

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.993 OF 2004

The State of Maharashtra	)
(through the Police Station Officer,	)
Mohol Police Station, C.R.No.310/03,	)
RCC No.223/03	)....Appellant
	(Org.Complainant)

V/s.

1) Shrikrishna Kundlik	)
Waghchavare, Age-24 years	)
2) Kundlik Bala Waghchavare	)
Age-65 years	)
3) Sou.Sitabai Dhondiba Waghchavare	)
Age-40 years.	)....Respondents
	(Org.Respondent nos.1 to 3)

Ms.Pallavi Dabholkar APP for appellant-State.
Mr.Ujwal R.Agandsurve for respondent nos.1 to 3.

CORAM : K.R.SHRIRAM,J
DATE : 24.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 7.5.2004 passed by the III Ad-hoc Assistant Sessions Judge, Solapur acquitting the respondents (accused) of offences punishable under Sections 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306 (*Abetment of suicide*) read with

section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2. Deceased Varsha got married to accused no.1 on 13.6.2003 at village Khavani, Tal. Mohol, Dist.Solapur. Financial condition of Varsha's father was very poor and therefore, her marriage expenses were borne by her mother's brother Popat Satyawant Bhosale. After marriage Varsha went to live with accused no.1 at village Bhambewadi. Accused no.1 is husband of Varsha, accused no.2 is father-in-law of Varsha and accused no.3 is called cousin mother-in-law. I am unable to make out what it means. Suffice to say, she is related to accused. It has come on record that she has been living separately for 15 years since her marriage though in the same locality and no specific allegation is made against accused no.3. Strangely in the dying declaration which is at Exh.15 on which reliance is placed by the prosecution, Varsha does not mention anything about accused no.3.

3. Accused no.1 was educationally qualified and was M.A. passed. The accused were all agriculturists with 10 to 12 acres of land.

4. It is stated that for the period of about one year, Varsha was treated well at her matrimonial home but thereafter harassment started and the accused are alleged to be harassing her by abusing and not giving food to Varsha. The accused are also alleged to have been demanding Rs.50,000/- for buying a Jersey cow. Varsha was also being taunted that her father could not even afford to marry his daughter. These were informed to PW-1-complainant when Varsha visited her parental home.

5. On 28.10.2003 when complainant (PW-1) went to meet her daughter, she met one person by name Ankush Patil, who has not been examined by the prosecution. When PW-1 inquired with Ankush Patil as to how Varsha was feeling, Ankush Patil informed her that Varsha was admitted to civil hospital at Solapur with burn injuries. Thereafter PW-1 immediately rushed to the civil hospital and saw her daughter was admitted in burn ward and was under going medical care. Father-in-law-accused no.2 was present in the hospital. When PW-1 inquired with Varsha as to how she got burns, Varsha informed her that because the accused were harassing her with the demand of Rs.50,000/-, taunting her that her father was not able to spend or conduct her marriage and were also suspecting her character, Varsha poured kerosene on her person and set herself on fire.

6. While under medical treatment Varsha died on 31.10.2003 at about 3.30 p.m. FIR was lodged on 7.11.2003, based on which complaint came to be registered. After investigation and recording of statements, charge came to be filed. The accused pleaded not guilty and claimed to be tried.

7. Accused no.1 and accused no.2 say that while Varsha was making tea, she got burnt and was admitted to the hospital and died during treatment. It is a false case filed only to harass accused nos.1 & 2. Accused no.3 also says she is being unnecessarily harassed and that she has been staying separately since 15 years with her husband and 3 children and she was not at all concerned with the incident and was being wrongly implicated.

8. To prove the case, as against 14 witnesses listed in the charge-sheet, prosecution has examined only 4, i.e., Surekha Suresh Kadam, mother of Varsha and also complainant as (PW-1); Harsha Suresh Kadam, sister of Varsha as (PW-2); Mohd.Munir Daud Chiniwal, Special Judicial Magistrate who recorded dying declaration at Exh.15 as (PW-3); and Hanmant Shankarrao Mane, Investigating officer as (PW-4).

9. The Apex Court in ***Ghurey Lal Vs. State of U.P.***¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

¹ (2008) 10 SCC 450

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

10. The Apex Court in many other judgments including ***Murlidhar Vs. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view

² (2014) 5 SCC 730

taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

11. The Apex Court in *Ramesh Babulal Doshi Vs. State of Gujarat*³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even reappraise the evidence and arrive at its own conclusions.

12. As regards the evidence of PW-1, first of all allegations mentioned are very general. Secondly PW-1 says that when she met Varsha at hospital, Varsha told her that her earlier statement that she was burnt because of stove explosion is not correct and she told that to

³ 1996 SCC (cri) 972

the police because while being taken to the hospital, the 3 accused told her that she should tell everybody that she got burnt as the stove exploded when she was making tea otherwise she will not get any medical treatment.

PW-1 says Varsha committed suicide by pouring kerosene on her person as she was unable to bear the ill-treatment and harassment by the accused demanding Rs.50,000/- for purchasing jersey cows and the reason that her marriage expenses were borne by her Uncle and not by her father.

PW-1 says that 3 days after the funeral of Varsha was conducted, she went to the police but police refused to lodge FIR saying papers have not been received from the civil hospital and after the papers were received, her complaint was recorded.

In her cross-examination, PW-1 admits that no attempts were made by calling respectable people from the society and from both the families to stop harassment to Varsha. PW-1 admits that earlier she has not lodged any complaint. She admits that accused no.3 was living separately and not in the matrimonial home of Varsha. In paragraph-4 of her cross-examination, PW-1 has admitted in her statement recorded by police that she has not mentioned: (a) that at the time of marriage, 3 tolas gold and other articles were given to the accused; (b) when Varsha came to her house at the time of festival,

she was complaining about ill-treatment by the accused on account of demand of Rs.50,000/-; (c) The accused used to beat her for that demand; (d) Varsha came to the parental home during Diwali when she informed PW-1 that her in-laws and husband were ill-treating and assaulting her; (e) Her asking Varsha as to how she got burnt due to explosion of stove and Varsha telling her it was not explosion but she put kerosene on herself and put herself on fire because the accused threatened not to give medical treatment to her if she did not say there was explosion and she got burnt; (f) She did not approach the police for 3 days that she was mourning her daughter's death and she has not stated that the police refused to lodge a complaint for want of papers from civil hospital, Kolhapur.

All these are major omissions as I would have expected PW-1 to state in her complaint particularly what Varsha told her in the hospital.

13. Similarly PW-2 who is sister of Varsha though repeats basically what PW-1 stated about harassment and demand of Rs.50,000/-, admits that in her statement recorded by police, she has not mentioned that Varsha had come to the parental home for festival, that Varsha informed her that she was being abused and beaten by the accused, that she went to the civil hospital where Varsha told her that

the accused were demanding Rs.50,000/- and therefore, she set fire to herself.

Strangely, Varsha's father has not testified.

14. But the most damaging thing for the prosecution is reliance of prosecution in the dying declaration Exh.15. PW-3 is the Special Judicial Magistrate who has recorded the dying declaration. PW-3 admits that no Doctor has certified in the dying declaration that Varsha was in a position and was conscious to make the statement that is attributed to her. In his examination-in-chief, PW-3 says "..... I went to the patient and inquired whether doctor was available but at that time, doctor was not available".

PW-3 also says in his cross-examination that he does not know that permission of the Doctor before entering the burn ward to avoid infection was required. PW-3 says that he asked questions and patient replied to his questions. But he has not kept his notes. Dying declaration is in a statement form and not in questions-answers form.

15. The Apex Court in *Bhajju alias Karan Singh V/s. State of Madhya Pradesh*⁴ has summarised the principles governing the evaluation of a dying declaration. Paragraphs 23, 25, 26, 27 and 30 of

4. 2012 (4) SCC 327

the said judgment read as under :

23. The “dying declaration” essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that the conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth.

.....

25. There is a clear distinction between the principles governing the evaluation of a dying declaration under the English law and the Indian law. Under the English law, credence and relevancy of a dying declaration is only when the person making such a statement is in hopeless condition and expecting an imminent death. So under the English law, for its admissibility, the declaration should have been made when in the actual danger of death and that the declarant should have had a full apprehension that his death would ensue. However, under the Indian law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration. The dying declaration is admissible not only in the case of homicide but also in civil suits. The admissibility of a dying declaration rests upon the principle of nemo meritorius praesumuntur mentiri (a man will not meet his maker with a lie in his mouth).

26. The law is well-settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the Court may, as a rule of prudence, look for corroboration and if the infirmities are such as would

render a dying declaration so infirm that it pricks the conscience of the Court, the same may be refused to be accepted as forming basis of the conviction.

27. Another consideration that may weigh with the Court, of course with reference to the facts of a given case, is whether the dying declaration has been able to bring a confidence thereupon or not, is it trust-worthy or is merely an attempt to cover up the latches of investigation. It must allure the satisfaction of the Court that reliance ought to be placed thereon rather than distrust.

.....

30. It will also be of some help to refer to the judgment of this Court in the case of Muthu Kutty and Another v. State by Inspector of Police, T.N., (2005) 9 SCC 113 where the Court, in paragraph 15, held as under:-

"15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in [Paniben v. State of Gujarat](#) [(1992) 2 SCC 474 : 1992 SCC (Cri) 403 : AIR 1992 SC 1817] (SCC pp. 480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the

result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted."

16. Therefore, a dying declaration which looks suspicious should not be acted upon without corroborating evidence. The Court has to satisfy itself whether deceased was in a fit mental condition to make a dying declaration and for that will look to the medical opinion. But no doctor has been examined for the Court to ascertain the mental

condition of Varsha on 28.10.2003 at 7.15 p.m. when Exh.15 was recorded by PW-3. There is no doctor's endorsement either on Exh.15. Therefore, Exh.15 cannot be relied upon or cannot be acted upon without corroborative evidence.

17. In the absence of a medical certification in any form that the injured was in the fit state of mind at the time of making the declaration, it would be risky to accept the subjective satisfaction of a Magistrate who has opined that Varsha was in a fit state of mind at the time of making a declaration, particularly because PW-3 Mohd.Munir Daud Chiniwal- Magistrate states that he asked questions and answers were given but declaration is in statement form and secondly victim has given a thumb impression and not signed the declaration and PW-3 does not say that Varsha was so badly burnt that she could not sign, though he asked her to sign. Moreover, no doctor has been examined.

18. PW-4 admits that in one statement Varsha has stated that she got burnt because of explosion of stove and in the other she stated that she wanted to commit suicide.

19. When we look at all these points, only one conclusion can be arrived at, i.e., prosecution has failed to prove beyond reasonable

doubt the guilt of the accused.

20. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court. For acquitting the accused, the Sessions Court rightly observed that the prosecution had failed to prove its case.

21. Appeal dismissed.

(K.R.SHRIRAM,J)