

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.748 OF 2000

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

**SURESH GENU PAWAR)
Age 28, Occupation – Service,)
Resident of Ambedkar Colony, Panchgani,)
Taluka Mahableshwar, District – Satara.)...RESPONDENT**

Mr.A.R.Patil, APP for the Appellant – State.

None for the Respondent.

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

DATE : 29th OCTOBER, 2020

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

1 This appeal is filed by the State challenging the judgment and order of acquittal dated 2nd May 2000 passed in Sessions Case No.109 of 1999 by the learned Sessions Judge, Satara, for the offences punishable under Sections 498A and 302 of the Indian Penal Code (IPC).

2 Narrated in nutshell, it appears from the evidence of PW5 Yuvraj Tate, Police Head Constable, Satara City Police Station, Satara, that on 27th May 1998, he was on duty at Civil Hospital, Satara. A patient came at about 1.30 hours from Pachgani and her name was Shubhadra Pawar (deceased). The doctor told him that the deceased had sustained 92% burn injuries and was accompanied by her husband and husband of her sister and sister. After satisfying from the concerned doctor that the deceased was in a fit condition to give statement, he recorded her statement.

3 While recording the dying declaration, the deceased told that on 26th May 1998 she had kept Rs.50/- somewhere in the house and had incurred expenditure of Rs.50/- for sundry articles on the earlier day. She further told that she had asked her husband as to whether he had found Rs.50/- which was kept in utensils and on that count a quarrel took place between the deceased and her husband (accused). Even she was driven out

and therefore, she went to the house of her landlord. However, she was persuaded by the respondent-accused to join his company. A quarrel again took place between them. The respondent-accused picked up a knife and rushed on person of the deceased. The deceased replied that she would not die by that knife and better he should kill her. The respondent-accused, accordingly, poured kerosene on the person of the deceased and set her on fire by means of a matchstick. The respondent-accused then poured water on her person. The neighbours gathered and asked respondent-accused to take the deceased to hospital.

4 It appears from the said dying declaration that Satara City Police Station registered Crime No.0 of 1999 under Section 307 of the IPC and later on Crime No.14 of 1999 under Section 307 of the IPC came to be registered by Pachgani Police Station. However, during the course of treatment, the deceased succumbed to the burn injuries on 9th June 1999.

5 Record would reveal that the investigation was carried out by PW6 Anand Tukaram Kohobare, Police Sub-Inspector, Pachgani Police Station. The Investigating Officer recorded statements of witnesses, forwarded the muddemal article to Forensic Science Laboratory, Pune and after receipt of Chemical Analyzer's Report and completion of investigation, forwarded the charge-sheet against the respondent-accused with an addition of Section 302 of the IPC.

6 In order to bring home the guilt against the respondent-accused, the prosecution has examined as many as six witnesses and exhibited number of documents. The respondent-accused was questioned under Section 313 of the Code of Criminal Procedure (Cr.P.C.) about the incriminating evidence and circumstances and he denied all of them as false. According to the written statement of defence given under Section 313 of the Cr.P.C., the respondent-accused submitted that on 27th May 1999 when he returned to his house at about 9.00 p.m., the deceased was cooking food on a stove. Meantime, he heard the voice of

deceased “petle petle vachva”. He saw the deceased in flames and therefore poured water on her person, removed her clothes and put a blanket on her. Meantime, neighbour also gathered and while extinguishing fire, his hands also got burnt. She was then removed to hospital at Satara where she was given an injection and she fell asleep and woke up at about 4.00 a.m. in the morning. According to him, he had not set his wife on fire and the statement of the deceased that it was he who had put her on fire was got prepared at the instance of mother of deceased as she was an employee of Civil Hospital, Satara. Lastly, he submitted that he never quarreled or beat the deceased.

7 Mr.Patil, learned APP for the appellant/State, submitted that the prosecution case is based on two dying declarations which are quite consistent in all material particulars. There is also ocular testimony of PW3 in order to show the harassment meted out to the deceased during her lifetime. Despite there being cogent,convincing and inspiring evidence, the learned trial Court wrongly acquitted the respondent-accused. Since the

charge against the respondent-accused is duly proved, he deserves to be punished in accordance with law by setting aside the order of acquittal, urged learned APP

8 When the matter was called out, none appeared for the respondent-accused.

9 The postmortem report, which is duly admitted in evidence (Exh. 16), shows that the concerned Autopsy Surgeon after noting the various burn injuries on the person of the deceased opined that the probable cause of death was septicemic shock due to 92 % superficial to deep burn injuries. Thus, there is no dispute on the count that the deceased died because of burn injuries. However, the prosecution has come with a theory that it was the respondent-accused who authored the death of the deceased and has based its case on the ocular and dying declarations of the deceased. We would like to go through that evidence.

10 The prosecution case rests on multiple dying declarations. Before we venture and tread through those dying declarations, we deem it fit to outline the governing principles as to multiple dying declarations.

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

12 Similarly, in Sudhakar V/s 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

1 AIR 2004 SC 1708

2 2012 Cri.LJ 3985.

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 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 more than one dying declaration, 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.

13 Keeping in mind, the aforesaid governing principles, we wish to scan and scrutinize the dying declarations involved in the present case one by one.

14 Before we advert to the evidence on record, we at the very threshold note and which is not disputed that after the incident the deceased was immediately taken, firstly, to Primary Health Center, Pachgani, where Dr.Mrs.H.P.Kadam examined her and issued Medical Certificate. This Medical Certificate (Exh. 29) is also duly admitted in evidence by defence. Pertinently enough, the said doctor has not been examined by the prosecution in order to prove that she had asked the deceased as to how the burn injuries were caused and that the deceased replied that it was her husband who had set her ablaze. On the contrary, it is simply mentioned in the certificate that Shubhadra was brought in the hospital on 27th May 1999 at about 11.00 p.m. with history of burn injuries all over the body. In our considered opinion, this was the first available opportunity for the deceased to disclose that it was her husband and none else who had set her ablaze. It is also quite intriguing that the concerned Medical Officer also did not bother to apprise herself as to how the deceased sustained burn injuries. Be that as it may, the opportunity was not availed by the deceased nor any of the person who were accompanying

her told the concerned Medical Officer as to how the deceased sustained burn injuries.

15 It is also not disputed that from Pachgani, the deceased was referred to Civil Hospital, Satara and PW2 Dr.Shankar Dattatraya Jadhav attended her. Therefore, his evidence also assumes significance.

16 PW2 states in his evidence (Exh. 19) that the deceased was brought by her husband and other relatives with history of burn injuries, due to fall of one end of saree on burning stove. At the same time, if we read medical case record at Exh. 21, it shows that the patient was brought by her husband and other relatives with history of burn due to fall of saree padar on stove (burning) at 9.00 p.m. on 27th May 1999. It further shows that patient herself gave history that she was burnt by her husband viz. Suresh Genu Pawar i.e. the respondent-accused. However, to our surprise, the substantive evidence of Medical Officer does not reveal whether he himself had enquired with the deceased as to how she sustained burn injuries or for that matter, the deceased on her

own told him that it was respondent-accused who had set her on flames. Therefore, the case history so given loses its evidentiary value for want of corroboration from the mouth of PW2 Dr. Shankar Dattatraya Jadhav.

17 Now we come to the dying declaration recorded by PW5 Yuvraj Tate, Police Head Constable, followed by PW4 Amolkumar Ratanlal Shah, Special Judicial Magistrate.

18 PW5 Police Head Constable states in his evidence (Exh. 27) that on 27th May 1999 he was on duty at Civil Hospital. The concerned doctor told him that the deceased had sustained 92% burn injuries. After satisfying her health condition, he interrogated the deceased. As far as the health condition of the deceased at the relevant time was concerned, PW2 Dr.Shankar Jadhav in his evidence has corroborated that the patient was in a condition to give the statement and this is also deposed by PW5.

19 It is his further evidence that the deceased told him that she had kept Rs.50/- somewhere in the house and had

incurred expenditure of Rs.50/- for sundry articles on the earlier day. As she was not able to locate the remaining Rs.50/-, she asked her husband as to whether he had found Rs.50/- which was kept in utensil. According to him, after completion of recording of statement, the deceased signed it. The said statement is at Exh. 18.

20 First of all, it may be noted that the dying declaration of deceased is not recorded in the Question-Answer form. A perusal of the dying declaration at Exh. 18 would show that when the deceased had enquired with the respondent-accused about Rs.50/-, the respondent-accused stated that she might have given it to somebody. On the same day, the respondent-accused had taken some liquor at 5.00 p.m. and then again at about 8.00 to 8.30 p.m. after beating her drove out of the house. Therefore, she went to the house of landlord. However, the respondent-accused brought her back after some persuasion and assured that he would not beat her. According to this dying declaration, the respondent-accused again picked up a knife and rushed on the person of the

deceased and thereafter poured kerosene on her person and set her ablaze.

21 The above material facts are nowhere deposed by PW5 Police Head Constable who claims that he had recorded the dying declaration of the deceased. Therefore, much cannot be read from the evidence of this witness and the trial Court was also justified in not giving any weightage to the testimony of this witness.

22 This takes us to another dying declaration recorded by PW4 Special Judicial Magistrate. PW4 states in his evidence (Exh. 23) that before recording the dying declaration, he satisfied himself that the deceased was in a fit condition to give her statement. Again his version is duly supported by PW2 Medical Officer who examined the deceased before recording of her dying declaration and certified that the deceased was conscious and oriented. His evidence further shows that the dying declaration was recorded in Question-Answer form and thereafter, he again took endorsement of the concerned doctor and then proved the dying declaration at Exh. 25.

23 A careful reading of the dying declaration at Exh. 25 would show that on 27th May 1999, at about 9.00 p.m., a quarrel took place between the deceased and the respondent-accused. According to the deceased, the respondent-accused always, after consuming liquor, used to harass her and told that she was having illicit affair with others. On 27th May 1999, as usual he came home after consuming liquor and on the ground of suspicion, started beating the deceased. He even rushed on her person by taking a knife. The deceased then told that she should be killed finally and then, thereafter the respondent-accused poured kerosene on her person and set her ablaze.

24 Thus, if both the above noted dying declarations are read in conjunction, then we find that both are poles apart in respect of contents and the circumstances under which the incident took place. Dying declaration at Exh. 18 shows that the quarrel started on the ground of monies and more particularly, when the deceased enquired the respondent-accused whether he had seen Rs.50/- kept by her in the house. It also shows that

when he started beating the deceased under the influence of liquor, she took shelter in the house of her landlord only to be persuaded thereafter to join again the company of respondent-accused followed by the main incident of burning. This is absolutely not the case with the second dying declaration at Exh. 25.

25 Dying declaration at Exh. 25 basically is on the ground of intoxication of respondent-accused and thrashing of deceased on the ground of infidelity followed by the main incident of burning. Therefore, both the dying declarations disturbingly differ on material particulars. We are, therefore, not prepared to place implicit reliance on either of the dying declarations.

26 The prosecution has also examined the landlord viz. PW3 Santosh Bhaskar Bhosle. His evidence shows that on 27th May 1999, at about 7.45 p.m., a quarrel started between respondent-accused and his wife (deceased). The deceased had come to him and stated that she should be rescued as her husband was beating her. Her husband also followed. He tried to pacify

him but the respondent-accused was not listening. However, he was able to pacify him and took him near his house. The respondent-accused told him that he should sent his wife to his house otherwise he would involve him in false accusation. The respondent-accused started beating and abusing the deceased. It is his further evidence that at about 9.45 p.m., the respondent-accused with his wife again came to his house and told to his father that they had patched up their quarrel. However, at about 10 or 10.15 p.m., they heard shouts coming from the house of the respondent-accused. Many persons gathered. Despite knocking door, the respondent-accused did not open. He further stated that there is a room in possession of Mr.Kamble and there is a window to that room and from that window they entered in the room of the respondent-accused. At that time, Sindu i.e. the deceased was in wet condition and one blanket was wrapped around her person. The respondent-accused was also standing near her. The bedsheet on the cot was burning. He put off the fire.

27 His evidence lastly shows that he has no personal knowledge as to why there used to be quarrels between the respondent-accused and deceased.

28 From the cross-examination of this witness it appears that there are two windows in between the two tenements, one, which is in possession of the respondent-accused and other in possession of Mr.Kamble. One cannot hear the conversation going on in the house of respondent-accused by remaining in his house but one can hear it if he remains in the house of Mr.Kamble.

29 For what purpose this witness was examined by the prosecution is not clear. If his evidence is seen in proper perspective, then it would be seen that after entering into the house of the respondent-accused, he found the deceased wrapped in a blanket but his cross-examination shows that he had no talks with the deceased after she was brought out from the house and taken to the hospital. He being the landlord, either he should have asked the deceased as to how and under what circumstances she was burnt or since this witness was well-known to the

deceased, who was none other than her own landlord and to his house she had been just few hours before the incident, in a natural course, she ought to have revealed her plight and how she sustained burn injuries. Nothing of this sought is coming on record.

30 Apart from above, the immediate neighbour was Mr.Kamble which is apparent from the evidence of PW3 landlord. He was the most important witness in as much as whatever might have been transpired at the time of the incident, Mr.Kamble was in a position to hear the quarrel and cries from the house of the respondent-accused. It is not the case of prosecution that at the relevant time Mr.Kamble was not present in the house. On the contrary, Mr.Kamble was very much there because from the window of his house PW3 landlord and others had made their way to the house of the respondent-accused. In the circumstances, all we are here to draw an adverse inference against the prosecution.

31 The prosecution has also alleged that the deceased was subjected to cruelty within the meaning of Section 498-A IPC. However, there is not even a whisper of willful conduct of respondent-accused of harassment of the deceased at his hands with a view to coerce her to meet any unlawful demand by him so as to attract the provisions of Section 498-A read with Explanation thereto. The dying declarations at Exh. 18 and Exh. 25 and as also the evidence of PW3 landlord are conspicuously silent in this regard. Therefore, on this count also there is total failure on the part of prosecution.

32 The above being the nature of evidence and obtaining circumstances, the learned trial Court held that prosecution has failed to prove its case beyond reasonable doubt. This finding of the trial Court could not be said to be perverse. It was based on a proper appreciation of evidence.

33 On perusal of the entire evidence and law on the subject, we are of the considered view that the trial Court was

right in holding that the prosecution has failed to prove its case beyond reasonable doubt and rightly extended benefit of doubt to the respondent-accused.

34 For the aforesaid reasons, we find no merit in the appeal and pass the following order:

ORDER

Criminal Appeal is dismissed.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)