

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 455 OF 2001

The State of Maharashtra

... Appellant

Vs.

Shankar Tukaram Mohite
Age 35 Years,
R/o Mhasurli Paiki, Kumbharwadi,
Taluka Radhanagari,
District Kolhapur.

... Respondent
(Orig. Accused)

....

Ms. P.N. Dabholkar, APP for the State.
Mr. Shailesh Kantharia for Respondent No.1.

CORAM : PRAKASH D. NAIK, J.

**RESERVED ON : 7th APRIL, 2018
PRONOUNCED ON : 4th JUNE, 2018.**

JUDGMENT :

1. The appellant - State of Maharashtra has preferred this appeal under Section 378 (1) of Code of Criminal Procedure, 1973 against the order of acquittal passed by the learned IIIrd Additional Sessions Judge, Kolhapur in Session Case No. 31/1999.

2. The respondent was prosecuted for the offences under Sections 498-A and 306 of Indian Penal Code. The Trial Court after recording the evidence and statement of the accused under Section 313 of the Code of Criminal Procedure acquitted the accused of the said offences by Judgment and Order dated 13th February, 2001.

3. The prosecution story in brief is as under :-

(a) Deceased Sarita is from village Adur. Her sister namely Akkatai was married to one Pandurang who is resident of Kumbharwadi. Prior to marriage, Sarita used to visit her sister Akkatai where she got acquainted with respondent-accused and thereafter they got married against the will of the parents of the accused. After the marriage, Sarita was cohabiting with respondent-accused at Kumbharwadi.

(b) One month after the marriage, the respondent subjected Sarita to cruelty as he was doubting her chastity. He used to assault her. Thereafter Sarita visited her maternal home and she used to disclose these facts to her parents, brother as well as sister.

(c) On the previous day of the incident which is subject matter of the prosecution, the respondent abused Sarita and assaulted her by fist and kicks and also by stick as he was doubting her chastity. On the day of the incident, the respondent accused slapped her and gave her Rs.10/- and asked her to go to the house of relatives.

(d) On 25.10.1998 after the incident of assault, Sarita poured kerosene on her and lit herself. The fire was extinguished by neighbours. The respondent-accused had left for work and returned after the incident and admitted Sarita at CPR Hospital, Kolhapur.

(e) The Medical Officer at CPR Hospital gave information to police head constable at CPR Hospital Police Chowky. Hence, police head constable recorded the statement of injured Sarita before whom she narrated the incident and torture to which she was subjected by accused. Police head constable on duty at CPR Police Chowky issued letter to Special Judicial Magistrate requesting him to record dying declaration and record the statement of injured Sarita and accordingly her statement was

recorded. All these papers were forwarded to Laxmipuri Police Station and the offence was registered against the respondent. Thereafter Laxmipuri Police Station forwarded paper to Radhnagari Police Station on the ground that the offence had taken place within the jurisdiction of said Police Station.

(f) Investigation was entrusted to PHC Khot. During the investigation Mr. Khot visited the spot, drew the panchanama of the spot in presence of panchas. He seized articles and recorded the statement of witnesses. Inquest panchanama was recorded. Postmortem was conducted. On completing the investigation, the chargesheet was filed before the concerned Court for offences punishable under Sections 498-A and 306 of Indian Penal Code and thereafter the case was committed to the Court of Session.

4. Prosecution examined the following witnesses (1) P.W. No.1 Rama Ganpati Tawar – father of deceased Sarita, (2) P.W.No.2 Anil Ramchandra Tawar brother of deceased Sarita, (3) P.W. No.3 Sham Pitke – Special Judicial Magistrate who recorded dying declaration of deceased, (4) P.W. No.4 Dr. Namita Prabhu, Medical Officer attached to CPR Hospital, (5) P.W.No.5 Balwant

Singhan – PHC attached to CPR Police Chowky (6) P.W.No.6 Satyawar Parab – PHC attached to Radhanagari Police Station, (7) P.W.No.7 Mahipati Ganpati Khot Police Constable attached to Radhanagari Police Station, (8) P.W.No.8 Khanderao Nimbarkar, PHC CPR Police Chowky and (9) P.W.No.9 Jayasingh Yadav, PSI attached to Radhanagar Police Station.

5. The Trial Court on appreciating the evidence adduced by the prosecution viz; oral evidence of the witnesses and the documentary evidence, gave a finding that deceased Sarita met with suicidal death on 28.10.1998. The Court also gave a finding that the prosecution has not been able to prove that deceased was subjected to cruelty one month after her marriage and during the period of cohabiting by the accused till her death by willful conduct which is of such a nature likely to drive her to commit suicide. The prosecution has failed to prove that the accused abetted the deceased for commission of suicide by his willful conduct.

6. Learned APP Ms. Dabholkar submitted that the judgment of the Trial Court is required to be set aside and the accused deserves

to be convicted for the offence punishable under Sections 498-A and 306 of Indian Penal Code. It is submitted that the Trial Court has overlooked the evidence on record and gave a finding which is contrary to the material on record. The judgment of the Trial Court is perverse and contrary to the well established principles of law. It is submitted that the evidence of P.W.No.1 and P.W.No.2 and the statement of the deceased which are treated as dying declaration establishes that the deceased was subjected to cruelty and was compelled to commit suicide. The conduct of the accused towards the deceased has resulted in suicide being committed by deceased and therefore the accused has abetted the suicide. The prosecution has established through evidence both the charges under Section 498-A and 306 of Indian Penal Code. The evidence of P.W.No.1 and 2 has been discarded for no reason. Their evidence render support to the statement in the nature of dying declaration authored by deceased. The prosecution has proved that the accused had subjected the deceased to physical and mental cruelty. The deceased was being harassed and assaulted from time to time as the accused was doubting her chastity. Even on the previous day of incident and on the date of incident the deceased was subjected to assault by the accused who doubted her

character. On the day of incident in the morning, she was slapped by the accused and was asked her to visit her relatives by handing over the currency notes of Rs.10/-. This has compounded the frustration which compelled the deceased to commit suicide. Learned APP Ms Dabholkar further submitted that there was no reason to disbelieve the evidence of the said witnesses as well as the statement of the deceased in the form of dying declaration. The contents of the dying declaration which were recorded by the witnesses examined by the prosecution attribute specific overt act to the accused having subjected the deceased to cruelty which prompted her to take drastic step to commit the suicide. The dying declaration which were recorded immediately after injured was admitted to the hospital inspire confidence and the same ought not to have been overlooked by the Trial Court. It is submitted that the judgment of the Trial Court suffers from perversity and hence the Appellate Court can interfere by invoking the powers under Section 378(1) of the Code of Criminal Procedure, 1973.

7. Mr. Kantharia, learned Advocate appearing for respondent submitted that the Trial Court has appreciated the evidence in

proper prospective and has acquitted the accused. The Court has assigned cogent reason for disbelieving the evidence of the witnesses. The judgment under challenge does not suffer from any infirmity and no interference is warranted in the said decision. The Trial Court has given thoughtful consideration to the evidence on record and assigned reasons to discard the evidence of witnesses and the dying declaration of the deceased. It is further submitted that the statement of the deceased and the witnesses proceeded with the fact that the incident had occurred accidentally on account of bursting of stove. Witnesses thereafter changed the version and urged that the deceased was being subjected to cruelty and she has committed suicide by pouring kerosene on herself. There is variation in the two dying declarations relied upon by the prosecution. The first dying declaration was recorded by the police and the second was recorded by Special Judicial Magistrate. It is submitted that even after recording alleged statement of deceased (first dying declaration), the constable who recorded the said statement had forwarded the letter to Special Judicial Magistrate requesting him to record the statement of the deceased, as she has sustained burn injuries on account of bursting of stove. It is further submitted that the stove was found in the premises where

the alleged incident had occurred which supports the initial version of the witnesses and the deceased. It is submitted that there are material contradictions between the two dying declaration. It is further submitted that the view taken by the trial court is a possible view and there is no reason to set aside the judgment of the Trial Court. There is no perversity warranting interference in the judgment of the Trial Court. Thus, the appeal preferred by the State may be dismissed.

8. I have gone through the evidence on record with the assistance of the learned prosecutor and the counsel for respondent. P.W.No.1 who is father of the deceased has deposed that accused was assaulting his daughter and was doubting her character. This fact was disclosed to him by deceased. On the date of incident after learning about the burn injuries sustained by her daughter he visited CPR Hospital. At that time Sarita disclosed to him that her husband had assaulted her since last two days continuously and she has poured kerosene on her person and lit herself. In the cross-examination he has stated that whenever Sarita used to visit parental home she was taken back by the accused. He further deposed that he cannot assign any reason as

to why it is not recorded in the statement recorded by the police that Sarita had disclosed to him that she was assaulted by the accused continuously for two days and hence she poured kerosene on her person and lit herself. P.W.No.2 who is brother of the deceased has deposed that the accused started assaulting his sister Sarita one month after her marriage as he was doubting her character. Sarita had disclosed this fact to him. On the day of incident he visited CPR Hospital where Sarita was admitted for treatment and at that time she has disclosed to him that on the day of incident her husband slapped her and asked her to go to the house of relatives. She also disclosed that the accused was doubting her character and she was unable to bear it and set herself on fire.

9. P.W.No.3 Mr. Pitke who is Special Judicial Magistrate who had purportedly recorded the statement of Sarita, stated that he was informed to visit the hospital for recording the statement of the injured. He was given one letter by police head constable requesting him to record dying declaration. The patient was examined by doctor who made an endorsement that she was conscious and able to give statement. He recorded the statement of

the injured. He signed the same and obtained impression of right toe of injured Sarita on the statement. The said statement of the deceased was treated as dying declaration. In the cross-examination he stated that patient had sustained 95% burn injuries. He did not call any independent witness while recording the dying declaration. He also stated that saline was administered to the patient to both her hands. P.W.No.4 Dr. Namita has deposed that she has examined the patient and gave her treatment. She examined the patient and found that she was fully conscious and in the state of giving statement and therefore made an endorsement on the top of paper. Special Judicial Magistrate then recorded the statement of the patient. After completion of statement, the same was signed by the Special Judicial Magistrate and she obtained the impression of the right toe of the patient on the said document. The patient was conscious while recording the statement. In the cross-examination, she deposed that at the time of admitting the patient in the hospital, she has disclosed that she sustained burn injuries due to explosion of stove. Intimation in that regard was given to police chowky. She also stated that palm surface of left hand of patient had not sustained burn injuries.

10. P.W.No.5 is the police constable who recorded the first statement of injured Sarita which was treated as dying declaration. According to him, the Medical Officer of CPR Hospital gave wardi relating to admitting of patient namely Sarita on account of burn injuries. He made entry in the register. He went to the patient and recorded her statement and obtained left hand thumb mark of the patient. He also put his signature beside thumb mark of patient. After recording the statement, he informed Special Judicial Magistrate to visit the hospital for recording dying declaration. Thereafter, the said witness reached to hospital where he handed over to him requisition letter requesting him to record the dying declaration of injured Sarita. During his cross-examination he stated that he did not obtain endorsement of Medical Officer before or after recording the statement of Sarita.

11. P.W. No.6 was police head constable attached to Radhanagari Police Station. He registered the offence against the accused. Investigation was handed over to PHC Khot. P.W.No.7 was attached to Radhanagari Police Station. He conducted the investigation. During cross-examination he stated that there are 7 to 8 houses adjoining the spot, he did not record the statement of

neighbours. He found one stove over which one pot was lying containing tea. P.W.No.1 did not state before him that Sarita disclosed to him that she was constantly beaten by accused for two days continuously and therefore she poured kerosene on her person and lit herself. P.W.No.8 was attached to CPR Police Chowky at the relevant time. He stated that brother of deceased was present during the inquest panchanama and disclosed that injured has sustained burn injuries on 25.10.1998 due to explosion of stove. P.W.No.9 was working as P.S.I. at Radhanagari Police Station. He recorded supplementary statement of witnesses and filed the chargesheet. In the cross-examination he deposed that seized articles were not sent to CA for analysis. He did not record the supplementary statement of Akkatai. He did not record the statement of witnesses who are residing adjoining house of accused.

12. On appreciating the evidence on record, I do not find any reason to disturb the judgment of acquittal delivered by the Trial Court. The Court has assigned cogent reasons for arriving at the findings of acquittal. To establish a charge under Section 498-A of Indian Penal Code, the prosecution has relied upon the

deposition of P.W.No.1 and P.W.No.2. Their evidence does not inspire confidence. It appears that injured while being admitted in the hospital had disclosed the history that the incident had occurred on account of bursting of stove. P.W.No.1 and P.W.No.2 who were related to deceased as father and brother has referred to the statement being made by the deceased to them about the alleged ill-treatment meted out to her by the accused. The dying declaration of the deceased states that she had never disclosed the ill-treatment subjected to her by the accused to her family members. If that statement is to be accepted then it is difficult to accept as to how the witnesses have deposed that they were informed about the assault and harassment given to the deceased by respondent-accused. It is also pertinent to note that after the death of deceased, the inquest panchanama was recorded in the presence of P.W.No.2. The contents of the panchanama indicate that the said witness had disclosed to the panchas that the deceased had sustained injuries accidentally on account of bursting of stove. It is also necessary to note that there is major omission in the evidence of P.W.No.1 vis-a-vis the alleged statement made by the deceased to him that she was being assaulted / ill-treated and therefore she has committed suicide.

This version was not reflected in the statement recorded by the police. The Trial court has therefore rightly disbelieved the said witnesses. P.W.No.5 had rightly recorded the statement of the injured immediately after she was admitted in the hospital. The said witness is PHC attached to the concerned Police Station. He did not call any independent persons while recording the statement of injured. He did not obtain the endorsement of the doctor about the fitness of the injured to give statement before recording her statement and even after recording was completed. This is purportedly the first dying declaration. His version and purported recording of dying declaration creates doubt from the fact that even after recording the alleged statement of the deceased he forwarded letter to the Special Executive Officer (Exh.25) wherein it was stated that the dying declaration of the injured is required to be recorded as she sustained burn injuries due to explosion of stove. However, P.W.No.5 was aware about the circumstances in which the incident occurred and knowing the version of the injured from her statement, there was no reason for him to record the contents of the letter Exh.25. It is true that the Trial Court has not given a finding that the injuries were sustained by the deceased accidentally and it was opined that cause of

injuries is pouring of kerosene and setting herself on fire in order to commit suicide. The Trial Court however observed that there is no cogent evidence on record to establish the charge that the deceased was subjected to cruelty or that the accused had abetted her to commit suicide. In the light of nature of evidence before the Trial Court, I do not find any reason to take a different view of the matter.

13. P.W.No.1 has stated that the injured Sarita had disclosed to him in the hospital that her husband was assaulting her for two days continuously and hence she poured kerosene. Apart from the fact that this version is an omission from the evidence of P.W.No.2 it can be seen that according to him when he visited to hospital the injured had disclosed to him that on the day of incident in the morning the accused had slapped her and asked her to go to the house of relatives and he went away for his shop. The said version is contrary to the alleged information given by the injured to P.W.No.1. P.W.No.1 had also stated that two to three months after the marriage of Sarita, the parents of the accused started residing seperately, while in the dying declaration it is stated that they were residing together. P.W.No.3 has stated that after

recording the statement of the injured he put his signature on the statement and obtained the impression right toe of the patient on her statement. He has also stated that patient had sustained 95 percent burns and she had sustained injuries to her both hands. He obtained the impression of right leg toe on her statement. Whereas, P.W.No.5 has stated that he had recorded the statement of the injured and obtained left hand thumb mark of the patient and also put his signature beside the thumb mark of patient Sarita. This version of both the witnesses creates doubt about the genuineness of the dying declaration. The alleged first dying declaration was recorded by P.W.No.5 on 25.10.1998 without any endorsement of Doctor about the fitness of the injured. It is true that by itself would not make the declaration false, but cumulative effect of all circumstances creates doubt about prosecution case. In the said dying declaration it is stated after one month from the date of marriage the accused was doubting her character and started assaulting her. She did not disclose the incident to her parents. On the previous day, the accused had consumed the liquor and started abusing and assaulting her by first blows and stick on the ground that she is having relation with outsider and doubted her character. The in-laws did not question her husband

and they were supporting him, whereas in the second dying declaration purportedly recorded by P.W.No.3 (Exh.20) it was stated that the husband used to assault her after the marriage. Her mother-in-law used to support him. On the previous day, he was drunk and assaulted her. He assaulted her by using stick. She could not give any reason as to why she was assaulted. She has not disclosed about the ill-treatment at matrimonial home to her parent as it was of no use. On account of ill-treatment meted out to her husband she poured kerosene on her and set on fire on herself and at that time her mother-in-law and father-in-law were at home and husband had gone for work. The neighbours extinguished the fire and took her to Kolhapur. She was told by her husband to give the statement that she suffered burn injuries on account of bursting of stove. The said statement was recorded on 25.10.1998 at 4.45 pm till 5.25 pm. Thus, it can be seen that there is variation in the two dying declarations. The reason for assault depicted in the first dying declaration is not reflected in the second dying declaration. However, there is consistency with regard to the fact that she did not disclose the ill-treatment to her parental home. On perusal of evidence of Dr. Namita (P.W.No.4) it appears that according to her she had examined the patient and

found that she was fully conscious and in the state of giving the statement. The said endorsement is appearing on the top of the said document which is at Exh.20. She further stated that after completion of statement, she again examined the patient and found that she was conscious while recording her statement and made endorsement at the bottom. In the cross-examination she has stated that she had examined the patient in the casualty ward before and after recording the statement. She also stated that the consciousness cannot be equated with the fitness of mind. Taking into consideration at the circumstances it cannot be said that the prosecution has been able to prove its case beyond all reasonable doubt.

14. The reasons for acquittal assigned by the Trial Court can be summarised as follows:

(a) The prosecution has not been able to prove that the accused have abetted her to commit suicide and therefore there is no evidence to convict accused for the offence under Section 306 of Indian Penal Code.

(b) The report given by the Doctor, CPR Police Chowky (Exh.22) indicated that the injured had been admitted in the hospital due to 95 percent burns on account of explosion of stove.

(c) Letter given by PHC Singhan (PW No.5) to Special Judicial Magistrate requesting him to record the statement of injured Sarita in which she has mentioned that injured Sarita had sustained 95 per cent burn injuries due to explosion of stove (Exh.25).

(d) The inquest panchanama (Exh.13) disclose that brother of deceased (P.W.No.2) had disclosed before the panchas on 25.10.1998 that her sister was admitted in CPR Hospital due to burn injuries on account of explosion of stove.

(e) The case of Sarita was initially being treated as accidental on account of explosion of stove and accordingly wardi was given by Medical Officer to CPR Police Chowky. However, later on statement of injured Sarita was allegedly recorded by PHC Singhan (P.W.No.5). However, even after recording the statement, he issued letter Exh.25 to P.W.No.3 for recording the statement of injured mentioning that she has sustained burn

injuries due to explosion of stove.

(f) P.W.No.2 has also made a similar version to the panchas during the recording of the inquest panchanama. His statement therefore appears to have been recorded subsequently wherein he has attributed the role of the accused on the basis of purported statement being made by the injured to him with regard to cause of death. It is difficult to believe his version.

(g) The fact of ill-treatment at the hands of the accused to deceased Sarita during the period of cohabitation is required to be connected to the accused having committed the alleged offence, the prosecution has to prove that the willful conduct of accused was of such a nature likely to drive a woman to commit suicide. On perusal of both the dying declaration it can be seen that she has never disclosed the incident of her ill-treatment to her parents or brother. In such situation evidence of P.W.No.1 and P.W.No.2 with regard to torture meted out to Sarita cannot be accepted as truth. Thus, there is no evidence to establish the charge under Section 498-A of Indian Penal Code. There is variation in the written dying declaration of deceased Sarita.

(h) The two oral dying declaration made to P.W.No.1 and P.W.No.2 cannot be accepted as truth in the light of omission and the circumstances creating doubt about the version of the said witnesses.

(i) Even assuming that the deceased was subjected to ill-treatment, the nature of ill-treatment alleged by the prosecution was not sufficient to invoke Section 498-A of Indian Penal Code and it cannot be said that the evidence was sufficient to establish the charge that the accused has abetted the deceased to commit suicide.

15. Taking into consideration all aforesaid circumstances, I am of the opinion that there is no infirmity or perversity in the judgment of the Trial Court. The view taken by the Trial Court is reasonable and cannot be overturned for any reason. In several decisions, the Hon'ble Supreme Court has observed that it is open to the High Court to appreciate the evidence and conclusions drawn by the Trial Court, who, naturally interferes when the judgment of the Trial Court is stated to be perverse. There is no

limitation on the part of the Appellate Court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion. However, while dealing with the appeal preferred by the State against the order of acquittal, it should ensure that there are compelling and substantial reason for doing so. It will have to be seen whether the evidence laid before the Trial Court is purportedly wrong or manifestly erroneous or administratively unsustainable and if the Court answers the above question in the negative, the acquittal cannot be disturbed.

16. On analyzing the evidence in the present case and the findings given by the Trial Court, it cannot be said that the judgment of the Trial Court is erroneous or contrary to the well established principles of law. In the circumstances, this appeal must fail and same deserves to be dismissed. Hence, I pass the following order:

ORDER

1. Criminal Appeal No. 455 of 2001 stands dismissed;
2. No order as to costs.

(PRAKASH D. NAIK, J.)