

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 586 OF 2002

THE STATE OF MAHARASHTRA)...APPELLANT
(ORIG. COMPLAINANT)

V/s.

- 1) KISHOR SHIVARAM AMBRE)
AGED ABOUT 24 YEARS,)
RESIDENT OF KUTARE- TAMBADWADI)
TAL. CHIPLUN, DIS. RATNAGIRI)
- 2) SOU. SITA SHIVRAM AMBRE)
AGED ABOUT 46 YEARS,)
RESIDENT OF KUTARE – TAMBADWADI)
TAL. CHIPLUN, DIST- RATNAGIRI)
- 3) SOU.SUSHMA SURESH KADAM)
AGED ABOUT 19 YEARS)
RESIDENT OF SAWARDE KHOTWADI)
TAL. CHIPLUN, DIST. RATNAGIRI)..RESPONDENTS
(ORIG. ACCUSED)

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Mr.H.J.Dedhia, APP for the Appellant – State.
None for the Respondents.

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CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.

DATE : 8TH DECEMBER, 2020

JUDGMENT : (PER : V. G. BISHT, J.)

1. This appeal has been preferred by the State challenging the judgment and order of acquittal dated 14th February, 2002 passed

in Sessions Case No. 85 of 2000 by learned Sessions Judge, Ratnagiri for the offences punishable under Sections 498-A, 302 and 342 read with 34 of the Indian Penal Code, 1860 (for short “IPC”).

2. The prosecution case as reflected from the first dying declaration (Exh. 43) is that Kishori @ Ujwala (since deceased) was the wife of accused Kishor Shivram Ambre (A-1), Sita Shivram Ambre (A-2) and Sushma Suresh Kadam (A-3) are the mother-in-law and sister-in-law respectively of the deceased.

3. On 15th May, 2000, deceased’s father Jagannath Krishna Shelar (PW-2) had been to the matrimonial home of the deceased in order to take her to his house at Nandgaon but A-1 and A-2 refused to send her. After deceased’s father left all the accused started quarreling with the deceased and alleged that because of her, the house is ruined. The deceased was also beaten by them.

4. It further appears that on the same day in between 2.00 pm. to 3.00 p.m., A-1 and A-3 poured kerosene on the person of the

deceased while A-2 set her ablaze. The accused then closed the door of the room and confined the deceased inside it.

5. Later on, she was rushed to Kamathe hospital, Chiulun where dying declaration (Exh. 43) came to be recorded by the police. Crime No. 24 of 2000 under Section 307 read with 34 of IPC with Savarde Police Station, Chiulun came to be registered.

6. Then it appears that pursuant to the registration of the FIR, PW-10 Investigating Officer visited the spot and prepared spot panchnama. PW-10 during the course of investigation also recorded statements of witnesses, seized property from the place of occurrence and forwarded the same to the office of Chemical Analyzer. After collecting chemical analyzer report and postmortem certificate and completion of investigation, PW-10 forwarded the chargesheet against the accused.

7. In order to bring home the charge, the prosecution examined in all 10 witnesses and exhibited number of documents. The respondents-accused were questioned under Section 313 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.")

about the incriminating evidence and the circumstances and they denied all of them as false.

8. According to A-1-husband, there was no dispute between him and the deceased and that a false case is filed against him. Similar is the defence of A-2 and A-3.

9. Mr.Dedhia, learned APP representing the State, vehemently submitted that PW-1-neighbor has clearly deposed in his evidence about the behavior of the respondents-accused and the treatment given to deceased and his version is ably supported by PW-2 father who also had witnessed the cruel treatment given to deceased by respondents -accused.

10. By inviting our attention to the dying declarations on record, learned APP strenuously submitted that both the dying declarations are consistent in material particulars and therefore, same being true and genuine, the learned trial Judge ought to have believed those dying declarations. It was wrong on the part of the learned trial Judge to discard those dying declarations.

11. There being overwhelming evidence on record as to culpability of the respondents- accused in the alleged crime, the learned trial Judge ought to have held that the prosecution has satisfactorily proved the case beyond reasonable doubt. The acquittal of the respondents-accused being erroneous, same is liable to be set aside, argued learned APP.

12. None appeared for the respondents-accused.

13. It appears from the evidence of PW-10 Investigating Officer that the postmortem report was exhibited by consent of the defence at Exhibit 48. Moreover, it is clear from the record that before giving consent to exhibit the postmortem report, the prosecution had not examined autopsy surgeon, who conducted the postmortem over the dead body of deceased. Column No. 17 of the postmortem report shows the following injuries:

17. Surface wounds –
Scattered burns of grade I to III all over body.
 - (i) rt Chest abdomen- 10% more part of lt chest abdomen epigastreares.
 - (ii) Face neck – 5%
 - (iii) Back -15%
 - (iv) Upper extremities -10%

(v) Lower extremity both thighs gluteal area calf
region -24%
Total burn – 64%

Superior to deep burns scatter more so one anterior
part with line of demarcation in between seen.
Granulation seen at some part near periphery of
burns.
Cause- flame burn.
Age 1 week.

14. The opinion as to the cause of death is due to septicemic shock due to 64% flame burns.

15. We have carefully gone through the record with the assistance of learned APP. We find that the prosecution case rests on two dying declarations. Before we look into the merits and demerits of those dying declarations, we deem it fit to outline the governing principles as to multiple dying declarations.

16. In the case of **Nallam Veera Satya Nandam and Ors. vs. Public Prosecutor, High Court of A.P.¹** , the Hon'ble Apex Court held that the trial Court erred because in case of multiple dying declarations each dying declaration has to be considered

¹ AIR 2004 SC 1708

independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there are more than one dying declaration, it is the duty of the court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

17. In **Sudhakar vs. State of M.P.**², the Hon'ble Apex Court has held that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the Courts and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and

² 2012 Cri. LJ 3985

possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the Court in such matters. Each dying declaration has to be considered independently on its own merit so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there is one more dying declarations, it is the duty of the court to consider each one of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

18. Having referred to the law relating to the dying declarations, now we may examine the issue in the present case involving multiple dying declarations made by the deceased and which of the various dying declarations should be believed by this court.

19. Before we do so, we would like to quickly go through the evidence of some of the witnesses including the father of deceased.

20. PW-1 Santosh Arjun Ambre states in his evidence (Exh. 19) that he knows Shivram Ambre i.e. father of A-1 as his house is near his house. It is his further evidence that all the accused used to quarrel with the deceased. On 15th May, 2000, he heard the quarrel between A-1 and deceased. A-1 was giving filthy abuses and was saying that she had ruined the house.

21. It is his further evidence that on the same day i.e. on 15th May, 2000 at about 2.30 pm., he heard shouts of the deceased, who was shouting for help. Therefore, he went to the house of A-1. The back door of his house was closed. Deceased was lying inside the house and was in a burnt condition. Smell of kerosene was coming from inside the house. Kerosene can was also lying there. Sulochana Ambre, cousin mother-in-law of the deceased, asked the assembled persons to go out of the house and thereafter she put a chaddar on the deceased. The deceased was asking for water from A-2 and A-3 and was saying that A-2 and A-3 had burnt her. She also said that if she survived, she would take proper care of A-2 and A-3. A-1 was also present in the house at that time. None of the accused gave water to the deceased.

However, Sulochana Ambre gave water to her.

22. It is his further evidence that he and Sulochana then told A-1 and A-2 to give treatment to the deceased but A-2 said that she did not have money for it. After arrival of the deceased's father, she was taken to Rural Hospital at Kamathe. He came to know about the death of deceased on 20th May, 2000.

23. The initial part of evidence of PW-1 shows that the accused used to quarrel with the deceased and even on 15th May, 2000 he saw A-1 giving filthy abuses to deceased. However, this witness being a neighbour of deceased has nowhere explained as to why all the accused used to quarrel with deceased nor as to the incident dated 15th May, 2000 wherein A-1 allegedly gave filthy abuses and told that the deceased had ruined their house.

24. Coming to the main incident, the evidence of this witness is loud and clear to the effect that after hearing the shouts for help, he rushed to the house of deceased and saw her in a burnt condition. He also noticed the presence of cousin mother-in-law of

the deceased, namely, Sulochana Ambre and also saw deceased soliciting water from A-2 and A-3. Not only this, he also heard deceased saying that it were A-2 and A-3 who had set her on fire and that if she survived, she would take proper care of A-2 and A-3. Thus, the whole incident is narrated very vividly by this witness as if everything as deposed had transpired in his very presence. However, we have our own doubts to the credibility of this witness.

25. We have at the very beginning narrated the story of prosecution from the dying declaration at Exhibit 43. If this dying declaration is read carefully then it would be seen that after the deceased was set ablaze, she shouted for help but nobody came near her and thereafter she became unconscious. This dying declaration outrightly negates and discredits the evidence adduced by PW-1, who in his evidence claims that the deceased had not only solicited water from A-2 and A-3 but had clearly pointed out the finger of guilt at A-1 and A-3 and further that if she survived, she would take proper care of them.

26. Similarly, the said dying declaration nowhere attributes the presence of this witness or for that matter cousin mother-in-law of deceased, namely, Sulochana Ambre. This being clear obtaining situation, it would be hazardous to place any reliance on the testimony of this witness.

27. PW-2 – Jagannath Krishna Shelar, father of deceased, states in his evidence (Exh. 26) that on 15th May, 2000 he along with his wife went to the house of accused. All the three accused were present there. Father of A-1 was also present. He told them that he had come to take away his daughter for four days and thus requested them to send his daughter along with them. All the accused refused. Afterwards, they all said that he could take away the deceased only and that they would not send the child

28. It is his further evidence that he brought the deceased upto Kutare ST stop. He then went to the house of police patil and complained that the accused were not sending child along with them. The police patil then went to the house of accused and

brought A-1 at ST stop. A-1 told that after two days he would be going to Pune and requested to keep the deceased at his house and that he would come to his house after two days. Therefore, he alone returned.

29. It is his further evidence that on the same day i.e. 15th May, 2000 at about 3.30 pm. Shivram Ambre, father of A-1 visited his house and disclosed that Kishori i.e. deceased was burnt. When he asked him as to how it had happened, he did not tell anything for about two minutes but then disclosed that all the accused had poured kerosene on the deceased and set her on fire. On hearing it, he and his son immediately rushed to village Kutare. When he reached the house of accused, he saw deceased in a burnt condition. The deceased requested him to save her. He asked her how it happened to which she disclosed that her mother-in-law (A-2) and sister-in-law (A-3) and her husband (A-1) all burnt her by pouring kerosene on her person. She was then shifted to Kamathe hospital and from there to Krishna Hospital, Karad.

30. As far as the visit of this witness to the house of accused on 15th May, 2000 is concerned, it gets corroboration to some extent from the contents of dying declaration (Exh. 43). His evidence clearly shows that initially the accused refused to send deceased but later on obliged this witness, which is not at all the case made out in the dying declaration. The said dying declaration rather shows that the accused outrightly had refused to send the deceased along with this witness.

31. The next part of his evidence shows that after this witness came to know about the burning of deceased from Shivram Ambre, who is none other than the father of A-1, he enquired with Shivram Ambre as to how it had happened and Shivram Ambre allegedly disclosed that it were the accused who had poured kerosene on deceased and had set her on fire.

32. Interestingly, the dying declaration (Exh. 43) nowhere shows the presence of Shivram Ambre when the incident of burning took place. It is also not the case of the prosecution that

Shivram Ambre came to know from the accused themselves that it were they who had put the deceased on fire.

33. The version of this witness needs to be questioned not only on this count but also on the count that he was told by the deceased that it were accused, who had set her on fire. We again go back to the dying declaration (Exh. 43) and point it out at the cost of repetition that the deceased had fallen unconscious. The dying declaration nowhere shows that till the time she was in the house in a burnt condition, PW-2 father had already arrived and she had an occasion to tell her father that it were accused who after pouring kerosene on her person had set her ablaze.

34. There is one more reason for not accepting the testimony of this witness.

35. In the cross-examination, PW -2 father states that the police patil (PW-6) was also present when he enquired with his daughter as to how the incident had happened. Very surprisingly, PW-6 police patil in his whole evidence has nowhere supported

the version of PW-2 in this regard. His evidence is absolutely silent and does not throw any light to the fact that the moment PW-2 father reached to the house of accused, he made an enquiry with the deceased as to the circumstances leading to the incident and in turn the deceased narrated the incident to her father involving the respondents-accused. This being so, we are not absolutely satisfied with the testimony of this witness.

36. PW-4 Vilas Bandu Ware appears to be the owner of the trax in which deceased was taken to Kamathe Hospital. It is his evidence (Exh. 29) that on 15th May 2000, he had taken Jagannath Shelar (PW-2), the father of deceased and police patil (PW-6) to the house of accused. It further appears from his evidence that after reaching there and within 10 minutes Jagannath Shelar (PW-2) and his son brought deceased wrapped in a bed sheet. She was then kept on the middle seat of the trax. PW-2, his son and police patil (PW-6) sat in the trax. He then took them to Kamathe hospital.

37. According to his evidence, daughter of Jagannath Shelar (PW-2) was alive and was in a burnt condition. She was requesting her father to save her and was groaning.

38. His cross-examination shows that while he was taking the above said persons to the hospital, neither Jagannath Shelar (PW-2) disclosed police patil as to how the deceased got burn injuries nor police patil (PW-6) asked Jagannath Shelar (PW-2) as to how she was burnt. Police patil even did not make enquiry from the deceased about the incident.

39. Again reverting back to the dying declaration (Exh. 43), we have made it clear from the contents of dying declaration that the deceased had fallen unconscious after the incident in question and regained consciousness only in the hospital. There was no reason or occasion for the deceased either to ask water from her father or for that matter to groan in pain, as is deposed by PW-4 trax owner. This is one striking feature of the evidence of this witness.

40. What is quite unusual is that on way to the hospital neither PW-2 father complained police patil that his daughter was burnt by all the accused, as is claimed by him in his examination-in-chief, nor police patil (PW-6) thought it proper to enquire the circumstances leading to burning of the deceased although it was quite a serious affair. Therefore, the conduct of both i.e. Jagannath Shelar (PW-2) and police patil (PW-6) as is reflected from the evidence of PW -4 is quite perplexing. Therefore, we are not inclined to accept the testimony of PW-4.

41. PW-6 Vilas Ramchandra Salvi at the relevant time was police patil of villag Kutare. It is his evidence (Exh. 33) that on 15th May, 2000 at about 2.00 p.m., he came to know that one woman was burnt at Tambadwadi and therefore, he started proceeding towards Tambadwadi. One trax stopped behind him when he was about to reach S.T. Bus stop of Kutare. Jagannath Shelar (PW-2) and his son were in that trax. They called him and thus he accompanied them.

42. It is his further evidence that after reaching Tambadwadi he saw deceased in a burnt condition. He asked A-1 as to how it had happened but he did not tell anything. The deceased was shouting and requesting to save her. She was then taken by the said trax to the hospital.

43. From the evidence of this witness, it is quite clear that when he along with Jagannath Shelar (PW-2) and his son reached at the residence of accused, he found deceased in a burnt condition and also requesting to save her.

44. We have already pointed out from the first dying declaration (Exh. 43) that after the incident in question took place, the deceased started crying but nobody came to her rescue and thereafter she became unconscious. We have also noted from the said dying declaration that the deceased regained her consciousness in the hospital. This being so the evidence of PW-6 police patil is in sharp contradiction to the said dying declaration from which we have noted the material fact as to unconsciousness of the deceased.

45. Here it is also to be noted from the evidence of PW-2 that when he reached at the residence of accused and enquired with her daughter, the latter told him that she was set on fire by all the accused. Quite surprisingly, no such evidence is adduced by PW-6 who was very much present along with PW-2. This is to show that neither the testimony of PW-6 nor that of PW-2 is reliable for want of satisfactory corroboration.

46. The cross-examination of PW-6 is also interesting. He states that it is his duty to visit the spot and make enquiry about the incident. In the trax, he asked Jagannath Shelar (PW-2) as to how deceased was burnt but he expressed ignorance. This is again in contrast to what has been deposed by PW-2 in his cross examination that in the very presence of PW-6 police patil, he had asked his daughter as to how the incident had taken place. The conduct of PW-6 also does not appear to be above board when he further states in his cross-examination that although the deceased was conscious in the trax, he did not make enquiry from her about the incident. This is quite unnatural particularly when he himself

says that it was his duty to visit the spot and make necessary enquiry about the incident.

47. For all these reasons, we think it proper to discard the evidence of this material witness.

48. This brings us to the crucial aspect of prosecution case - dying declarations.

49. PW- 9 Dr. Sandesh Sitaram Bodade states in his evidence (Exh. 42) that on 15th May, 2000 he was attached to Cottage Hospital, Kamathe, Chiplun as a Medical Officer. The deceased was brought to the hospital by her father, who was having burn injuries. The deceased disclosed the history which he recorded in writing.

50. It is his further evidence that in his presence police recorded her statement and he wrote on the statement that she was conscious. He then proved his endorsement on the certificate at Exh. 43.

51. From the evidence of PW-9 Medical Officer, it appears that not only he was very much present at the time of recording of statement of deceased by the police but also he heard statement during the course of its recording. What he heard has been nowhere revealed by this witness in his examination. The said part of his evidence shows that it was the deceased who gave history and the history was that she was burnt by all the accused. Now, this is again is not in consonance with the dying declaration. We say so because in the dying declaration the role of each accused is specifically narrated by the deceased. The dying declaration shows that it were A-1 and A-3 who poured kerosene on the person of deceased while A-2 set her ablaze.

52. PW-9 Medical Officer does not say so and rather states that the history was given showing the involvement of all the accused without specifying their roles in setting ablaze the deceased.

53. Interestingly, we may note here that the police personnel who recorded the dying declaration of the deceased has not been examined by the prosecution for the reasons best known to it.

Therefore, in the strict sense it cannot be said that what has been narrated in the dying declaration at Exh. 43 was duly proved by the prosecution in accordance with law. On the contrary, PW-9 Medical Officer has contradicted the contents of dying declaration at Exh. 43.

54. We now take up second dying declaration.

55. PW-7 Anandrao Vishwanth Sawant at the relevant time was attached to Karad Police Station as a Head Constable. He states in his evidence (Exh. 35) that his duty was at police chowki of Krishna Hospital, Karad. PSO directed him to record the statement of deceased. Therefore, on 16th May, 2000 at about 8.00 a.m he went to ICU of the said hospital and in presence of Doctor and nurse of that ward he recorded statement of deceased. He then proved the statement at Exh. 36.

56. We are unable to decipher and discern anything from the evidence of this material witness inasmuch as he nowhere categorically and clearly states in his evidence as to what was told

to him by the deceased during the course of recording of the dying declaration. Even his evidence showing that the doctor and nurse were present at the time of recording of statement of the deceased has come by way of omission inasmuch as he admits in his cross-examination that while recording his statement by the police he did not state that the doctor and nurse were present at the time of recording of statement of the deceased.

57. His evidence also doesn't show that it is only after satisfying the mental condition of the deceased through the concerned Medical Officer he recorded the statement of deceased. In this regard, his cross-examination is also significant. In the cross-examination, he states that he had asked the deceased her name and address in order to know whether she was conscious but then nowhere explains whether he was indeed satisfied with the answer of the deceased as to her consciousness and agility. Therefore to the extent that the patient was in a fit condition to give the statement, the evidence is clearly missing.

58. It appears from the dying declaration at Exh. 36 that the concerned Medical Officer put his endorsement that the patient was conscious at the time of recording of dying declaration. The said Medical Officer is examined by the prosecution, who is PW-8 Dr. Sagar Prabhakar Pawaskar. Therefore, we need to go through his evidence.

59. PW-8 Dr. Sagar Prabhakar Pawaskar states in his evidence (Exh. 37) that at the relevant time he was attached to Krishna Hospital. On 15th May, 2000 at 11.30 a.m. deceased was admitted in burn I.C.U. He asked her history upon which deceased disclosed that at about 3.30 p.m. her husband (A-1) and her mother-in-law (A-2) poured kerosene on her and burnt her. On examination, he found her to be conscious and oriented. Then he proved his endorsement as to consciousness of the deceased at the relevant time at Exh. 38. The evidence of PW-8 Medical Officer can be rejected for number of reasons.

60. First of all, it is worth mentioning here that it was PW-7 Head Constable who had recorded the statement of deceased in Kamathe Hospital. The entire evidence of PW-7 nowhere shows that before recording the statement of deceased, he got himself satisfied from the concerned treating Medical Officer of the deceased that the deceased was in a sound mental state to give statement. Even his evidence is silent to the fact that before recording of the dying declaration of deceased, deceased was thoroughly examined by PW-8 Medical Officer.

61. On the contrary, as we have already pointed out while discussing the evidence of PW-7 that it was he, who in order to satisfy himself whether the deceased was conscious or not, had asked the name and address of deceased. Thus, one thing which is very clear from the evidence of PW-7 is that the concerned Medical Officer had not examined in his presence about the physical and mental condition of deceased.

62. Another crucial aspect which emerges from the examination-in-chief of PW-8 Medical Officer is that while soliciting the case history from deceased, he was told by deceased that she was burnt by her husband and mother-in-law after pouring kerosene on her person. This piece of evidence is in conflict with the allegations made in the dying declaration (Exh. 36) inasmuch as A-1 - husband had not been alleged to be one of the parties to the incident. Rather it shows that it were mother-in-law (A-2) and sister-in-law (A-3) who after pouring kerosene on the person of deceased set her ablaze. This is certainly a major contradiction. Moreover, the alleged case history has not been brought on record so as to substantiate the version of PW-8 Medical Officer.

63. For all these reasons, we are not satisfied with the quality of evidence of this witness and therefore, distance ourselves.

64. On perusal of the entire evidence, we are of the considered view that the learned trial Judge was right in holding that the prosecution has failed to prove its case beyond reasonable doubt. Neither oral evidence nor the documentary evidence in the form

of dying declarations are upto to the mark. The finding of the learned trial Judge could not be said to be perverse. It was based on a proper appreciation of evidence.

65. For the aforesaid reasons, we find no merit in the appeal and accordingly dismiss the appeal.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)