

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1301 OF 2002

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

1) SHANTABAI KABIR JOSHI)
2) SANJAY KABIR JOSHI)...RESPONDENTS

Mr.S.V.Gavand, APP for the Appellant – State.

Mr.Nitin Sejpal a/w. Mrs.Pooja Sejpal, Advocate for Respondents.

CORAM : A. M. BADAR, J.

DATE : 20th JANUARY 2018

JUDGMENT :

1 By this appeal, the appellant / State is challenging the judgment and order dated 18th May 2002 passed by the learned Ad-hoc Additional District and Sessions Judge, Thane, in Sessions Case No.490 of 2001, thereby acquitting respondents/accused of offences punishable under Sections 498A and 306 read with 34 of the Indian Penal Code.

2 According to the prosecution case, Vandana Sanjay Joshi married respondent no.2 Sanjay Joshi two years prior to the incident in question. Out of this wedlock, she gave birth to a child. Vandana was residing with her husband – respondent no.2/accused Sanjay Joshi and her mother-in-law i.e. respondent no.1/accused Shantabai Joshi at Turbhegaon in Navi Mumbai.

3 According to the prosecution case, both respondents/accused used to ill-treat Vandana by suspecting her character. Respondent no.2/accused Sanjay Joshi had purchased a plot from maternal uncle of Vandana by paying consideration of Rs.4 lakh. This transaction was not approved by respondent no.1/accused Shantabai. She was insisting her son respondent no.2/accused Sanjay Joshi to cancel the said transaction and get the amount back from the maternal uncle of Vandana. On this count also, respondents/accused used to harass Vandana.

4 On 25th July 2001, in the morning hours when Vandana was fetching water, respondent no.1/accused Shantabai

obstructed her by uttering that house does not belong to Vandana and everything belongs to respondent no.1/accused Shantabai. When respondent no.1/accused Shantabai left the house for going to market, Vandana poured kerosene on her person and set herself ablaze. Respondent no.2/accused Sanjay doused the fire by pouring water. Vandana was taken to MGM Hospital at Vashi. On getting information of admission of Vandana to hospital, PW6 Subhash Kokate, Police Sub-Inspector, got her statement (Exhibit 26) recorded through PW1 Dr.Rajesh Iyer, Special Executive Magistrate. On the basis of that statement, Crime No.102 of 2001 for the offence punishable under Section 498A of the Indian Penal Code came to be registered against respondents/accused persons. However, during the course of her medical treatment, Vandana succumbed to burn injuries on 28th July 2001, and that is how, Section 306 of the Indian Penal Code was added to the case diary of the crime on completion of investigation. Both respondents/accused persons were charge-sheeted for offences punishable under Sections 498A and 306 read with 34 of the Indian Penal Code.

5 During the course of the trial, the prosecution has examined in all six witnesses to prove offences alleged against respondents/accused persons. Respondents/accused persons did not enter in defence. After considering the evidence of prosecution, the learned trial court by the impugned judgment and order was pleased to acquit respondents/accused persons of offences alleged against them.

6 I have heard Shri S.V.Gavand, the learned APP appearing for the appellant/State. He argued that evidence adduced by the prosecution demonstrated that Vandana was subjected to cruelty by her husband/respondent no.2/accused Sanjay and mother-in-law/respondent no.1/accused Shantabai, but there is no cross-examination of prosecution witnesses to demonstrate that Vandana was a short tempered lady who indulged in self effacement. Her relatives are pointing out cruel treatment meted out to her by the accused persons by suspecting her character as well as for getting refund of Rs.4 lakh. The learned APP further argued that the learned trial court considered

alleged suicidal note written by deceased Vandana which was not even proved during the course of evidence.

7 Per contra, the learned advocate appearing for respondents/accused persons justified the impugned judgment and order of acquittal by arguing that vague and general allegations are made against the accused persons. There is no evidence to point when incident of cruelty took place and statement of independent witnesses as well as neighbours are not forthcoming to point out guilt of the respondents/accused persons.

8 I have carefully considered the rival submissions and also perused the record and proceedings including deposition of prosecution witnesses as well as documentary evidence placed on record.

9 There is not much dispute about suicidal death of Vandana Sanjay Joshi occurring on 28th July 2001. The defence

has admitted the report of postmortem examination of dead body of Vandana Joshi (Exhibit 17) which shows that Vandana died because of shock following burns. Certificate at Exhibit 16 recording cause of death of Vandana, inquest notes Exhibit 13 are also the documents which are admitted by the defence. These documents point out that Vandana sustained burn injuries and died because of the resultant shock. Spot panchnama at Exhibit 10 is also a document not disputed by the defence. This spot panchnama shows that the incident of sustaining burns by Vandana took place on 25th July 2001 in the kitchen of her residential house. The floor of the kitchen was wet and smelling kerosene. Burnt clothes were found in the kitchen. A can containing about 3 litres of kerosene, a burnt matchstick as well as a matchbox was also found in the kitchen. A chit allegedly written by deceased Vandana was also found in the house. All these articles were seized by the Investigator vide panchanama Exhibit 10. The spot of the incident does not reflect any material to infer that Vandana sustained accidental burns. On the contrary, it is defence of respondents/accused persons that Vandana is indulged

in self effacement by pouring kerosene on her person. This is even reflected from plea of her husband i.e. accused Sanjay Joshi. Hence, it needs to be put on record that the prosecution has established suicidal death of Vandana Sanjay Joshi occurring on 28th July 2001.

10 Now let us examine whether by this evidence, prosecution has established that respondents/accused persons or any of them had subjected Vandana to cruelty, and thereby, instigated, provoked or encouraged her to commit suicide by setting herself on fire.

11 It is case of the prosecution that dying declaration of Vandana came to be recorded officially on the day of the incident i.e. on 25th July 2001 itself through the Special Executive Magistrate at MGM Hospital, Vashi, Navi Mumbai, in presence of PW6 Subhash Kokate, Police Sub-Inspector. It is in evidence of PW6 Subhash Kokate, Police Sub-Inspector, APMC Police Station, Navi Mumbai, that on getting message from the MGM Hospital,

Vashi, regarding admission of Vandana with burn injuries, he went there. Then he came to know that Vandana is shifted to Sion Hospital, Mumbai. Then, he went to Sion Hospital and ascertained from the Medical Officer as to whether Vandana was in a position to give her statement. Then, as deposed by PW6 Subhash Kokate, Police Sub-Inspector, he called the Special Executive Magistrate Dr.Rajesh Iyer and in presence of the attending Medical Officer, Special Executive Magistrate PW1 Dr.Rajesh Iyer interrogated Vandana and under dictation of the Special Executive Magistrate, he took down the dying declaration of Vandana Sanjay Joshi (Exhibit 26A).

12 Exhibit 26A – statement of Vandana Joshi, claimed to have been recorded by PW6 Subhash Kokate, Police Sub-Inspector, was considered as the First Information Report (FIR) and accordingly, Crime No.I-102 of 2001 came to be recorded against accused persons at APMC Police Station. This statement, on death of Vandana Joshi, can be construed as her dying declaration. The statement of deceased Vandana at Exhibit 26A is to the effect that

after her marriage, her husband used to suspect her character. Her husband – Sanjay Joshi had decided to purchase a plot of land from her maternal uncle PW5 Ramnath Patil for a consideration of Rs.4 lakh, but as her mother-in-law respondent no.1/accused Shantabai Joshi had not approved the said transaction, her husband respondent no.2/accused Sanjay Joshi used to harass her for getting back the money. Deceased Vandana in her statement Exhibit 26A has further stated that her husband used to assault her. It is also disclosed in the statement at Exhibit 26A that in the morning hours of 25th July 2001 when Vandana was fetching water, her mother-in-law respondent no.1/accused Shantabai obstructed her by uttering that everything in the house belonged to respondent no.1/accused Shantabai Joshi. There was quarrel and when respondent no.1/accused Shantabai left the house, Vandana committed suicide.

13 Now let us consider whether explicit reliance can be placed on the so called dying declaration at Exhibit 26A. As the dying declaration is generally made in absence of the accused, and

as the accused has no opportunity to cross-examine the declarant, no explicit reliance can be placed on the dying declaration unless and until it gains support and corroboration from other material on record and unless and until its truthfulness is established.

14 PW1 Dr.Rajesh Iyer is the Special Executive Magistrate on whose dictation, PW6 Subhash Kokate, Police Sub-Inspector, has claimed to have written the dying declaration at Exhibit 26A. Evidence of PW1 Dr.Rajesh Iyer, Special Executive Magistrate, shows that he had received a telephonic call on 21st July 2001 from Sion Police station and therefore, he went to Sion Police Station. At Sion Police station, statement of Vandana was read over to him. PW1 Dr.Rajesh Iyer further deposed that he went to Sion Hospital and saw Vandana. She was in a position to make a statement. PW1 Dr.Rajesh Iyer claimed that he took down statement Exhibit 9 of Vandana.

15 Careful scrutiny of PW6 Subhash Kokate, Police Sub-Inspector and PW1 Dr.Rajesh Iyer, Special Executive Magistrate,

unerringly point out that statement at Exhibit 26A dated 25th July 2001 was not at all recorded in dictation of PW1 Dr.Rajesh Iyer. Evidence of PW1 Dr.Rajesh Iyer shows that what was recorded by him was statement at Exhibit 9. Exhibit 9 is not a statement but it is a certificate dated 24th July 2001. This is a certificate issued by PW1 Dr.Rajesh Iyer. Certificate at Exhibit 9 in handwriting of Dr.Rajesh Iyer dated 24th July 2001 is to the effect that statement of Vandana is true and it was shown to the relatives of Vandana, who verified it to be true. PW1 Dr.Rajesh Iyer has not clarified as to which statement of Vandana was found to be true by him. Neither on 21st July 2001 nor on 24th July 2001, Vandana Joshi was admitted to hospital at Sion. She sustained burns on 25th July 2001 and was admitted initially to MGM Hospital, Vashi, and then to Sion Hospital on 25th July 2001. Cross-examination of PW1 Dr.Rajesh Iyer, so also his answers to the court questions makes it clear that he did not record any statement of deceased Vandana. Statement of Vandana was already recorded when he visited the hospital. It does become clear that in every probability, subsequently, PW1 Dr.Rajesh Iyer, Special Executive Magistrate,

had prepared certificate dated 24th July 2001 declaring that statement made by Vandana to police is true, when infact, on 24th July 2001, the incident did not happen nor Vandana had any occasion to make a statement to the police on 24th July 2001. PW6 Subhash Kokate, Police Sub-Inspector, so also, PW1 Dr.Rajesh Iyer, Special Executive Magistrate, do not appear to be witnesses of truth, but it is seen that the record has been created to show that statement of deceased Vandana was got recorded through the Special Executive Magistrate i.e. PW1 Dr.Rajesh Iyer. Hence, it cannot be said that the prosecution has proved dying declaration Exhibit 26A of deceased Vandana Joshi, allegedly recorded by PW6 Subhash Kokate, Police Sub-Inspector through PW1 Dr.Rajesh Iyer, Special Executive Magistrate.

16 The rest of the evidence, in order to establish cruelty and resultant abetment, adduced by the prosecution is coming through mouth of PW2 Narayan Bhagat – father, PW3 Bebitai Bhagat – mother, PW4 Kishore Bhagat – brother and PW5 Ramnath Patil – maternal uncle of deceased Vandana.

17 PW2 Narayan Bhagat had deposed that he visited Vandana four months prior to the incident. At that time, she told that accused no.2 Sanjay used to ill-treat her, beat her and was suspecting her character. This witness further stated that Vandana used to be ill-treated by accused no.1 Shantabai as Shantabai did not like transaction of purchase of plot by accused no.2 Sanjay from her relative and as accused no.1 Shantabai wanted to get back the amount of Rs.4 lakh. As per version of PW2 Narayan Bhagat, in his re-visit to Vandana, she told him about ill-treatment and when he questions accused no.2 Sanjay, accused no.2 Sanjay replied that he can do anything with Vandana.

18 PW4 Kishor Bhagat – brother of deceased Vandana had deposed that four months prior to the incident at her house, his sister told him that accused suspects her character and beats her. PW4 Kishor Bhagat has claimed to have brought back Vandana to her paternal house and has further deposed that thereafter, accused no.2 Sanjay Joshi came and threatened that if Vandana is not sent back, he would divorce her.

19 PW3 Bebitai Bhagat – mother of the deceased deposed that three or four months prior to the incident, Vandana told her that her husband Sanjay was beating and her mother-in-law Shantabai was harassing her by suspecting her character. As per version of PW3 Bebitai Bhagat, at the hospital, Vandana told her that her mother-in-law had asked her not to fetch the water as the house belonged to accused Shantabai. This, according to PW3 Bebitai Bhagat, was the cause of sustaining burn injuries by Vandana, as narrated by Vandana to her.

20 PW5 Ramnath Patil is relative of deceased Vandana and he had settled the marriage. His evidence shows that Vandana did not disclose anything to him but as she was found weak, he questioned accused no.2 Sanjay as to why Vandana was not taken to hospital. Upon that, accused no.2 Sanjay had told him that it was his choice. PW5 Ramnath Patil has further deposed that a plot of land was given to accused no.2 Sanjay for a consideration of Rs.4 lakh and accused no.2 Sanjay was asked to

return the said amount as his mother accused no.1 had not approved the said transaction.

21 This is all that has been deposed against the respondents/accused by the witnesses examined by the prosecution to establish cruelty and abetment to a married woman for indulging in self effacement. What was the type of ill-treatment or cruelty meted out to Vandana by the accused persons is not explained by the prosecution witnesses. They are merely stating in a vague manner that Vandana was subjected to ill-treatment by suspecting her character by the accused persons. Vague allegations of beating are also made by these prosecution witnesses. The evidence adduced by the prosecution further shows that there was some transaction in respect of an immovable property which was not approved by accused no.1 Shantabai. What was the nature of ill-treatment to Vandana for getting back the money involved in this transaction is also not explained by the prosecution witnesses. Even if these averments are accepted as it is, then also, they fall short of establishing legal cruelty to a

married woman. The averments and allegations coming on record from mouth of prosecution witnesses are not of such a nature which could drive a married woman to commit suicide. On the contrary, as seen from evidence of PW3 Bebitai Bhagat – mother of the deceased, deceased Vandana has indulged in self effacement because of petty quarrel with her mother-in-law i.e. respondent /accused no.1 Shantabai on 25th July 2001. The deceased is seen to have been obstructed by respondent/accused no.1 Shantabai – mother-in-law while the deceased was fetching water. Respondent /accused no.1 Shantabai during that incident claimed that the house belonged to her and everything in the house belonged to her. This triggered Vandana to commit suicide by pouring kerosene on her person. This suicide is not common course of event and natural result of normal conduct of a human being. The respondents/accused persons may be the reason for deceased Vandana to commit suicide, but that does not depict abetment by accused persons to her to commit suicide. The evidence on record does not reflect any harsh or harmful conduct of required intensity and persistence by the accused persons in treating deceased

Vandana. The conduct of accused persons, as reflected from evidence of prosecution, does not reflect any legal cruelty as envisaged by explanation to Section 498A of the Indian Penal Code.

22 To crown this all, the spot panchnama at Exhibit 10 recorded by the Investigator shows that on the scene of occurrence, a chit written by deceased Vandana was found. That chit is filed by the prosecution along with the charge-sheet. If the said chit is perused, then it is seen that deceased Vandana has stated that as she is fed up with her life, she is committing suicide and nobody is responsible for her suicide. The chit allegedly written by deceased Vandana categorically mentions that her husband and her mother-in-law had not played any role in commission of suicide by her and they are not guilty. The chit further contains an averment that mother and father of the deceased should not be held responsible for suicide. True it is, that this chit filed was with the charge-sheet and and it was seized from the spot of the incident by the Investigator is not proved, but

it is well settled that unproved documents of the prosecution can be relied by the accused for the purpose of his defence. The Nagpur Bench of Bombay High Court in **Sheo Prasad vs. Emperor**¹ which was subsequently relied by the Madhya Pradesh High Court in **Bharat vs. State of Madhya Pradesh**² had held that documents of prosecution which remained unproved cannot be utilized by the prosecution but it would be wrong to deny the defence of its user. Such documents can be used by the defence, if it supports the defence in any manner.

23 In the result, the prosecution has failed to establish the cruelty and resultant abetment to deceased Vandana by accused persons or any of them. Hence, no infirmity can be found in the impugned judgment and order of acquittal of the respondents/accused.

The appeal is, therefore, devoid of merits and the same is dismissed.

(A. M. BADAR, J.)

1 1939 Cr.L.J. 917

2 1992 (1) Crimes (Part III) 880