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

CRIMINAL REVISION APPLICATION NO.481 OF 2004

Sou. Savitrabai w/o Arjun Tikone
Age 58 years, Occu. Household,
R/o Vesdare, Taluka Parner,
District Ahmednagar

... APPLICANT

VERSUS

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad)

... RESPONDENT

.....
Shri S.S. Jadhavar, Advocate for applicant
Mrs. R.P. Gaur, A.P.P. for State
.....

CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 10th July, 2019

Date of pronouncing judgment : 17th July, 2019

J U D G M E N T:

Correctness, legality and propriety of the judgment of conviction and order of sentence, dated 31/1/2003, passed by learned 4th Ad-hoc Assistant Sessions Judge, Ahmednagar in Sessions Case No.163/2002, and confirmed by the Additional Sessions Judge, Ahmednagar by judgment and order dated 8/12/2004 in Criminal Appeal No.7/2003 is questioned in this

Criminal Revision Application.

2. Facts giving rise to the present Criminal Revision Application are as follows :-

The applicant before this Court is the mother-in-law of deceased Usha. Deceased Usha Gangaram Tikone was admitted to Civil Hospital, by 10.40 p.m. on 3/9/2002 as she had suffered extensive burns. Her statement (F.I.R.-cum-Dying Declaration) was recorded by Police Constable Shivaji Sathe (P.W.7) by one 1.00 a.m. on 4/9/2002. Deceased Usha was married to Gangaram, son of Savitribai and Arjun (both accused before the trial Court), about two years before September 2002. Both Gangaram (husband of Usha) and his brother Anil were staying in Mumbai as they were employed there. The deceased Usha would live along with her parents-in-law at the matrimonial home at village Vesdare, Taluka Parner, District Ahmednagar. Usha's parents would reside at village Bhalwani, Taluka Parner, District Ahmednagar.

The deceased was sitting outside her house. It was about 8.30 a.m., the applicant and her husband (parents-in-law of Usha) returned from temple and started abusing her. They questioned her as to whom she was waiting for. The deceased

told the applicant that she was on and, therefore, requested her to do the household work. Thereafter, the deceased Usha went to the field and returned by 7.30 p.m. The parents-in-law again started abusing her. Usha, therefore, emptied kerosene can on her person and set herself ablaze. She was immediately rushed to Civil Hospital, Ahmednagar. The Police Constable Shivaji (P.W.7) recorded her statement-cum-First Information Report (F.I.R.)-cum-dying declaration. In her statement, Usha narrated her woes. Thereafter Usha's statement-cum-dying declaration was recorded by Special Executive Magistrate Ramchandra Dimble (P.W.4) Crime vide C.R. No.I-199/2002 was registered under sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code at Tophkhana Police Station, Ahmednagar. After due investigation, the parents-in-law of deceased Usha were proceeded against.

3. After full dress trial, the 4th Ad-hoc Assistant Sessions Judge, Ahmednagar (trial Court) convicted and sentenced both the accused for the offences punishable under Sections 498-A and 306 read with Section 34 of the Indian Penal Code. The applicant and her husband were sentenced to undergo rigorous imprisonment for one year and two years for the offences punishable under Sections 498-A and 306 of the Indian Penal Code respectively.

4. Criminal Appeal No.7/2003 from conviction was preferred before the Sessions Court, Ahmednagar. The Additional Sessions Judge, Ahmednagar, by judgment and order dated 8/12/2004, partly allowed the appeal. The father-in-law (accused No.2) came to be acquitted, maintaining the conviction and sentence imposed against the applicant herein (accused No.1). This is how the applicant is before this Court.

5. Shri S.S. Jadhavar, learned counsel for the applicant, at the outset, submitted for taking a lenient view in the matter. He urged for release of the applicant under the Probation of Offenders Act. According to learned counsel, the applicant is more than 70 years old lady. 17 years have passed after the alleged offence took place.

The learned A.P.P., on the other hand, left it to the discretion of this Court.

6. Before the trial Court, 8 witnesses were examined and number of documents were tendered in evidence. P.W.1 Deubai Rokhale and P.W.2 Ramdas Tikone were the mother and brother of the deceased Usha. P.W.3 Deepak Rokhale was the neighbour of the deceased. P.W.4 Ramchandra Dimble, Special Executive

Magistrate, recorded the dying declaration, Exh.17. P.W.7 Shivaji Sathe was examined in proof of the F.I.R.-cum-dying declaration (Exh.28). P.W.6 - Dr. Sunil Pokharna conducted the post mortem.

7. Admittedly, the deceased set herself ablaze at her matrimonial home on 3/9/2002 by 8.30 p.m. Her husband and brother-in-law were staying in Mumbai. The deceased would stay with her parents-in-law at her matrimonial home. The deceased was immediately rushed to the Civil Hospital, Ahmednagar. The case was based on oral as well as two written dying declarations. The brother and mother of the deceased had rushed to her matrimonial home on hearing her to have suffered extensive burns. Both of them had accompanied the deceased to the hospital. It is their case that, on way to the hospital, the deceased told them to have set herself ablaze as the ill-treatment meted out to her by her parents-in-law became unbearable. As stated above, at the hospital, P.W.7 recorded F.I.R.-cum-dying declaration. Within hours thereafter, the Special Executive Magistrate P.W.4 - Ramchandra Dimble recorded the dying declaration of the deceased.

8. Both the courts below found the testimony of P.W.1 and P.W.2 to be of evidence of interested witnesses. So far as

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regards written dying declarations are concerned, I found them to be grossly inconsistent with each other. One even may say that, both the dying declarations are mutually exclusive. In view of the submissions of the learned counsel for the applicant, I have scrutinised the evidence so as to find whether I would be justified in reducing the sentence of the applicant to the period already undergone or releasing her on executing a bond of good conduct. The F.I.R.-cum-dying declaration recorded by P.W.7 Shivaji Sathe records :-

"आज दि. ३/९/०२ रोजी वार मंगळवार रोजी मला एम.सी. झाल्याने मी बाहेर बसले होते तेव्हा माझी सासू व सासरा असे सकाळी ८ ते ८.३० वा. च्या सुमारास मंदिरातून जावून आले व मला बाहेर बसलेले पाहून नेहमी सारखे मला शिव्या देऊ लागले की तू बाहेर का बसली तुझे कोणीही येणार आहे का असे म्हणून माझी सासू व सासरे दोघे घरात गेले. तेव्हा मी बाहेर माझे सासूस सांगितले की मला शिवायचे नाही त्यामुळे तुम्ही घरातील काम उरकून घ्या असे म्हणाले व मी बाहेर बसले तेव्हा माझी सासू व सासरा घरातून मला नेहमी सारख्या शिव्या देत होते. मी माझे आवरून भाकर घेऊन आमचे वावरात लसूण लावण्यासाठी निघून गेले व ७ ते ७.३० वा. च्या सुमारास पुन्हा वावरातून घरी आले तेव्हा माझे सासू व सासऱ्याने पुन्हा मला शिवीगाळ करण्यास सुरु केली त्याचा मला राग येऊन मी घरातील रॉकेलचा ड्रम उचलून स्वताहा पेटवून घेतले. नंतर मला येणारे जाणारे लोकांनी विझविले. नंतर मला समजले की माझा चेहरा, गेला, छाती, पोट, दोन्ही हात, दोन्ही पाय व पाठ असे भाजून ठिकठिकाणी जखमा झाल्या आहेत. नंतर मला माझा सासरा याने उचलून आज दि. ३/९/०२ रोजी रात्र ९ तो ९.३० वा. चे सुमारास सिव्हील हॉस्पि. अ.नगर येथे

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औषोधोपचार कामी दाखल केले आहे. सादर प्रकार हा माझे सासू सासरे हे नेहमी त्रास करत असल्याने व आज सहन न होतील अशा शिव्या दिल्याने मी यांचे तासंतास कंटाळून स्वताहा पेटवून घेतले आहे.”

9. The aforesaid dying declaration indicates that, the applicant and her husband would ill-treat the deceased by abusing her. On the fateful day, the deceased was sitting outside her matrimonial home. The applicant and her husband returned from temple by 8.30 in the morning. Both the applicant and her husband abused her and questioned whom she was waiting for. Thereafter the deceased informed the applicant that she was undergoing her periods and was, therefore, unable to do the household work. She, therefore, requested the applicant to do the household work. Thereafter, the deceased went to her field for agricultural operations. She returned home by 7.30 p.m. The applicant and her husband again started abusing her. The deceased got annoyed, thereby she picked up a kerosene can and emptied it on her person. She set herself ablaze. It is further alleged that, the applicant and her husband would starve the deceased and physically assault as well. As the ill-treatment became unbearable, the deceased set herself ablaze.

10. The dying declaration (Exh.23) recorded by the Special Executive Magistrate Ramchandra Dimble (P.W.4) reads :-

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"ही घटना काल रात्री ८ || वाजता झाली. सासूचे व माझे भांडणे नेहमी होतात. भांडणे स्वयंपाकावरून व इतर कामाविषयी भांडणे होतात. मला राग आल्याने मी घरातील रॉकेल अंगावर टाकून पेटवून घेतले. मी ओरडले व वरची मुलगी आलीच नाही. तिचे आजोबा आलेत व मला विझविले. मला पाणी प्याला दिले. त्यावेळी सासू सासरे घरी नव्हते. विझविल्यानंतर सासू सासरे गावातून आले व त्यांनी मला नगरला दवाखान्यात आणले. माझे माहेरी आई वडील यांना कळविले व ते दवाखान्यात आले. माझी सासू सासरे भांडत होते. म्हणून माझी त्यांच्याविषयी तक्रार आहे. त्यामुळे मी पेटवून घेतले. माझे शिक्षण १२ वी झाली आहे."

The aforesaid dying deceased indicates that, there used to be frequent quarrels between the deceased and the applicant over cooking and other household work. The deceased got annoyed of such quarrels and, therefore, set herself ablaze. Her neighbour residing upstairs came her home and doused the fire. The applicant and her husband were not at home. Both of them came after the fire was doused. They brought her to the Civil Hospital. The reason behind setting herself ablaze is stated to be, the applicant and her husband would frequently quarrel with her.

11. The aforesaid two dying declarations are found to be mutually exclusive. The first one has been recorded by police official, the second by Special Executive Magistrate, without appreciating both dying declarations. Suffice it to say that, such nature of evidence in the case leads me to interfere with the

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quantum of sentence imposed on the applicant by the trial Court and confirmed by the appellate Court. I propose to allow the Revision Application, maintaining the judgment and conviction, but reducing the sentence to the period already undergone. The record indicates that, the applicant was behind the bars for 22 days. Hence, I pass the following order :

ORDER

Criminal Revision Application is partly allowed.

The judgment and order of conviction dated 31/1/2003, passed by learned 4th Ad-hoc Assistant Sessions Judge, Ahmednagar in Sessions Case No.163/2002 is maintained. However, the sentence of imprisonment imposed on both counts is reduced to the period already undergone. Rest of the order of sentence, passed by the trial Court to stand unaltered.

The Criminal Revision Application stands disposed of in above terms.

(R.G. AVACHAT)
JUDGE

fmp/-