

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.258 OF 2001**

The State of Maharashtra ... Appellant

Vs.

Rangrao Narayan Dhere,
Age 28 years,
R/o Thikpurli Paiki Dherewadi,
Tal. :Radhanagari,
District Kolhapur.

... Respondent

Mr. P.P. Shinde, APP for the Appellant - State.

Mr. Ajay L. Bhise i/b. Mr. H.S. Venegavkar, for the Respondent.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

JUDGMENT RESERVED ON : 22.10.2020.

JUDGMENT PRONOUNCED ON : 16.12.2020.

JUDGMENT : PER SADHANA S. JADHAV, J.

1. The State being aggrieved by the judgment and order dated 5th December 2000 passed by the Additional Sessions Judge, Kolhapur in Sessions Case No.123 of 1998 thereby acquitting the accused of the offences punishable under sections 498-A and 302 of IPC has filed the present appeal.

2. It is the case of the prosecution that the respondent herein got married to Sunita (deceased) sometime in the year 1995. The couple is blessed with a son in 1997. That they were living in a joint family.

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

(i) On 7th April 1998, Sunita – wife of the present respondent was admitted in C.P.R. Hospital at 1.30 am with history of accidental burns. Since it was a medico-legal case an intimation was given to Radhanagari Police Station about admission of a burn case and to make arrangement for recording a dying declaration. The station diary entry is at **Exh.34-C**. The Police requisitioned the services of an Executive Magistrate to record the statement of the injured. Accordingly, a Police Head Constable had recorded the statement of the injured on 7th April 1998 wherein she had disclosed that on 6th April 1998 while she was preparing tea she had pumped the stove and the stove had blasted. She had further disclosed that her saree had caught fire and she sustained burn injuries on her face, chest and legs etc. That her mother-in-law had sustained burn injuries while extinguishing the burn injuries and they both were admitted in C.P.R. Hospital.

(ii) On 7th April 1998, at about 11.00 am, PW1 – the father of Sunita had reached the Hospital. His daughter, upon inquiry, informed him that on 6th April 1998 while she was breastfeeding her son Sachin, her husband had kicked her, swirled her around by her hair, poured kerosene and then set her ablaze. On the basis of the said report, Crime No.27 of 1998 was registered against the respondent for the offences punishable under section 498-A and 307 of Indian Penal Code.

(iii) On the same day, i.e. on 8th April 1998, at about 2.30 pm, PW5- Mr. Suresh Salokhe, the Special Executive Magistrate had recorded the statement of Sunita and she disclosed that she was assaulted by her husband intermittently and on 6th April 1998 at about 7.00 pm he had set her ablaze after subjecting her to physical assault. The said dying declaration is at **Exh.24**.

(iv) On 10th April 1998, Sunita had succumbed to the burn injuries at about 8.35 am. The medical case papers of C.P.R. Hospital are at **Exh.45**. The autopsy was conducted on the dead body of Sunita by Dr. Awate and the final cause of death was shown as “shock due to superficial to deep burn”. Hence, section 302 of IPC was added. After completion of investigation, the charge sheet was filed and the case was registered as Sessions Case No.123 of 1998. The prosecution has examined as many as 12 witness to bring home the guilt of the accused.

4. According to PW1 – Shankar- the father of the deceased, his daughter was married to the respondent 3-4 years prior to the alleged incident. That the husband of Sunita was demanding Rs.5,000/- and was coercing her to fetch the amount from her father. That his daughter was being subjected to cruelty and harassment at the hands of her husband since PW1 had not fulfilled the demand of Rs.5,000/-. That on 7th April 1998 at about 11.00 am, he had received a message that his daughter had sustained

burns and that she was admitted in the hospital. He went to see his daughter on 8th April 1998. That when he had been to meet his daughter in the hospital, at that time, upon inquiry, she had disclosed that on 6th April 1998 while she was feeding her son the accused had kicked her, he had swirled her around, poured kerosene and then set her ablaze. He had reported the matter to the Police Station, on the basis of which Crime No.27 of 1998 was registered against the accused for the offences punishable under sections 498-A and 302 of IPC. It is elicited in the cross-examination that the marriage was performed in front of the house of the accused and the accused had borne the expenses for the said marriage. It is also admitted that since his daughter was pretty the accused had not made any demands at the time of marriage. That, he used to visit the matrimonial home of his daughter quite often. That on some occasions, the family of the accused had offered gifts to the family members of the complainant. That his daughter has not written any letters to him. He could not assign any reason for the demand of Rs.5,000/- by the accused. That, after Sunita had disclosed to him, the circumstances of the transaction in which she had sustained burn injuries, he had lodged a report after discussing with his brother and other relatives. It is also admitted that he had not reported immediately to the Police station but he had lodged the FIR on the next day. It is also admitted that he was accompanied by a Police Head Constable from Radhanagari Police Station to C.P.R. Hospital, when he had been to meet his daughter.

5. On 8th April 1998, at about 2.30 pm the statement of Sunita was recorded by PW5 - Special Executive Magistrate Mr. Salokhe. The said statement is at **Exh.24**. That Sunita had disclosed the incident dated 6th April 1998 and had further stated that at about 6.00 pm when she was feeding her child her husband had kicked her, swirled her around, poured kerosene and set her ablaze. The said statement of Sunita dated 8th April 1998 is proved by PW5 – Suresh Salokhe. According to him, he had received a requisition letter from Radhanagari Police Station requesting him to record the statement of the injured in C.P.R. Hospital. He was accompanied by a Police Head Constable. The medical officer had examined the patient and certified that she was conscious and alert to give the statement. The CMO was present throughout the recording of the statement of Sunita. He had obtained the thumb mark of left toe of Sunita which he had attested. It is pertinent to note that PW5 has not narrated before the Court the contents of dying declaration which is at **Exh.24**.

6. At this juncture, it would be further pertinent to note that Sunita had not disclosed either to PW1 or to PW5 that she has disclosed earlier to the Police that she had sustained accidental burns due to blasting of stove. Neither she had informed anyone that she was pregnant at the time of incident.

7. The medical case papers of C.P.R. Hospital which is at Exh.45 show that on 7th April 1998 Sunita was admitted in the Hospital at 1.30 am. The history recorded was “accidental burn injuries”. That, she was diagnosed with 18 weeks pregnancy and on 8th April 1998 at about 6.20 am she had delivered the foetus. The medical case papers are proved by PW11 – Dr. Vilas Deshmukh, Medical Officer at C.P.R. Hospital who has deposed before the Court that she had suffered from “hypoxia due to which she got aborted”.

8. On 10th April 1998, Sunita succumbed to the burn injuries at about 8.35 am. The post mortem notes also show death due to “accidental burns as per Police panchanama”. The cause of death is “shock due to superficial to deep burn of 54%. The post mortem notes are at **Exh.39** and the same are proved by PW10 - Dr. Awate.

9. PW12- Krishna Kalantre was attached to C.P.R. Police Chowki. He has deposed before the Court that on that day, at about 3.45 am, two patients were admitted in C.P.R. Hospital. He had received the message from the Medical Officer. That the Doctor had opined that the patient Sunita is unconscious and that she is not in a position to give the statement. He had requisitioned the services of PW5. He had recorded the statement of Rakhamabai the mother-in-law of Sunita. She had disclosed that when

Sunita was preparing tea there was a blast of the stove. Her saree had caught fire. When she saw that Sunita was engulfed in flames, she embraced her in an attempt to rescue her and thereby sustained burn injuries. The said statement is at **Exh.52**. Rakhamabai had succumbed to the burn injuries. He has admitted in the cross-examination that at about 9.20 pm he had intimated Juna Rajwada Police Station about the admission of Sunita and her mother-in-law at C.P.R. Hospital with history of accidental burns and accordingly, an entry is taken in the station diary which is at **Exh.34-C**.

10. The case of the prosecution rests on multiple dying declarations which are inherently inconsistent with each other. That there is a major variance in both the dying declarations. In the case of **Suresh S/o of Arjun Dodorkar Vs. State of Maharashtra reported in 2005 ALL MR (Cri) 1599, it is held as under:**

“in cases resting on multiple dying declarations the Courts cannot pick and choose any one dying declaration. All the dying declarations have to be consistent in respect of material aspects of the incident. According to us, consistency is expected in multiple dying declarations in respect of the names and the number of accused, the prelude to the incident and the incident itself. If in the dying declaration the truthfulness of the narration is doubtful, no reliance can be placed on the dying declaration. Acceptance of one dying declaration falsifies the other. The dying declarations have to be necessarily rejected.”

11. In the present case also the dying declaration at **Exh.24** is not consistent with dying declaration at **Exh.26**. The dying declaration at **Exh.24** would indicate homicidal burns whereas the dying declaration at **Exh.26**

indicates accidental burns. It is necessary that the dying declaration should inspire confidence of the Court. The Apex Court, in the case of *State of Maharashtra Vs. Sanjay S/o Digambar Rao Rajhans reported in 2004(9) SCALE 50*, has held as follows :

“the version of homicide set up by the prosecution as well as the version of suicide set up by the accused appear to be highly improbable and do not inspire confidence in the mind of the Court to believe either version. In this state of things, when two incredible versions confront the Court, the Court has to give benefit of doubt to the accused and it is not safe to sustain the conviction.”

12. In the present case, the dying declaration at Exh.26 would clearly indicate that the deceased had succumbed to accidental burns. There is no material on record brought by the prosecution to indicate that the said dying declaration is a product of tutoring or under hallucination and therefore, the same needs to be discarded. There are two conflicting versions about the circumstances of the transaction which resulted in the death of the deceased and hence, it can be said that these are two incredible versions which have confronted the Court and therefore, acquittal of the accused is legally sustainable in the eyes of law.

13. The Sessions Court has rightly discarded both the dying declarations as they are inconsistent with each other. The learned Sessions Judge has assigned justifiable reasons for recording an acquittal in favour of the accused. Hence, no interference is warranted. The appeal is dismissed.

14. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J.)

(SMT. SADHANA S. JADHAV, J.)