

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.112 OF 2002

THE STATE OF MAHARASHTRA

)...APPELLANT
(ORIG. COMPLAINANT)

V/s.

- | | | |
|----|------------------------------------|------------------------|
| 1) | PRAVEENKUMAR PANNALAL BARDIA |) |
| | R/o. Vetalnagar Zopadpatti, |) |
| | Chinchwad Gaon, Pune. |) |
| | |) |
| 2) | SAU.CHANCHALABAI PANNALAL BARDIA) | |
| | R/o.Gandhi Hotel, Opp. Maharashtra |) |
| | Hotel, Chinchwad Gaon, Pune |) |
| | |) |
| 3) | RAJENDRA PANNALAL BARDIA |) |
| | R/o.Biltika Nagar, Thergaon, Pune |) |
| | |) |
| 4) | PANNALAL PHULCHAND BARDIA |) |
| | R/o.Gandhi Peth, Opp.Maharashtra |) |
| | Hotel, Chinchwad Gaon, Pune |) |
| | |) |
| 5) | SAU.SUVARNA DHHERAJKUMAR JAIN |) |
| | R/o.Gujarnagar, Thergaon, Pune |) |
| | |)...RESPONDENTS |
| | | (ORIG. ACCUSED 1 TO 5) |

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Mr.H.J.Dedhia, APP for the Appellant – State.

Mr.Rajesh More, Advocate for the Respondents.

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

DATE : 22nd OCTOBER, 2020

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

1. The instant criminal appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (Cr.PC.) has been preferred by the State for

assailing the judgment and order dated 11th October 2001 passed by the Additional Sessions Judge, Pune in Sessions Case No.362 of 1996, whereby the respondent-accused was acquitted of the charges under Sections 498A, 302 read with 34 of the Indian Penal Code (IPC).

2. Narrated in nutshell, the prosecution case is that PW2 Jaywant Haribhau Khomne at the relevant time was working as a Special Judicial Magistrate. On 13th March 1994, at about 7.15 p.m., he received a request letter from Police Head Constable Pawar of Nigdi Police Station to record dying declaration of Vandana Pravinkumar Bardia (deceased), who was admitted in Sassoon Hospital.

3. PW2 accordingly went to Sassoon Hospital at about 7.45 p.m. and approached the Medical Officer. The Medical Officer examined the deceased and gave certificate that the deceased was fit to give a statement. According to him, when he asked as to how she was burnt, the deceased told that on Tuesday a quarrel took place between her and her mother-in-law Chanchalabai Pannalal Bardia (A-2), sister-in-law Suvarna (A-5), father-in-law Pannalal Phulchand Bardia (A-4), brother-in-law Rajendra Pannalal Bardia (A-3) and her husband Praveenkumar Pannalal Bardia (A-1). She further told that all the accused told her

that they would kill her by pouring kerosene on her person. A-1 and A-2 accordingly poured kerosene on her person and a burning lamp was pushed on her person by A-3. She further told that her clothes caught fire and she ran out and sat below a water tank. According to her, she did not understand as to what statement she had earlier given as on that day she was not conscious.

4. It further appears from record that PW-9 Investigating Officer during the course of investigation further recorded the statement of deceased (Exh. 51) and on the basis of said statement, registered Crime No.66 of 1994 for offences 498A, 302 read with 34 of the IPC with Police Station Nigdi. He also recorded statements of witnesses. As the deceased died on 15th March 1994, Section 302 IPC came to be added. He also obtained specimen signature of A-1 and sent it to handwriting expert. It further appears from the record that as PW-9 Investigating Officer came to be transferred, the further investigation was handed over to Police Sub-Inspector Jadhav who after completion of investigation forwarded the charge-sheet against the accused.

5. To substantiate the charge against the respondents-accused, the prosecution examined as many as nine witnesses and exhibited number

of documents. It is seen from the record that the respondents-accused were questioned under Section 313 of the Cr.P.C. about the incriminating evidence and the circumstances and they denied all of them as false. The respondents-accused have also filed their common statement of defence wherein it is submitted that since all the respondents-accused and the deceased never resided together, the question of mental and physical harassment allegedly given to deceased does not arise at all. So also the residence of deceased does not have electricity facility and on the day of incident PW-1 daughter of deceased (Mamta) was also not present in the house. The oil lamp kept in the house fell on the person of deceased and thus caused accidental burns to her. In order to take revenge, mother, brother and brother-in-law of deceased have concocted a false story and also got prepared a false dying declaration from deceased.

6. Mr.Dedhia, learned APP, assailed the impugned judgment and order of acquittal by contending that the learned trial Judge wrongly disbelieved the evidence of prosecution witnesses and as also failed to appreciate the dying declaration in its true sense. Even there was failure on the part of the learned trial Judge to understand and appreciate the letters written by the deceased which were certainly

helpful to the cause of the prosecution. There being total failure on the part of the trial Court and the fact that an erroneous judgment of acquittal is an outcome of improper marshalling of evidence, the same deserves to be set aside, argued learned APP.

7. Mr. More, learned counsel for the respondents-accused, on the other hand, has supported the impugned judgment and order of acquittal. The learned counsel took us through the evidence of material witnesses and pointed out how the prosecution witnesses are not reliable. According to the learned counsel, there being no merit in the appeal, the same is liable to be dismissed.

8. PW-5 Vaibhavi Rajesh Mandlik states in her evidence (Exh. 37) that in the year 1994 she was serving as Assistant Lecturer in Forensic Department at B.J. Medical College. On 15th March, 1994, the dead body of deceased was brought for post-mortem by Nigdi Police Station. According to her, there were second and third degree infected burn injuries over the body with total percentage of 58%. In her opinion, the cause of death was due to toxemia due to burns. She then proved her post-mortem report at Exh. 38.

9. Pertinently enough, the examination-in-chief of this material witness regarding burn injuries and cause of death went totally unchallenged. Thus, at the moment, the cause of death on record is toximea due to burns.

10. In the present case, in all there are 3 dying declarations. First dying declaration (Exh. 69) was recorded on 8th March, 1994 by Shri Ulhas Dattatraya Koranne, Special Judicial Magistrate. Second dying declaration (Exh. 27) was again recorded by PW-2 Jaywant Haribhau Khomane, Special Judicial Magistrate on 13th March, 1994 and third dying declaration (Exh. 51) came to be recorded during the course of investigation by PW- 9 Hazrat Pasha Patel, Investigating Officer.

11. Apart from above, there is an eye witness also, namely, PW-1 Mamta Pravinkumar Bardia, the daughter of deceased. Before we venture and tread through those dying declarations and ocular testimony, we deem it fit to outline the governing principles as to multiple dying declarations.

12. 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

¹ AIR 2004 SC 1708

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.

13. 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 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

² 2012 Cri.LJ 3985.

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.

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

15. We have noted from the impugned judgment and order that the first dying declaration at Exh. 69 was duly admitted in evidence by defence without any formal proof and rightly so because the said dying declaration does not make any allegation against any of the accused but rather shows that the deceased was accidentally burnt. There is endorsement of the concerned Medical Officer on the said dying declaration that at the time of making the said dying declaration, the patient was fully conscious while giving the statement. This also therefore rules out any possibility of the deceased not being aware of

what she had stated at the relevant time.

16. Even otherwise, the prosecution has not in any manner questioned the recording of said dying declaration or for that matter the same was recorded in suspicious circumstances. Therefore, the first dying declaration does not in any manner implicate the present respondents-accused.

17. Second dying declaration. PW-2 Jaywant Haribhau Khomane states in his evidence (Exh. 26) that at the relevant time he was working as a Special Judicial Magistrate. On 13th March, 1994 he received requisition letter from PHC Pawar of Nigdi Police Station to record dying declaration of Vandana Pravinkumar Bardia i.e. deceased, who was admitted in Sassoon Hospital. Accordingly, he went to Sassoon Hospital at about 7.45 p.m. and approached the Medical Officer and apprised him the purpose of his visit. The concerned Doctor examined the patient and gave certificate that the patient was fit to give a statement and also accordingly put the endorsement at the top of the statement.

18. It is his further evidence that after putting some preliminary questions to the deceased, he told her that she had given a statement

earlier and whether she wanted to give another statement again, the deceased replied in affirmative. He therefore asked as to how she was burnt and she replied that on Tuesday a quarrel took place between her and her mother-in-law Chanchalabai (A-2), sister-in-law Surekha (Suvarna) (A-5), father-in-law Pannalal (A-4), brother-in-law Rajendra (A-3) and husband (A-1) and they all said her that they would kill her by pouring kerosene on her person. She further told that A-1 and A-2 poured kerosene on her person. While burning lamp was pushed on her person by A-3, her clothes caught fire. Accused ran out. She sat below a water tank. She further told that she had not understood what statement was made by her earlier as on that day she was not conscious. This witness then proved the said statement of deceased at Exh. 27.

19. If the evidence of this witness is read carefully, then we find that there are two important facts which emerge therefrom. At the concluding part of the dying declarations, according to this witness, the deceased gave explanation under what circumstances the first dying declaration was given by her. If the evidence of this witness is to be taken into proper perspective, then, according to him, the deceased had given clarification that she was not able to understand the nature of

first statement given by her as at the relevant time she was not conscious. This piece of evidence is in direct conflict with the endorsement given by the concerned Medical Officer on first dying declaration which we have noted while discussing the first dying declaration.

20. To repeat, we again observe that the concerned Medical Officer has clearly and unequivocally given the endorsement that the patient was fully conscious at the time of making statement. Therefore to say that the deceased was not able to understand the implication of first dying declaration because of her unconsciousness is nothing but a lame excuse and quite contrarily to endorsement given by the concerned Medical Officer at the time of recording of her first dying declaration. There is definitely something amiss.

21. The second part of her dying declaration vividly gives an account under what circumstances she came to be burnt and the role played by the respondents-accused. Further, whether the remaining part of the evidence gets sufficient corroboration either from third dying declaration which came to be recorded by PW-9 Investigating Officer or from the oral testimony of her own daughter is remains to be seen.

22. The evidence of PW-2 shows that he was told by deceased specifically that kerosene was poured on her person by A-1 and A-2 and it was A-3 who had thrown on her person a burning lamp but if her dying declaration at Exh. 27 is read carefully then it would be seen that it nowhere attributes the role of any of the accused by pinpointing his or her name that a burning lamp was thrown on her person by him or her. What it shows is that a lamp was burning in the house which was thrown on her person without specifying the name of any of the respondents-accused.

23. PW-9 Hajrat Pasha Patel states in his evidence (Exh. 50) that the deceased stated before him that all the accused persons quarreled with her, made allegations and A-1 threw kerosene towards her and A-3 threw a burning lamp on her person and the remaining accused instigated. The deceased further stated that she was threatened by her husband and so she gave earlier statement that she was accidentally burnt. He then proved the statement at Exh. 51.

24. A simple reading of the evidence of this witness would show discernible inconsistency between dying declarations at Exh. 27 and at Exh. 51. According to PW-9 Investigating Officer the deceased told him

that it was A-1 who had thrown kerosene on her person, whereas, according to dying declaration at Exh. 27, it were A-1 and A-2 who had poured kerosene on her person.

25. His evidence further shows that he was told by deceased that the remaining accused instigated A-1 and A-3 whereas no such evidence on the point of instigation is deposed by PW-2 Special Judicial Magistrate.

26. Lastly, this witness was further told by deceased that as A-1 had threatened, without explaining the nature of threats, she had given first statement to the effect that she was accidentally burnt. This is again in sharp contradiction to Exh. 27 and as also according to PW-2, deceased had told that she was not able to comprehend the nature of first statement made by her as she was unconscious.

27. In our considered opinion, there is material inconsistency between these two dying declarations at Exh. 27 and Exh. 51. We are certainly not satisfied with the nature of evidence in respect of second dying declaration.

28. This brings us to ocular evidence of PW-1 Mamata Pravinkumar Bardia.

29. Before that, we may note here that at the time of recording of evidence of PW-1, she was 14 years old.

30. PW-1 states in her evidence (Exh. 23) that at the relevant time she was residing with her deceased mother. Her mother used to work in a factory. Her mother used to go for work at 7.00 a.m. and return at 4.30 p.m. According to her, her father (A-1) was not residing with them and rather was residing with his father at some other place.

31. It is her further evidence that the incident took place on 8th March, 1994. When she returned from school she found her mother and all accused persons in the house. A quarrel took place between her mother and father. Her father asked her mother as to why she came late and on that count a quarrel took place. At that time the remaining accused abused her mother. Her father (A-1) and grand-mother (A-2) then poured kerosene oil from a tin on the person of her mother. Grand-father(A-4) and maternal aunt (A-5) were saying that her mother should be killed. Raju uncle (A-3) threw a burning lamp towards her mother. Her mother started burning. Her mother sat

below water tap. The accused persons ran away. It is her further evidence that many persons gathered near her house. Her father returned to spot and her mother was taken to Talera Hospital in an auto rickshaw.

32. Her evidence lastly shows that on medical advice, her mother was immediately taken to Sassoon Hospital. She went with her mother and father. Her mother was admitted in Sassoon Hospital. Her father threatened mother to kill her (witness) and her brother if the incident was disclosed. She was frightened and therefore, did not tell anybody about the incident on that day. In that night itself, she went to the house of her uncle Ashok.

33. Before we appreciate the testimony of this material witness, we would like to note from her examination-in –chief that in the year 1994 she was studying in 2nd standard when the incident in question took place. It is also clear from her examination-in-chief that she started residing with her maternal grand-mother and maternal uncle since after the incident. Suffice to say this witness was under tutelage of her maternal grand-mother and maternal uncle since the time of incident and was totally detached from her father i.e A-1. It is in this

background and the fact that at that time she was a child witness, her testimony assumes significance. If the evidence of this witness is read as a whole, we are quite sceptic about her reliability for reasons to follow hereinafter:

(a) From examination-in-chief it is more than clear that at the time of incident her mother and accused were residing separately from each other. It is not made clear as to how and why on the date of incident all of the accused gathered at the residence of deceased. This is one aspect of the matter.

(b) Coming to the main incident, her evidence shows that A-1 and A-2 poured kerosene oil from a tin on the person of her mother while A-4 and A-5 were saying that her mother should be killed. Now if the dying declaration at Exh. 27 is to be seen then it nowhere shows that it were only A-4 and A-5 who were exhorting the remaining accused to kill the deceased.

(c) On the contrary, it shows that all the accused were saying that they would kill her (deceased) by pouring

kerosene on her person. However, the evidence of PW-9 Investigating Officer nowhere shows that it were A-4 and A-5 who had exhorted the remaining accused to kill the deceased.

(d) Her cross-examination also offers many inconsistencies vis-a-vis the other two dying declarations. It is apparent from her evidence that her mother was firstly taken to Talera Hospital. According to her, they all were in the hospital for about 15 to 20 minutes. The Doctor in the hospital had made enquiry with her mother and then she admits that her mother told that she was accidentally burnt. It is pertinent to note here that the very first dying declaration i.e. Exh. 69 also shows that she was accidentally burnt but later on while recording second dying declaration at Exh.27 the deceased allegedly clarified that as she was unconscious, she did not know as to what she had stated earlier.

(e) Interestingly, deceased's own daughter doesn't say anywhere that her mother was unconscious or was not in a position to make a statement. Rather, according to her, at

Talera Hospital her mother on being enquired by Doctor clearly stated that she was accidentally burnt. It is also to be noted here that while recording third dying declaration by PW-9 Investigating Officer, according to latter, the deceased had told him that earlier statement was given by her under threat but the evidence of PW-1 daughter nowhere shows that when her mother was taken to Talera Hospital, her father had threatened because that was the first available opportunity for A-1 to say anything to deceased wife.

(f) On the contrary, the evidence of PW-1 shows that it is only when she was taken to Sassoon Hospital at that time her father threatened deceased that if she disclosed the reality he would kill her (PW-1 and brother). Again this evidence doesn't get corroboration either from Exh. 27 or from the evidence of PW-9 Investigating Officer.

(g) Her examination then shows that after the incident and when her deceased mother sat under a tap, the people of the locality gathered and made enquiries but she did not tell anything. Why she did not tell the reality about the

incident or for that matter her own mother to the people from the locality who had gathered is a mystery. It is also not the evidence of this witness that by the time people gathered her father had already threatened her not to disclose the reality to anybody or otherwise he would kill her or her brother as is the case put forth by the prosecution.

(h) One more aspect. Assuming that she was very much present in the house when the incident in question took place but surprisingly her presence is nowhere attributed by the deceased mother in her statements given before the Magistrate and police.

(i) Apart from above, it is seen from the record that the statement of this witness came to be recorded on 15th March, 1994 i.e after 7 days of the incident. She was the only eye witness to the incident. No explanation much less the satisfactory explanation is forthcoming for the delay in recording of her statement. Thus, having regard to the overall analysis of her evidence, we do not find her to be a natural witness and rather our considered view is that since

this witness had started residing with her maternal grandmother and maternal uncle immediately after the incident, the possibility of her being tutored in the facts and circumstances of the case cannot be ruled out.

34. 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 a willful conduct of respondents-accused of harassment of the deceased at their hands with a view to coercing her to meet any unlawful demand by them so as to attract the provisions of Section 498A read with Explanation thereto. The dying declaration at Exh. 27 and as also the evidence of PW-9 Investigating Officer who recorded dying declaration at Exh. 51 are conspicuously silent in this regard. Therefore, on this count also there is total failure on the part of prosecution.

35. The above being 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.

36. On perusal of the entire evidence and the 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 respondents-accused.

37. 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.)

**Trupti
Bhamne**

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