

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

CRIMINAL APPEAL NO.326 OF 1997

1. Nana Dhondiram Lad
Age : 65 years

2. Sulochana Nana Lad
Age : 46 years

Both resident of 238-A,
Apte Nagar, Kolhapur

.... Appellants

Vs.

The State of Maharashtra

.... Respondent

Mr. Shekhar A. Ingawale for the Appellants.
Ms. Pallavi Dabholkar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 15th March 2019

JUDGMENT :

1 Heard the Counsel.

2 The appellants herein are convicted for the offences punishable under Sections 498-A and 306 read with 34 of Indian Penal Code by the Additional Sessions Judge, Kolhapur vide

judgment and order dated 23rd May 1997 and sentenced to suffer rigorous imprisonment for six months, to pay a fine of Rs.100/- each, in default to suffer rigorous imprisonment for seven days and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.100/- each, in default to suffer rigorous imprisonment for seven days respectively. Hence, this appeal.

3 Such of the facts are necessary for the decision of this appeal are as follows :

The son of the present appellants namely Pravin was married to Ujwala sometime in the year 1993. Ujwala was residing in the joint family alongwith her in-laws and her husband. She used to visit her maternal house intermittently. She had disclosed to her parents that she is happy with her husband but she is being ill-treated and harassed at the hands of her in-laws, so much that they were not providing her proper meals. She had informed her husband about the same, but he could not afford to confront his parents about the same and therefore had maintained silence. On 6th April 1995,

Ujwala had immolated herself in the bathroom. Her husband had attempted to extinguish the flames by covering her with a blanket and thereafter had admitted her in CPR hospital. She succumbed to the burn injuries on 8th April 1995.

4 The case rests upon the two dying declarations, which are at Exhibits 26 and 38. Soon after Ujwala was admitted in CPR hospital, her statement was recorded by Head Constable, Pandurang Ganpat Chopade, who was posted at CPR Hospital. In the said statement, she had categorically stated that her in-laws used to abuse her and raise quarrels with her for no reason. Her husband used to maintain her properly. That on 6th April 1995 also she was being abused by her in-laws and therefore being fed up of the ill-treatment at the hands of her in-laws, she had immolated herself at about 11.20 pm. The statement was recorded on 7th April 1995. An endorsement of the Doctor on Exhibit 38 shows that he had certified the consciousness and orientation of the injured at about 11.45 pm., however, the Head Constable has written that the statement is recorded on 7th April 1995. It is pertinent to note that the said

statement is recorded in the presence of the father of the injured Ujwala and he signed on the said statement by endorsing her signature. The Head Constable had taken her thumb impression on Exhibit 38. The investigating officer had solicited the services of the Executive Magistrate in order to record dying declaration and the same was recorded on 7th April 1995 at about 00.20 am. She had reiterated her allegations, however, before the Executive Magistrate, she had elaborated that this was her second marriage. At the time of marriage, she was informed that her husband had abandoned his first wife as she was not a good housewife. She has further elaborated that at the time of incident, she was carrying pregnancy of three months. The post-mortem was conducted on 8th April 1995 between 10.45 to 11.45 pm. The post-mortem notes do not indicate as to whether uterus was gravid or non-gravid. On the basis of the dying declaration, Crime Number 51 of 1995 was registered against the appellants for the offences punishable under Sections 306 and 498-A read with 34 of Indian Penal Code. The charge-sheet was filed on 16th May 1995. The case was registered as Sessions Case No. 36

of 1996. The prosecution has examined eight witnesses to bring home the guilt of the accused.

5 PW-1, Kerba Nagu Mahadik happens to be father of the deceased-Ujwala. He has deposed before the Court that on every visit to her maternal house, Ujwala had disclosed to them that she is being harassed at the hands of her in-laws. According to him, on 6th April 1995 at about 12.30 in the night, he had received a message that Ujwala had sustained burn injuries and is admitted in the hospital. As far as the incident in question is concerned, according to PW-1, soon after receiving the message, he had visited the hospital. He had talked with his daughter Ujwala. He has further stated that he had informed the Police that she had complained to him that at the relevant time, she was insulted and abused by the appellants and therefore, she had attempted to commit suicide. It is pertinent to note that according to PW-1 by the time, he had reached the hospital, statement of Ujwala was already recorded by the Executive Magistrate. He has feigned ignorance about the signature on the statement recorded by the Police. However, it is a matter of record

and upon perusal of Exhibit 38, it is clear that he had endorsed the statement of his daughter at Exhibit 38.

6 PW-2, Sonabai Hari Faratte happens to be the neighbour of parents of deceased-Ujwala and she has been examined by the prosecution only to support the contentions of PW-1. PW-3, Aruna Mahadev Mahadik happens to be the paternal aunt of deceased-Ujwala. Since this Court has observed that the entire case rests upon dying declarations at Exhibit 28 and 38, it would be necessary to ascertain as to whether the two statements are recorded in a manner, which would inspire the confidence of the Court and that are in the words of the deceased.

7 PW-4, Eknath Dattatraya Nikam was working as Nayab Tahsildar at Shirol, District Kolhapur. Upon receipt of the request letter, which is at Exhibit 25, he had reached CPR hospital in order to record the statement of Ujwala. He had taken the opinion of the Doctor about the fitness, consciousness and orientation of Ujwala before recording the statement. The said endorsement is at Exhibit

35. He had taken abundant caution while recording statement of Ujwala. He had asked Doctor to leave the ward while recording the statement and thereafter recorded her statement. It is elicited in the cross-examination that since the statement was recorded after midnight, the date as 7th April was mentioned in the dying declarations. He has asserted that Ujwala was not on saline when he had visited there. The relatives were not present.

In the cross-examination, he has stated that he had not obtained the first endorsement from the Doctor about the consciousness and physical fitness of the said patient to give the statement. As observed earlier, there is an endorsement of Dr. Patil. at 00.20 am. in respect of the consciousness and orientation to give the statement. He had not enquired with the Doctor as to whether the patient was administered any antibiotic or pain killer or sedative. He has admitted that he has not endorsed on the said dying declaration that he had readover the statement to the injured and she had endorsed it to be true and correct. On perusal of Exhibit 26, it can be seen that the said statement is signed by the injured.

8 PW-5 was attached to Juna Rajwada police station and had received copy of the statement recorded by the Head Constable. Another relevant witness would be Dr. Zunjarrao Ramchandra Patil. He has admitted before the Court that he had given his endorsement on Exhibit 26 in respect of her consciousness and orientation. That she was put on saline immediately but was not administered any sedative. According to him, her statement was initially recorded by Head Constable prior to the recording by Executive Magistrate and at that stage also he had endorsed that Ujwala was in a fit state of mind to give the statement.

9 It is pertinent to note that although he had brought the case papers to the court, they were not taken on record. It is to be noted that the father of Ujwala had approached the Doctor first in point of time and his signature was obtained on the case papers by apprising him of poor prognosis of patient. She was immediately put on saline and she continued to be on saline till her death. It is a sorry state of affairs that the line of treatment given to Ujwala soon

after her admission and till death have not been brought on record either by the prosecution or by the defence.

10 It is further pertinent to note that according to the Doctor, he had not put any endorsement on the statement recorded by the Executive Magistrate about the first examination. Needless to say that the circumstances speak for themselves and both the witnesses i.e. PW-3 as well as PW-6 have denied the endorsement. The Doctor has admitted in the cross-examination that the case of Ujwala was a case of 100% burns. PW-6 has deposed as follows :

“in this case thumb marks was obtained on Exhibit 36 but the impression of the thumb marks did not appear because of peeling of the skin burnt of the thumb portion”.

Upon perusal of Exhibit 36, it is seen that the Constable has obtained thumb impression although the skin was peeled. At the same time on Exhibit 26, one can find the signature of the deceased, the fact that she had sustained 100% burns, she could not have held the pen in order to sign on the said document.

11 It is further pertinent to note that there is no endorsement on Exhibit 26 to the effect that the statement was readover and recorded. In fact only in cases of Section 32(1) of the Indian Evidence Act, an exception is carved out wherein hearsay evidence is made admissible, subject to subjective satisfaction of the Court that the statement is voluntary, truthful and inspires confidence of the Court.

12 At this stage, learned APP has placed reliance upon the judgment of the full bench of this Court at Nagpur in the case of Ganpat Bakaramji Lad Vs. State of Maharashtra, reported in 2015 (4) Bom. C.R. (Cri.) 534. It is to be noted that the Full Bench had answered the reference as follows :

“a dying declaration cannot be rejected merely because the same is not readover to the declarant and the declarant admitting the same could have been correctly recorded. We hold and clarify that this can be one of the factors, if it assumes significance in the facts and circumstances of any case.”

13 It is in view of this that the facts and circumstances of the present case also need to be taken into consideration, which are as follows :

- firstly PW-1 and PW-6 have categorically stated that there is no endorsement of PW-6 on Exhibit 26 that the patient is in a fit condition to give statement, however the endorsement is found on Exhibit 26 to the effect that the patient is conscious and fit to give statement, the said endorsement is marked at Exhibit 35.

- Secondly, the inquest panchanama at Exhibit 18 indicates that the injured had sustained burn injuries to both the hands including fingers and the whole skin is blackened. It is admitted by PW-6 that Ujwala had sustained 100% burn injuries and the skin peeled off, despite that the Head Constable has obtained a clear thumb impression on Exhibit 38. PW-3 has obtained a signature (sic) of the injured on Exhibit 26. Both the endorsements do not inspire confidence of this Court.

- Thirdly, the statement of the injured has not been readover to the injured and then recorded. The Court cannot be oblivious of the fact that the said injured would not be available for cross-examination and therefore, it is incumbent upon the

investigating agencies to leave no scope to suspect the veracity of the mode of recording dying declaration.

- Fourthly, it was the father of the victim, who had first approached the Doctor for examining the injured before the statement could be recorded by the Head Constable. The father of the injured was not only present at the time of recording of the statement of the victim but also has countersigned the statement of the victim, which makes it doubtful.

- In the statement recorded by the Executive Magistrate, the injured had disclosed that she was carrying pregnancy of three months. The said fact is not corroborated by the medical evidence. The post-mortem notes do not indicate whether the uterus was gravid or non-gravid. The said fact is not corroborated by PW-1 or PW-3, who happens to be the paternal aunt. The same is not stated in the statement at Exhibit 38.

- That according to PW-6 from the time when she was admitted till her death, the injured was put on saline. This fact has been denied by PW-4. In view of the above mentioned facts, the very

recording of the statement of the injured as narrated by the prosecution witnesses, seems to be doubtful.

14 In the present case, it would be necessary to ascertain as to whether the ill-treatment meted out to the injured was such that it would drive her to commit suicide and that she had no other option but to commit suicide. Even according to the declarant, she was happy with her husband and had no grievance against him. In such circumstances, there were options open to her. It is submitted that the injured although did not have sufficient education, was working in a factory, she was economically independent and her husband was supportive. In view of the above discussions, it can be held that no conviction can be recorded solely on the basis of dying declaration. It can be safely held that the manner in which the dying declaration is recorded creates a doubt as to whether it was voluntary and truthful.

15 Learned counsel for the appellants submits that the appellant no.1 is an Octogenarian and his wife is a senior citizen.

Hence, for the above mentioned reasons, it can be said that there is no convincing evidence for sustaining conviction of the appellants for the offences punishable under Sections 306 and 498-A of Indian Penal Code. Hence, the following order:

O R D E R

- (I) The appeal is allowed and disposed of.
- (II) The conviction of the appellants for the offences punishable under Section 498-A and 306 read with 34 of Indian Penal Code awarded vide judgment and order dated 23rd May 1997 by the Additional Sessions Judge, Kolhapur is hereby quashed and set aside.
- (III) The bail bonds, if any, of the appellants stand cancelled.
- (IV) The appellants be released forthwith, if not required in any other offences.
- (V) Fine amount, if paid, be refunded to the appellants.

(*Smt. Sadhana S. Jadhav, J*)