

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

CRIMINAL APPEAL NO. 413 OF 2014

Padmabai w/o. Dattatraya Bhojne,
Age 57 years, Occu. Household,
R/o. Village Padali, Taluka Paithan,
District Aurangabad.

... APPELLANT
(Original Accused)

VERSUS

The State of Maharashtra
Through Bidkin Police Station,
District Aurangabad.

... RESPONDENT

...

Mr. Joydeep Chattergi, Advocate for Appellant-accused
Mr. D. R. Kale, APP for Respondent-prosecution

...

**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 13th AUGUST, 2019.

ORAL JUDGMENT : (Per : K.K. Sonawane, J.)

1. The appellant-accused, taking recourse of the remedy under Section 374 of the Code of Criminal Procedure, 1973, (Cr.P.C.), preferred the present appeal and agitated the validity and propriety of impugned Judgment and order of conviction and resultant sentence rendered by the Additional Sessions Judge, Aurangabad, in Sessions Case No. 30 of 2013, dated 01-07-2014. The learned trial Court convicted the appellant-accused for the offence punishable under Sections 498-A and 302 of Indian Penal Code (IPC) and imposed the sentence to suffer rigorous

imprisonment for three years and to pay a fine of Rs.1000/-, in default to suffer further rigorous imprisonment for one month as well as sentence to suffer imprisonment for life and to pay a fine of Rs.5000/- in default to suffer further rigorous imprisonment for six months, on both count, respectively.

2. The victim Rupali was married with Santosh Bhojane resident of Padali village, Taluka Paithan, District Aurangabad, and their marriage was solemnized on 04-11-2011 as per customary rites. After marriage, victim Rupali joined the company of husband Santosh at matrimonial home in the joint family comprising father-in-law Dattatraya and mother-in-law accused Padmabai. The victim Rupali received proper treatment from husband and father-in-law, during her cohabitation at matrimonial home. But, she had an grievance against the appellant-accused. It has been alleged that the appellant-accused used to maltreat and torture her on account of domestic reasons that she was not able to do the cooking work properly, moreover, she could not conceived. She was being abused and harassed by the appellant- mother-in-law. On the fateful day of incident i.e. on 02-10-2012, in the morning at about 10.00 a.m., the victim Rupali had been to field for agriculture operation accompanied with appellant-accused. In the field, the mother-in-law - accused picked up quarrel with the victim Rupali on the ground that she could not do the agricultural work properly and

she is an unlucky woman. She would remain as barren woman. The accused hurled abuses to her. Thereafter, both mother-in-law and daughter-in-law returned to home. But, the matter did not come to an end. There was quarrel once again in between both mother-in-law and daughter-in-law. The accused gave threats of life to the victim Rupali. In the fight, the appellant-accused took the kerosene can from the house and poured it on the person of victim Rupali. Thereafter, the accused put her on fire by igniting match-stick. The victim Rupali received the burn injuries. She was escorted to the hospital by the husband. The concerned Doctors on duty get the victim Rupali admitted in the hospital for her burns. The information was passed on to the concerned police for further process. Accordingly, the police personnel attended the victim Rupali and in presence of medical experts recorded her statement for cause of her burn. The victim Rupali blamed her mother-in-law – accused for her 97 % burns. Unfortunately, during medical treatment, the victim Rupali succumbed to burn injuries.

3. Pursuant to First Information Report (FIR) of victim Rupali, the Police of Bidkin Police Station, Taluka Paithan, District Aurangabad, registered the crime bearing No. 184 of 2012, for the offence punishable under Sections 498-A and 307 of IPC. But, after the death of victim Rupali, the police applied Section 302 of IPC and swung into action. The Investigation Officer (IO)

visited to the spot of incident and drawn spot panchanama. IO recorded the statements of witnesses acquainted with the facts of the case. IO collected the documents of inquest panchnama, P.M. report, C.A. report, etc., and after completion of investigation, IO preferred the chargesheet against the accused bearing Sessions Case No. 30 of 2013. The learned Sessions Judge proceeded to frame charge against the accused, but, she pleaded not guilty and claimed for trial. In order to bring home guilt of the accused, prosecution examined in all ten (10) witnesses in this case. The learned trial Court also recorded statement of accused under Section 313 of Cr.P.C. After hearing both sides, the learned trial Court considered the entire oral and circumstantial evidence adduced on record and held the accused guilty for the offence punishable under Sections 302 and 498-A of IPC and imposed the resultant sentence as indicated above. The validity and propriety of the impugned Judgment and order of conviction and resultant sentence recorded by the learned trial Court is put-in-question in this appeal.

4. Mr. Chatterji, learned counsel appearing for the appellant scathingly assailed that the impugned Judgment and order of conviction and resultant sentence is illegal, perverse and bad in law. The learned trial Court did not appreciate the evidence on record in its proper perspective. The appellant-accused is innocent of the charges pitted against her. She did not commit

any crime, but, she has been falsely implicated in this case. According to learned counsel, the alleged oral and written dying declaration of the deceased, all are the product of her dazed mental condition. The deceased victim received the burns accidentally or in a bid to commit suicide. But, she blamed the accused to wreak her wrath and vengeance. The learned counsel submits that at the relevant time the accused was not at home. But, she had gone to near-by well for fetching the drinking water. The learned counsel drawn attention towards the evidence of defence witness DW-1 Ram Uchit. He submits that after the alleged burning incident of victim Rupali, the DW-1 Ram Uchit rushed to the well on his motor bike and brought the accused to home. The learned counsel also criticized the mode and manner, in which, the police personnel recorded alleged dying declaration (Exhibit-55) of the victim Rupali. According to learned counsel, there are material omissions and contradictions in the evidence of prosecution witnesses. It creates doubt about the presence of accused at the relevant time of incident in the house. The learned counsel urged that the conviction of the accused on the sole basis of alleged oral and written dying declaration is not sustainable. The learned trial Court did not consider the attending circumstances on its strict scrutiny and committed error.

5. The learned prosecutor raised the objection to the

contentions propounded on behalf of learned counsel for appellant-accused and submits that the learned trial Court appreciated the entire facts and circumstances of the case in proper manner. There was no illegality or error committed by the learned trial Court while convicting the appellant-accused in this case. He supported the finding of guilt of appellant-accused expressed by the learned trial Court.

6. We have given anxious consideration to the arguments canvassed on behalf of both sides. We have also delved into the factual score as well as evidence adduced on record. The scrutiny of all circumstances on record reveals that the arguments advanced on behalf of appellant-accused appears much more appreciable and sustainable one. Admittedly, the entire edifice of the prosecution case is rest on written and oral dying declaration made by the deceased Rupali to police personnel as well as her kith and kins.

7. It was not put into controversy that the deceased Rupali received 97 % burn injuries. PW-5 Dr. Vikas Rathod conducted postmortem on the mortal remains of deceased Rupali and expressed the opinion that the victim Rupali succumbed to burn injuries. These material facts are not denied by the appellant-accused. Now the question that emerges for consideration as to whether the death of victim Rupali was homicidal one.

8. As referred supra, except the evidence in the form of written and oral dying declarations, there was no any other sort of evidence available on record for appreciation to evaluate the guilt of the appellant-accused. The PW-10 PSI Shri. Trimbak Rathod testified that after receipt of MLC of patient admitted in the Government Hospital for burns, he immediately rushed to the hospital. Thereafter, in consultation with concerned Doctor on duty, PW-4 Dr. Ladda, the PW-10 PSI Shri. Rathod reduced into writing the statement of victim Rupali in regard to the cause of her burns. The victim divulged the overt-act of appellant-accused and disclosed that the accused, her mother-in-law poured the kerosene oil and set her ablaze. The PW-4 Dr. Ladda certified that the victim Rupali was conscious and in a fit state to give statement. The PW-1 Uttamrao Kadam and PW-3 Rukhminbai, both parents of the victim Rupali and PW-2 Ravindra Deshmukh, relative of the parents of deceased, all deposed about the oral dying declaration made by the injured Rupali about the cause of her burns. The victim Rupali blamed the accused for her burns.

9. It is evident from the testimonies of these witnesses that the victim cast allegations of cruelty on the part of accused which resulted into the overt-act of accused to put her on fire. According to prosecution, it was an homicidal death. The learned trial Court kept implicit reliance on the oral and written dying

declaration of the deceased and held the accused guilty for the offence of murder of deceased Rupali. At this juncture, we are not inclined to substantiate the theory propounded on behalf of prosecution.

10. It is the rule of law that dying declaration is the relevant and material evidence. It is undoubtedly admissible under Section 32 of the Evidence Act and not being a statement on oath, so that, its truth could be tested by cross-examination. Therefore, the Courts have to apply the strictest scrutiny of closest circumspection of the statement before acting upon it. The great solemnity and sanctity are attached to the words of dying man because a person on the verge of death is not likely to tell lies or to concoct a case to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of imagination of the dying person. It is to be noted that once the Court is satisfied that the dying declaration of the deceased is true and believable one, it can base the conviction. But, if it is found suspicious, dubious and does not inspire confidence, it would not be legitimate for the Court to act upon such doubtful dying declaration for adverse inference against the accused. It is imperative for the Court to get satisfy itself that the declaration reflects a truthful version and for that purpose, the Court must subject the relevant evidence to a close and careful scrutiny.

Moreover, if the version contained in the dying declaration is found inconsistent with the actual facts collected during the course of investigation, the dying declaration should not be attached much importance.

11. In the matter-in-hand, the intense scrutiny of the factual score of the mater in the light of evidence on record reveals that the evidence in the form of her dying declaration found not compatible with the attending circumstances prevailing over at the relevant time on the scene of crime. It is obvious from the sketch map shown in the panchnama of spot (Exhibit-41) that the spot of crime comprising two rooms and courtyard, was located in the residential area. There are houses of neighbourer abutting to the spot of incident. Both the rooms located on the spot of incident were having separate access from the courtyard through the independent doors. There was an public road adjoining to the courtyard of the house of accused. We have discussed all these circumstances for the reason that the burning incident of victim as alleged by the prosecution, if in reality, occurred in the house at noon hours, the victim had an ample opportunity to escape from the spot. It has been alleged that the accused being 55 years old lady, alone committed crime by pouring kerosene oil from plastic can and put the young daughter-in-law aged 20 years as per inquest panchnama on fire by igniting match-stick. The evidence of prosecution witnesses

did not unfurl, the circumstances that the victim yelled for help or she made an attempt to come out of the house or to escape from the clutches of accused. The victim Rupali received 97 % burns. It could be visualized that there was no attempt to extinguish the fire. It seems that she herself allowed to engulf in flame. These circumstances smacks about attempt of self-immolation by the victim Rupali.

12. There was no any other sort of evidence available on record to show the presence of accused on the spot at the relevant time of burning incident of victim Rupali. In contrast, the defence witness DW-1 Ram Uchit stated that at the time of incident the accused had gone to well for fetching drinking water. There were no burn injuries to the accused nor her clothes were found smeared with kerosene residues. The PW-3 Rukhminbai attempted to bring on record that her daughter Rupali divulged that after setting her ablaze, the accused closed the door from outside and left the house. But, this sort of deposition of PW-3 Rukhminbai found to be an material omission as she did not state this vital circumstance in her statement before police, nor any other prosecution witnesses including deceased Rupali stated about the same. The entire evidence of prosecution appears silent on the vital issue of presence of accused on the spot at the relevant time of incident.

13. It is true that the victim categorically blamed the accused for her burns, but her version does not inspire confidence for lack of evidence of presence of accused at the scene of occurrence during relevant period. The attending circumstances created clouds of doubt about the veracity of allegation nurtured on behalf of victim for her burns being homicidal one. It would be reiterated that the victim Rupali received the 97 % burns. Had there been any homicidal act to ablaze the victim Rupali, there would have attempt to extinguish the fire. There would have efforts on the part of victim to come out of the house for help from the neighbourer to save her life. The absence of these vital circumstances desist us to draw adverse inference against the accused on the sole basis of dying declaration (Exhibit-55) and oral dying declaration of victim Rupali to PW-1 to PW-3. We find that when the attending circumstances of the scene of crime did not support the prosecution version stated in the dying declaration and there is no other independent evidence available on record to show the presence of accused on the spot of incident at the relevant time, in such circumstances, the suspicious and dubious dying declaration of the victim cannot be safely relied upon to convict the accused. It is unsafe to fasten the guilt on the accused for allegation of homicidal death of victim Rupali. In contrast, the circumstances on record conjures-up an image that there may be an attempt of suicide on the part of victim Rupali.

There was no any possibility of accidental burns to her in this case. When the judicial mind would tend to wobble between two equally plausible hypothesis that whether the death of victim was suicidal or homicidal then the benefit of doubt is to be given to accused.

14. In regard to allegations of cruelty as envisaged under Section 498-A of IPC against the appellant-accused; we did not come across with such accusation to constitute the offence under Section 498-A of IPC against the present accused. It is to be noted that the marriage of the victim Rupali was solemnized on 04-11-2011 and within nine (9) months span of marital life the present burning incident occurred with victim Rupali. She cast allegation that the appellant-accused subjected her to maltreatment for not cooking properly, not familiar with agricultural operations. But, these allegations are not sufficient to constitute the offence under Section 498-A of IPC. The victim Rupali was newly wedded wife, married prior to nine (9) months of incident. Therefore, the attempt or efforts of mother-in-law to teach the domestic affairs to the newly married daughter-in-law would not amount to an incriminating circumstances. It cannot be considered as an cruelty under Section 498-A of IPC for lack of *mens rea* on the part of accused.

15. In the above premises, we are of the considered opinion

that the impugned findings of conviction and resultant sentence against the appellant-accused are perverse, illegal and not within the ambit of law. The evidence of prosecution witnesses adduced on record appears not sufficient to bring home guilt of the accused. There was doubt about the presence of appellant-accused at the scene of occurrence as well as her overt-act of pouring kerosene oil and igniting match stick to set ablaze the daughter-in-law. In such peculiar circumstances, the present appeal deserves to be allowed.

16. In sequel, the appeal stands allowed. The Judgment and order of the trial Court convicting the appellant for the offence punishable under Sections 302 and 498-A of the Indian Penal Code is hereby set aside and quashed. The appellant stands acquitted of both the offences. The appellant is to be released from jail after obtaining from her P.R. Bond of Rs.15,000/- as provided under Section 437-A of Code of Criminal Procedure. Fine amount, if deposited, to be refunded to her.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE