

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

CRIMINAL APPEAL NO. 479 OF 2003

The State of Maharashtra,
Jinsi Police Station,
Aurangabad

... **APPELLANT**
[Ori. Complainant]

VERSUS

Abdul Qayyum S/o Sk. Hassan,
Age 45 yrs, Occu. Service,
R/o. Karim Colony, Aurangabad.

... **RESPONDENT**
[Ori. Accused]

...
Mr. S. J. Salgare, APP for Appellant / State.
Mr. A. S. Barlota, Advocate i/b Mr. S. K. Barlota, Advocate for Respondent.
...

CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 26th September, 2018.

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

. The appeal is filed by the State against the judgment and order of Sessions Case No.93 of 2001, which was pending before the III Ad-hoc Additional Sessions Judge, Aurangabad. The Trial Court

has acquitted the Respondent of the offences punishable under Sections 302 and 498-A of the Indian Penal Code.

2 Both the sides are heard.

3 In short, the facts leading to institution of the appeal can be stated as follow:

Deceased, Najma was the wife of present Respondent. She was brought to the Government Hospital on 6th October, 2000 as she had burn injuries to the extent of 92%. When she was admitted, the history of accidental burns, due to bursting of stove was given. When police officer recorded the statement, she gave account of suicidal burns and when the Executive Magistrate recorded her statement, she disclosed that it is the husband, who had poured kerosene on her person and set her on fire. Initially, the crime was registered for the offence of attempt of murder and after her death, it was converted to make it for the offence of murder.

4 In the dying declarations, the deceased had disclosed that the marriage had taken place about 14 years prior to the date of

incident. On the day of incident, there was quarrel between her and the Respondent on petty count in respect of their son. The husband was blaming that she was not taking proper care of children and then the incident took place.

5 Before the Trial Court, the evidence of only dying declarations of the deceased was given by the prosecution. The fact that she died due to burn injuries, is not disputed. There was no independent evidence on cruelty mentioned in Section 498-A of the Indian Penal Code. Though the daughter of couple was examined, the evidence of this daughter was only on quarrels between the father and mother. Relative of deceased by name Sayeeda was examined to give evidence on cruelty, but the Trial Court has not believed her as the so-called disclosure was made to the relative only few days prior to the date of incident, when there was a cohabitation of around 14 years.

6 When the matter came up for hearing, it was realized that the record of the evidence was destroyed by the Trial Court as per the procedure. Some orders were made by this Court to see that the

evidence given before the Trial Court is collected. Accordingly, copies of deposition were produced on record. On that basis and on the basis of evidence discussed by the Trial Court in the judgment, the matter was heard.

7 The evidence given before the Trial Court consist of atleast three recorded dying declarations. The first dying declaration is in the form of history given by the deceased when she was admitted in the hospital. That MLC is given Exhibit-23. The deceased had disclosed at the time of admission that due to bursting of stove, she had sustained burn injuries. The police officer, who recorded the second dying declaration Abdul (PW-8) gave evidence that Exhibit-22 was prepared as per the disclosure made by the deceased. On Exhibit-22, there was no endorsement of doctor to show that the deceased was fit to make the statement. In this disclosure, deceased gave account that due to some quarrel, which took place on that day, she set fire to herself by using kerosene.

8 There is evidence of Sanjay (PW-2), Executive Magistrate, who recorded the dying declaration, is at Exhibit-14. He

also had not obtained the certificate regarding fitness of deceased from doctor. In this disclosure, Exhibit-14, the deceased disclosed that the husband had set her on fire by using kerosene.

9 There was cohabitation of around 14 years. The three dying declarations are not consistent with each other. The incident took place in broad daylight and it is clear that attempt was made to save her life by shifting her to the hospital. When the issues of deceased were there, they gave evidence only on quarrels. The daughter was aged about 15 years on the date of evidence. She was in the school at the relevant time and she returned at 05:00 pm and after that, she learnt about the incident. No neighbour is examined, who could have said as to whether the husband was there when there was fire. The evidence of Abdul (PW-4), brother of deceased shows that he and the husband shifted her to the Government Hospital. His evidence shows that she disclosed that she had set fire to herself.

10 In view of inconsistencies in the recorded dying declarations and also the oral dying declaration, this Court holds that the view taken by the Trial Court is possible view. There can be many

reasons for sustaining of injuries due to fire. In the present matter, there are other two possibilities also and so, the Trial Court has given benefit of doubt to the Respondent. Interference in that decision is not possible. In the result, the appeal is dismissed.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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