

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.701 OF 2003

The State of Maharashtra,
Through Public Prosecutor,
High Court, Bench at
Aurangabad.

...APPELLANT

VERSUS

Viju @ Vijay Bhanudas Dhotre,
Age-23 years, R/o-Wadarwadi,
Bhingar, Ahmednagar.

...RESPONDENT

...

Mr.C.S. Kulkarni A.P.P. for Appellant-State.
Mr.D.R. Markad Advocate h/f. Mr. N.K. Kakade
Advocate and Mr. A.N. Kakade Advocate for
Respondent.

...

**CORAM: S.S. SHINDE AND
A.M. DHAVALA, JJ.**

DATE : 6TH JANUARY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is filed by the State
challenging the Judgment and order dated 15th July,
2003 passed by 4th Ad-hoc Additional Sessions

Judge, Ahmednagar in Sessions Case No.6 of 2003, thereby acquitting the Respondent/original accused - Viyu @ Vijay Bhanudas Dhotre for the offences punishable under Sections 307, 302, 504, 506 of the Indian Penal Code (For short "I.P. Code").

2. The prosecution case, in nut-shell, is as under :-

(A) On 27th October, 2002 wife of the accused, namely Ashabai Viyu Dhotre, aged 20 years, resident of Wadarwadi, Bhingar, Dist-Ahmednagar was admitted in Booth Hospital, Ahmednagar. The police officer of Camp Police Station, Bhingar, Paradhe (PW-3) recorded statement of victim Ashabai and on the basis of her statement, Crime No.I.113 of 2002 under Sections 307, 323, 504 of the I.P. Code was registered at Camp Police Station on 27th October, 2002 around 1.55 hours.

(B) Ashabai Vijay Dhotre, wife of the accused Vijay @ Vijay complained that she is residing along with her husband Vijay Bhanudas Dhotre, mother in law Chandubai and sister in law Sangita at Bhingar, Tq-Ahmednagar. Her father Vishnu Jetha Pawar is residing at Panchwati, Dist-Nashik. She got married with the accused one year prior to the incident. She is issue-less. Ashabai further complained that on 26th October, 2002 around 8.00 p.m. her husband Vijay Bhanudas Dhotre returned from the work and asked her what food is prepared, to which she replied that she prepared Varan-Dal. Her husband asked Ashabai why she did not prepare meat curry, to which she replied that due to death of his uncle, she did not prepare meat curry. On hearing it, accused started abusing and beating her by fist blows. Thereafter she served food to the accused and went to sleep in angry mood. After finishing his meal, her husband again came and started abusing her. Accused removed quilt from the person of Ashabai and poured kerosene on her

person from the tin and hurled burning Chimani and ran away. Due to this, saree and petticoat of Ashabai caught fire and therefore she shouted loudly. The neighbourers came and extinguished the fire by throwing water.

(C) Ashabai further stated that she had sustained burn injuries to her both hands, back, thighs, stomach etc. She was taken in a Rickshaw to the hospital by her father and father-in-law. The incident occurred at 9.30 p.m. in her residential house. She further stated that her husband was taking doubt about her character and used to beat her. Her husband set her ablaze and hence she has complained against him. She further stated that she was in full conscious state and her statement was true and correct, which was read over to her.

(D) On the basis of the complaint, crime was registered and the investigation was handed over

to A.P.I. Misal (PW-5), who went to the spot on 28th October, 2002 and recorded the spot panchnama. PW-5 Misal seized the pieces of burnt clothes, Chimani, kerosene Can from the spot and recorded the statements of the witnesses. Thereafter he handed over further investigation to A.P.P. Shri Devidas Kale (PW-4), who arrested the accused on 28th October, 2002. PW-4 Kale obtained the police custody of the accused from the Court. During the investigation on 31st October, 2002, around 23.55 hours Ashabai Viju Dhotre died in the hospital. Hence inquest panchnama of her dead body was drawn and later on the dead body was sent for postmortem. After completion of postmortem, the dead body was handed over to the father of the deceased (PW-1). Later on the offence under Section 307 of the I.P. Code was converted to Section 302 of the I.P. Code. The seized property was sent to chemical analysis. The supplementary statements of the witnesses were recorded. The postmortem report was obtained on 1st November,

2002. After completing the investigation, the police submitted the charge-sheet against the accused in the Court of J.M.F.C., Ahmednagar.

(E). Thereafter the case was committed to the Court of Additional Sessions Judge, Ahmednagar. Charge at Exhibit-3 was framed against the accused person and the same was explained to him. The accused pleaded not guilty and claimed to be tried, with the defence of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court acquitted the accused from the offences with which he was charged, as stated herein above in Para-1 of the Judgment. Hence this Appeal.

4. Learned A.P.P. appearing for the State invites our attention to the dying declaration of Ashabai, Exhibit-24, recorded by PW-3 Sharad Nagesh Paradhe and submits that Ashabai in clear

words stated that her husband, accused Vijay poured kerosene on her person and set her on fire. He further invites our attention to the evidence of other witnesses and submits that the prosecution has brought on record sufficient evidence to establish that the accused was responsible for the death of Ashabai. Therefore, he submits that the the Appeal may be allowed.

5. On the other hand, learned counsel appearing for the Respondent/accused, relying upon the findings recorded by the trial Court, submits that plausible view has been taken by the trial Court. He submits that spot panchnama shows that spot of incident was the house of father-in-law of the deceased, whereas Ashabai stated that incident took place in her residential house. He further submits that the doctor who has made endorsement on the dying declaration about the consciousness of Ashabai, was not examined by the prosecution and therefore it is unsafe to rely upon the dying

declaration of deceased and convict the accused. He therefore, submits that since the plausible view is taken by the trial Court, this Court may not cause interference in the order of acquittal.

6. We have considered the submissions of the learned A.P.P. appearing for the State. We have carefully perused the original record so as to ascertain whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

7. We have carefully perused the evidence of all the prosecution witnesses and in particular, evidence of PW-5 Bhagwat Gunaji Misal, the police officer who recorded the spot panchnama. Upon careful perusal of the spot panchnama Exhibit-36, it is specifically recorded that the spot of incident is the house of Bhanudas Dhotre, father-in-law of the deceased. The evidence on record shows that accused along with his wife - deceased

Ashabai, was residing separately and not in the house of his father Bhanudas Dhotre. If the Dying Declaration Exhibit-24 is carefully perused, Ashabai stated that the incident took place in her residential house. Thus, it is clear that the prosecution has not brought on record where exactly the incident took place. In this respect, the trial Court has rightly recorded the finding that the panchnama of the spot does not match with the statement of the deceased where exactly the incident took place.

8. There is only one dying declaration recorded by the police officer PW-3 Sharad Nagesh Paradhe. In the present case, the investigating officer has not recorded the dying declaration of Ashabai through the Executive Magistrate. It is well settled that the dying declaration recorded by the Executive Magistrate stands on much higher footing vis-a-vis the dying declaration recorded by the other officers/persons. The Supreme Court

in the case of Khushal Rao vs. State of Bombay¹, observed that the dying declaration recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon the oral testimony which may suffer from all the infirmities of human memory and human character.

9. PW-3 Sharad, the investigating officer who recorded the dying declaration of Ashabai, has stated in his evidence that before recording the dying declaration Dr. Satish Wakchoure from Booth Hospital, examined the patient and made endorsement that the patient was in a position to make statement and thereafter statement of Ashabai was recorded. However it is surprising to note that the the prosecution has not examined the said

1 A.I.R. 1958 S.C. 22 (V 45 C 4)

doctor who made endorsement on the dying declaration, and therefore the prosecution has failed to establish that Ashabai was conscious and well oriented before recording the dying declaration. Except the solitary dying declaration of Ashabai, that too recorded by the police officer, there is no evidence to connect the accused for the alleged offence. Be that as it may, the only dying declaration of Ashabai recorded by the Investigating Officer, which is not corroborated by any other evidence, does not inspire confidence so as to rest the prosecution case on the said dying declaration and reverse the acquittal of the Respondent-accused.

10. The prosecution has not brought on record that there was ill-treatment or harassment to Ashabai prior to her death at the hands of the accused. The evidence brought on record by the prosecution is too scanty to convict the accused. The trial Court has properly considered all the

evidence brought on record by the prosecution and observed that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubts. Considering all the evidence on record, the trial Court has acquitted the Respondent from all the charges with which he was charged.

11. In the light of discussion herein above, we are convinced that the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such. The view taken by the trial Court is plausible view. Even if it is assumed for a moment that, an another view is possible on the strength of evidence brought on record by the prosecution, the same is no ground to interfere in the order of acquittal when plausible view has been taken by the trial Court.

12. In the light of discussion in foregoing

paragraphs, we are not inclined to cause interference in the impugned Judgment and order of the acquittal. Hence the Appeal stands dismissed.

[A.M. DHAVALA, J.]

asb/JAN18

[S.S. SHINDE, J.]