beed, driven by Shaikh Jamil (PW-7), Kaushallyabai Surwase (PW-4) and Arun Surwase (PW-6) accompanied with Sarika. Kaushallyabai (PW-4) deposed that on way to the Hospital, Sarika made a statement to her and others in the jeep that, had they arranged for a sum of Rs.15,000/-, she would not have been put on fire by the accused her husband and mother-in-law. Arun Surwase (PW-6) also states that Sarika told him and other occupants that as they failed to give a sum of Rs.15,000/- to her husband and mother-in-law, she was set on fire by her husband and mother-in-law at about 11.30 to 11.45 p.m. at her house by pouring kerosene on her person.

11. However, it is material to note that driver Sk.Jamil (PW-7) has not supported to the versions of these two witnesses. Sk.Jamil (PW-7) is an independent witness and the fact that he has not supported the oral version of PW-4 and PW-6, speaks otherwise. Though, this witness turned hostile, he did not speak that Sarika made any

statement to Kaushallyabai (PW-4) and maternal uncle Arun Surwase (PW-6) and they have not stated anything in their evidence that they disclosed about the disclosure made by Sarika, till their statements recorded by investigating officer Shrikant Pathak, Dy.S.P.(PW-15). If at all, Sarika made a statement informing about the commission of the crime, these witnesses would have rushed to the police station immediately, at least after admission of Sarika in the hospital. They remained tight-lip till their statements were recorded by Shrikant Pathak (PW-15) after 20 hours of the incident, makes their claim doubtful.

12. Next aspect for consideration is about two dying declarations. The learned APP was repeatedly harping upon dying declarations, made by deceased Sarika to Narayan Takankhar (PW-8) and Ganpat Edke (PW-9). On perusal of the oral evidence of Narayan Takankhar (PW-8), it appears that he was on duty at the relevant time in the police chowki hospital, Beed and according to this witness, he recorded the dying declaration, after verifying

from doctor that the patient was in a position to speak or she was oriented and was able to give statement. This witness further deposed that deceased Sarika made a statement before this witness that on 28-06-2000 at night at about 11.30 or 11.45 p.m., there was a exchange of words between her and her husband, who was sitting outside the house. Dhondabai/Accused No.2, mother-in-law of Sarika poured the kerosene, accused No.1 caught-hold her, ignited matchstick and set her on fire. On getting engulfed in fire, she run out of the house, crying loudly.

13. On perusal of the record, it appears that Sarika was admitted in the Civil Hospital, Beed on 29-06-2000 at about 01.25 a.m. and her first dying declaration was recorded by Narayan Takankhar (PW-8) at about 4.30 a.m. On perusal of the dying declaration (Exh.46), it appears that she stated that accused No.2 poured kerosene on her person and accused No.1 set her on fire by lightening matchstick. From the oral evidence of Ganpat Edke (PW-9), it appears that on receipt of the

requisition letter, he immediately rushed to the hospital at about 05.00 a.m. and firstly went to the room of D.M.O. He was not available. Then he proceeded towards the burn ward, where, he met with D.M.O. and D.M.O. examined Sarika and told him that Sarika was able to make a statement. This witness deposed that Sarika narrated the incident to him, which was reduced into writing. It was then read over to Sarika. Sarika admitted it's correctness thereafter, this witness obtained thumb impression of Sarika. He also signed it. From the dying declaration (Exh.53), it appears that on 28-06-2000 at about 11.30 to 12.00 midnight, accused Nos.1 and 2 were demanding Rs.15,000/- for purchasing the motor-cycle, on which accused No.1 poured kerosene on her person from the stove and accused No.1 Ram set her on fire by lightening matchstick. This dying declaration was recorded at about 05.45 a.m.

14. On perusal of the evidence of the above two witnesses coupled with oral evidence of Kaushallyabai (PW-4) and Arun (PW-6), apparently,

it looks that Sarika on the way to Beed from Georai in the jeep has disclosed about the commission of the offence by accused Nos.1 and 2. However, on perusal of the medical case papers of Sarika, it appears that she was admitted in the hospital at Beed on 29-06-2000 at about 01.25 a.m. At that time, Dr.Dilip Saundale (PW-10) was a duty medical officer, who deposed that at about 04.30 a.m., police constable recorded the statement of Sarika, after her medical examination by this Dr.Saundale. Subsequently, the executive magistrate also recorded the dying declaration. During the cross-examination, this witness states as follows:

"Injured gave me history of accidental burn; at the time of her admission in the ward, which was recorded by me in the admission paper, in my handwriting. I have also recorded in treatment papers that injured and her relatives were not in a position to give definite history."

The aforesaid evidence of Dr.Saundale, if considered coupled with the entries in the case papers, it assumes much importance because these

entries are made immediately after admission of Sarika in the hospital. The concerned medical case records are at Exh.130 collectively, from which, it appears that Sarika was admitted on 29-06-2000 at about 01.25 a.m., having 62% burns superficial deep. Relevant entries in the case paper, read as follows:

"Referred patient from R.H., Georai.

History narrated by patient and relative.

History of accidental burn at around 11.00.

C/o. pain all over body.

Patient and relatives anxious, not giving definite history."

On plain reading of the aforesaid entry coupled with the admission given by Dr.Saundale (PW-10), it appears that immediate version or information about the cause of fire was altogether different from the allegations in the oral evidence by Kaushallyabai (PW-4) and Arun (PW-6) and the version in two dying declarations (Exh.46 and 53). Immediate version or the information narrated by the victim or the relatives assumes much importance, because there was no time to think or

to falsely implicate a person in a case. Further from the above entry, it appears that the relatives were also not in a position to give history. If at all the disclosure of the offence was made by Sarika to Kaushallyabai (PW-4) and Arun (PW-6) on the way from Georai to Beed, then definitely, they could have stated so before the medical officer moment, when Sarika was admitted in the hospital. Further from the endorsement on the case paper immediately next to the above, referred noting by the medical officer, it appears that the information / understanding was given to the relatives that the physical condition of Sarika was a very critical and we think that on getting such information, the witnesses, particularly, Kaushallyabai (PW-4) and Arun (PW-6) must have tutored Sarika to make allegations against accused persons. However, if at all, the accused have committed the offence as alleged, immediately, these witnesses could have stated so before the duty medical officer or it was expected from these witnesses to rush immediately to the

police station rather to the police chowki in the hospital itself. Therefore, natural conduct of the above witnesses appears to be improbable. The initial entry and the history given by the patient and her relatives, falsifies the alleged dying declarations made by Sarika before Narayan Takankhar (PW-8) and Ganpat Yedke (PW-9).

15. We have gone through the entire evidence on record, the reasons recorded by the learned Sessions Judge, while acquitting the accused persons. On re-appreciation of the same, we find that the findings recorded by the learned Sessions Judge, appear to be correct. Therefore, there is no reason to interfere with the same. In view of the above, there is no merit in the appeal and consequently, it has to be dismissed. Accordingly, it is dismissed.

[K.L. WADANE]
JUDGE

[T.V. NALAWADE]
JUDGE