

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 23 OF 2003**

The State of Maharashtra

... Applicant

V/s.

Subhadrabai Sarjerao Dimbale

... Respondent

Ms.PP. Shinde, A.PP. for Applicant-State.

None for Respondent.

**CORAM : A. S. GADKARI, J. &
N. J. JAMADAR, J.****DATE : 17th September 2020.****PC. :**

Heard Ms.Shinde, learned A.PP. for the applicant-State. Despite service, none appeared for the respondent.

Perused the entire record.

2. This is an appeal against the acquittal preferred by the State against the impugned Judgment and Order dated 4th September 2002 passed in Sessions Case No. 124 of 1997 by the learned 2nd Adhoc Additional Sessions Judge, Pune, acquitting the respondent from the offences punishable under Section 498(A) and 302 of the Indian Penal Code.

3. The prosecution case in brief is that, the deceased Sunita Dattatraya Dimbale was the daughter-in-law of the respondent. The marriage

of Sunita was performed with Dattatray Dimbale, i.e. the son of the respondent, on 5th May 1994. There used to be frequent quarrels *interse* between deceased Sunita and the respondent over petty issues. It was alleged by the prosecution that, the husband of Sunita and the respondent used to assault deceased Sunita. The respondent was also causing undue harassment and ill treatment to Sunita alleging that, she was unable to cook properly and do agricultural work. It is alleged that, the respondent was also demanding dowry/money from the deceased. That, on 6th August 1996 at about 7:00 am in the morning, due to quarrel with deceased Sunita, the respondent got enraged, assaulted her, poured kerosene from the can on her person and ignited it. Deceased Sunita was rushed to the hospital by neighbours. Her dying declaration (Exhibit-36/1) came to be recorded at about 2:35 pm on 6th August 1996 by the Special Executive Magistrate, Pune. In her said dying declaration, Sunita has not blamed anybody and has stated that, due to explosion of the stove her sari caught fire, due to which she received burn injuries. Her second dying declaration was recorded by Special Executive Magistrate on 7th August 1996 at about 11.30 pm, wherein deceased Sunita has implicated the respondent alleging that, due to the quarrel which took place in the morning of 6th August 1996, the respondent poured kerosene on her person and ignited it. The deceased has thus implicated the respondent as the perpetrator of the present crime.

4. Perusal of record would indicate that, the first dying declaration of deceased Sunita was recorded immediately after her admission to the hospital on 6th August 1996 at about 2:35 pm, wherein she has described the burn injuries as accidental due to explosion of stove. The brother of Sunita, namely, Shrirang Bhiku Chorge (PW-1) in his deposition has admitted that, after recording of the first dying declaration, he had been to the hospital and made inquiry with Sunita. At that time, Sunita told him that, the respondent and her husband Dattatray on the way to hospital had threatened her not to disclose the true and correct things to the Police and/or Magistrate; failing which they will not admit her to the hospital and accordingly, she gave her first dying declaration. He has further admitted that, he thereafter went to Shindewadi Police Station again and made a written application for re-investigation or re-inquiry of the incident and thereafter, the Magistrate recorded statement of Sunita, i.e. the second dying declaration, dated 7th August 1996 (Exh.32). The said dying declaration is also recorded by the Special Executive Magistrate, wherein Sunita has implicated the respondent as noted earlier.

5. Minute perusal of record would indicate that, possibility of tutoring Sunita by her brother Shrirang Chorge (PW-1) before recording her second dying declaration cannot be ruled out. It also appears from the record that, other relatives of Sunita had also met her before recording of her second

dying declaration and due to the said tutoring she had narrated the facts as recorded in the said dying declaration (Exhibit-32).

6. Apart from the aforestated evidence, the trial Court has also taken into consideration other relevant and mitigating circumstances while acquitting the respondent from the charge framed against him. The view adopted by the trial Court is legally possible in view of the facts of the present case. After perusing the record and impugned Judgment and Order, we are of the considered opinion that, the trial Court has not committed any error either in law or on facts while acquitting the respondent by its impugned Judgment and Order dated 4th September 2002.

7. Appeal being *dehors* of merits, is accordingly dismissed.

8. This Order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

[N. J. JAMADAR, J.]

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn
Digitally signed
by Omkar S.
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