

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

CRIMINAL REVISION APPLICATION NO.364 OF 2005

Laxman s/o. Limbraj Korde,
Age: 30 yrs., Occ:Agri.
R/o. Murud, Tq. & Dist. Latur **..APPLICANT**

VERSUS

1. The State of Maharashtra
Through Police Station
Bembli, Tq.Osmanabad
2. Santosh s/o. Kalyanrao Kshirsagar,
Age: 26 yrs. Occ:Drive & Agri.
3. Bhalchandra s/o. Kalyanrao Kshirsagar,
Age: 40, Occ:Agri.
4. Sumanbai w/o. Kalyanrao Kshirsagar,
Age: 67, Occ: Household.
5. Chhayabai w/o. Bhalchandra Kshirsagar,
Age: 32, Occ: Household.

All R/o. Nitali, Tq. &
Dist. Osmanabad. **.. RESPONDENTS**

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Mr.S.J.Salunke, Advocate for the applicant.
Mr.S.P.Sonpawale, Additional Public
Prosecutor for respondent no.1–State.

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CORAM: V.M.DESHPANDE, J.

DATE : 09.04.2019

ORAL JUDGMENT:

1] By this Revision Application, Laxman Limbraj Korde, the brother of the deceased, who lodged the First Information Report [Exhibit-36] questions the correctness of the judgment and order of acquittal passed by the learned 1st Ad-hoc Additional Sessions Judge, Osmanabad, dated 30th July, 2005 in Sessions Case No.33 of 2005, whereby the Court below acquitted respondent nos.2 to 5 for the offences punishable under Sections 498-A, 306 r/w. 34 of the Indian Penal Code.

2] I heard Shri S.J.Salunke, learned counsel for the applicant – first informant and Shri S.P.Sonpawale, learned Additional Public Prosecutor for respondent no.1 – State. Though respondent nos.2 to 5 were duly served, nobody represented them. I have also

perused the record and proceedings with the assistance of the learned counsel for the applicant and the learned Additional Public Prosecutor for respondent no.1 – State.

3] The respondent no.2 – Santosh got married with deceased Kamal on 20th May, 2002. The respondent no. 3 – Bhalchandra is the brother of respondent no.2 – Santosh. The respondent no.4 – Sumanbai is the mother of respondent no.2 – Santosh and mother-in-law of the deceased, whereas the respondent no.5 – Chhayabai is the sister-in-law of the deceased.

4] According to the prosecution case, the incident occurred on 10.05.2004, in which the deceased suffered burn injuries. She died on 17.05.2004 in the Hospital known as 'Lahane Plastic & Cosmetic Surgery Center & Dental Clinic Latur Burn Care Center'.

5] The First Information Report is lodged on 19.05.2004, in which the allegations were made against respondent nos. 2 to 5 that they used to demand money, and due to which, she was subjected to cruelty ultimately she committed suicide. The First Information Report was recorded by PW-4, Uttam M. Ghule, a PSI. He conducted the investigation and filed the charge-sheet in the Court of jurisdictional Magistrate for the offences punishable under Sections 498-A, 306 r/w. 34 of the Indian Penal Code. Since the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The charge was framed against respondent nos.2 to 5 for the offences punishable under Section 498-A, 306 r/w. 34 of the Indian Penal Code. They denied the said charge and claimed for their trial.

In all four witnesses were examined by the prosecution, namely, PW-1 Dr.Vithal

P.Lahane, PW-2 Suryaji N. Nagargoje, who recorded the dying declaration [Exh.32], PW-3 Laxman Limbraj Korde – the first informant and PW-4 Uttam M. Ghule, the Investigating Officer. The various documents were also relied upon by the prosecution, which were proved during the course of trial. The learned Judge of the Court below, after appreciating the prosecution case, found that the prosecution has failed to prove its case against respondent nos.2 to 5 and the death was due to result of pure accident.

6] The State chose not to prefer any Appeal against the judgment and order of acquittal and the brother of the deceased is before this Court.

7] The submissions of Shri S.J.Salunke, learned counsel for the applicant is that if the statement [Exh.32] recorded by PW-2 S.N.Nagargoje, is appreciated in its correct

perspective, then the respondents are the persons, who are the responsible for abetting her to commit suicide. He, therefore, submitted that the Criminal Revision Application be allowed.

8] In the present case, there are following dying declarations:-

- i] Exhibit-32 dated 12.05.2004, recorded by PW-2 S.N.Nagargoje.
- ii] Exhibit-28 recorded by ASI, V.V.Gaikwad, which was admitted during the course of trial by the defence.
- iii] Exhibit-29 recorded by the Special Executive Magistrate, S.G.Mulla, admitted during the course of trial.

Apart from these dying declarations, there is a note at Exhibit-24, an intimation given to the Police Officer, Latur by the Lahane Hospital.

9] From the aforesaid it is clear that in this case there are multiple dying declarations. The law of multiple dying declarations is well crystallized by the numerous decisions of this Court. The Bombay High Court, Bench at Aurangabad, in the case of *Suresh s/o. Arjun Dodorkar [Sonar] Vs. State of Maharashtra* reported in 2005 All.M.R. [Cri.] 1599, in which the Division Bench of this Court has ruled as under:

"In cases where there are multiple dying declarations and acceptance of one dying declaration falsifies the other, the dying declarations have to be necessarily rejected."

10] Keeping the aforesaid principle in mind let us examine the documentary evidence on record, there is no eye witness account in the present prosecution case.

11] Exhibit-24, which is an intimation given by the Hospital to the Police Officer, Shivaji Nagar Police Station, % Latur, reads as under:

सदरील रूग्ण स्वयंपाक करत असताना चुलीतील जाळ
साडीला लागल्याने जळाली आहे. ती ६७% जळाली आहे.
ही घटना तिच्या राहत्या घरी झाली आहे.

12] Exhibit-32 is recorded by PW-2, S.N.Nagargoje, a PSI. He recorded the statement of Kamal, the deceased, after getting fitness certificate from Dr.Vithal Lahane PW-1. In the statement, it is stated by the deceased that she was having trouble at the hands of respondent nos.2 to 5, and therefore, she committed suicide.

13] Exhibit-28, which is admitted during the course of trial, was recorded by another ASI, V.V.Gaikwad, and it was recorded on 10.05.2004, thus, prior to recording of the statement of Kamal, which is at Exhibit-32.

Exhibit-28 shows that on the date of incident due to accident, her saree came in touch with the fire, resultantly, she suffered burn injuries. In dying declaration recorded by S.G.Mulla, the Special Executive Magistrate, which is at Exhibit-29, which is also admitted during the course of the trial, would show that, she has not made any allegation against her husband, her brother-in-law and his wife, however, she made a statement that due to quarrel with her mother-in-law, she poured kerosene on herself and from *Chimny* set her ablazed. Thus, this particular dying declaration though absolves her husband, her brother-in-law and his wife, attributes that due to ill-treatment at the hands of her mother-in-law, she poured kerosene. Exhibit-30 is the spot panchanama, recorded during the course of accidental death proceedings, in that the Officer, who executed the said panchanama, did not notice

the presence of any *Chimny*, however, found that the presence of electric burner, which has reference in the dying declaration at Exhibit-28. This aspect was very properly considered by the learned Judge of the Court below, and therefore, has rightly rejected the dying declaration Exhibit-32, which has reference that she poured kerosene on herself. Further there is no C.A. report to show that any traces of kerosene were found on the person of the deceased. In view of the aforesaid position emerging on record, in my view, the Court below has not committed any mistake or wrong for acquitting the respondent nos.2 to 5 for the offence punishable under Section 306 of the Indian Penal Code.

14] In so far as the offence under Section 498-A of the Indian Penal Code is concerned, though only the evidence of Laxman, he is the brother of the deceased,

would show that in spite of the fact that he got knowledge about the incident dated 10.05.2004 on the very same day, for 9 days he kept mum and did not offer any explanation for keeping mum and on 9th day he approached the Police and lodged the First Information Report against respondent nos.2 to 5 making allegations of demand, etc. The prompt lodgment of the First Information Report always rules out the possibility of the false implication and embellishment. It was also open for the Laxman to offer explanation during trial also, however, he chose not to offer any explanation for lodging the First Information Report after 9 days. In that view of the matter, there is no reason for me to take other view than the view taken by the learned Judge of the Court below for acquitting the respondent nos.2 to 5 from the offence punishable under Section 498-A, 306 r/w.34 of the Indian Penal Code.

Consequently, the conspectus of the
aforesaid, which leads me to pass the
following order:

ORDER

i] The Revision Application is
meritless, and it is rejected.

ii] Rule is discharged.

[V . M . DESHPANDE]
JUDGE

DDC