

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 393 OF 2002

The State of Maharashtra) ...Appellant
(Orig. Complainant)

VERSUS

Bhagwant Kisan Shewale,)
Age 54 yrs,)
R/o. Jambutake, Tq. Dindori,)
District Nashik.) ...Respondent
(Orig Accused)

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

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

DATED : OCTOBER 08, 2020.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. This is a case where the prosecution went on collecting dying declarations after dying declarations, written and oral, and on assessment of this evidence in the form of dying declarations, the learned Trial Court i.e. Sessions Judge, Nashik in Sessions Case No. 171 of 1999 vide judgment and order dated 31st December, 2001 found that none of the dying declarations inspire the confidence and as it is unsafe to rely on any

of the dying declarations, and recorded the judgment and order of acquittal of the accused persons.

2. Being aggrieved by the said judgment and order of the acquittal, State of Maharashtra is before this court by filing present appeal against the original Accused No. 1 i.e. Respondent herein only.

3. It is the case of the prosecution that marriage of Snehalata daughter of Ramdas Jagtap (PW 2) solemnized with one Ravikant i.e. son of accused No. 1 in the year 1995. Family i.e. deceased, her husband and her in-laws were residing at Chachadgaon. Ravikant was a medical degree holder and before 2 years of the incident, he opened a dispensary at village Lakhamapur. For initial period, the couple was residing at Lakhamapur and 3 months prior to the incident accused no. 1 and wife of accused no. 1 that is father-in-law and mother-in-law respectively of the deceased also started residing at Lakhamapur. It is further the case of prosecution that accused No. 1 -Bhagwant Kisan Shewale, father-in-law of the deceased used to ill-treat her by using the abusing words and was also demanding money. The incident took place on the intervening night of 25th and 26th April, 1999. In the evening, accused no. 1 - Bhagwant

returned back to the house, and the deceased prepared tea for him. After sometime deceased served dinner to accused no. 1, and husband Ravikant was out of the house to attend patient. At that time, a cousin of deceased was also present in the house. Accused no. 1 Bhagwant started giving abuses to the deceased as such, the deceased asked her cousin brother to call one Balukaka Shevale. It is further the case of prosecution that as cousin brother of deceased went out of the house and deceased was taking dinner in the house alone, accused no. 1 - Bhagwant finding an opportunity that deceased was alone in the house took out kerosene from a plastic container, poured the same on the person of Snehalata and set her on fire by lighting a matchstick. Deceased Snehalata made an attempt to caught hold of Accused no. 1 but he was successful in running out of the house. Snehalata also came running out of the house and shouted for help. As she was unable to proceed further and collapsed in the courtyard. A jeep was arranged by her husband and she was taken to one Deepjyoti Hospital. On her admission in the hospital, an information was forwarded to the police authorities and accordingly, Special Judicial Magistrate was requested to record her dying declaration. Mr. Sonawane – Special Judicial Magistrate (PW 1) recorded the dying

declaration which is first in point of time. In this dying declaration Snehalata stated that while she was preparing the food the stove exploded and she caught fire. Information was sent to Ramdas Jagtap (PW 2) father of deceased. Ramdas (PW 2) reached to Deepjyoti Hospital. On reaching to hospital, he found that deceased had sustained burns and on his inquiry with deceased, deceased informed him that her father-in-law poured kerosene on her person and set her on fire. Ramdas (PW 2) then made complaint to police officials and insisted upon the police officials for re-recording dying declaration. At the insistence of Ramdas (PW 2) second dying declaration of Snehalata dated 26.04.1999 was recorded. In the second dying declaration Snehalata stated that while she was taking her meals, her father-in-law poured kerosene on her and set her on fire. As per the second dying declaration incident of setting Snehalata ablaze took place at about 08.30-08.35 pm.

4. On receipt of this second dying declaration recorded by Raghunath Wagh (PW 3) – Special Judicial Magistrate, Mr. Ramu Khandavi police havaldar registered the offence under Section 307 of IPC. Balasaheb Muthe (PW 14) took over the investigation and in the process of investigation, he took necessary steps such as, visiting the place

of occurrence, drawing the panchanama in presence of panchanas, visiting Deepjyoti hospital where Snehalata was admitted. He then made inquiry with the medical officer attached to Deepjyoti hospital about the health status of the Senahalata and on reply that Snehalata is conscious and in a position to give statement

Mr. Muthe (PW 14) recorded the statement/declaration of Snehalata on that day i.e. 27.04.1999 at about 10.00 am. This declaration is a detailed statement of Snehalata. In that statement she reiterated that her father-in-law by pouring kerosene on her person set her ablaze. On 27.04.1999 father-in-law of Snehalata came to be arrested. His arrest panchanama was drawn. In this arrest panchanama a reference was made to injuries sustained by accused no. 1 due to fire / burns. It is further the case of prosecution that on 29.04.1999 an incriminating article in the form of plastic can was recovered at the instance of accused no. 1 Bhagwant. On 16.05.1999 Snehalata succumbed to burn injuries as such, the offence against the accused converted into an offence under Section 302 of IPC.

5. Meantime, Ramdas (PW 2) produced two letters in support of his allegations that Snehalata was subjected to ill-treatment. The

investigation officer on completion of necessary formalities of investigation, filed the charge-sheet initially in the Court of JMFC, Dindori and learned Magistrate on finding that the case is exclusively triable by the Court of Sessions, the same was committed to the Court of Sessions. Learned Sessions Judge framed the charges against the accused. Accused was subjected to statement under Section 313 of the Cr.P.C. While denying the charges the defence raised by the accused person was of false implication. Learned Sessions Judge on assessment of the evidence recorded the judgment and order of acquittal.

6. Learned APP made an attempt to submit before this court that the dying declarations were recorded immediately after the incident took place. The written dying declarations are recorded by the special judicial magistrate and in presence of the medical officer or doctors. Thus, the dying declarations ought to have been accepted by the learned Trial Court. Learning APP then submitted that apart from dying declarations even the oral declarations supporting the case of prosecution. It is also submitted by Learned APP submitted that in the the dying declaration reference to the act of the accused persons in detail given. Thus, it is the submission of learned APP that the learned trial

judge committed a grave error in recording the judgment and order of acquittal.

7. None appeared for the respondents.

8. With the assistance of learned APP, we have gone through the evidence brought on record.

9. The prosecution in support of its case examined as many as 14 witnesses. These witness can be classified in four categories, i.e., panch witnesses i.e. Patil Kondaji Sonawane (PW 1), panch witness to spot or place of occurrence, Nana Sonawane (PW 4), panch on recovery of an incriminating article plastic can, Haribhau Bombale (PW 5) panch to production of letters at the instance of Ramdas (PW 2), Balasaheb Nirbhawane (PW 13) panch to arrest effected of accused no. 1, Ramdas (PW 2) is the informant, father of deceased and also states about an oral dying declaration to him made by deceased, Raghunath Wagh (PW 3) – Special Judicial Magistrate who recorded the dying declaration of Snehalata on 26.04.1999 Exh. 29, and Bhagwan Shinde (PW 6) who stated that Snehalata came out of the house in the courtyard raising shouts for help and disclosing that she was set on fire by her father-in-

law. Sanjay Jagtap (PW 9) is a witness on account of oral dying declaration, Dr. Sunil Shah (PW 7) and Dr. Deepak Deore (PW 11) are the medical officers on the autopsy. The prosecution has proved the postmortem report through Dr. Shah (PW 7). Dr. Deepak Deore (PW 11) is examined to show that while the dying declaration recorded by Raghunath Wagh (PW 3) Snehalata was in a fit condition to make statement. Dr. Satish Gharte (PW 12) is the another medical officer who certified that Snehalata was in fit condition to record the statement and accordingly investigating officer permitted to record her statement/dying declaration. Ganpat Patade (PW 8) is the person a kerosene dealer by occupation and he is examined by prosecution to show that the accused had purchased kerosene from him.

10. Now we may refer to the relevant evidence firstly. We may refer to the version of Ramdas Jagtap (PW 2) father of deceased. Ramdas in his deposition before the Court stated that maiden name of his daughter was Charulata. Marriage of his daughter was solemnized with one Ravikant in the year 1995 and since her marriage she was known as Snehalata. Then Ramdas states that for initial period of one year his daughter Snehalata was treated well thereafter there was a monitory

demand at the hands of son-in-law Ravikant. He further stated that in support of his allegation of demand he referred to two letters and in examination-in-chief itself he stated that first letter wherein there is a demand of Rs. 4,000/- neither bears the signature of his son-in-law or his daughter. . He further stated before the Court that in response to this letter he told father-in-law of his daughter Bhagwant that he will pay an amount of Rs. 4,000/- for a course fee (for academic purpose) to his son-in-law on their visit to his house. Then he states about the second letter received by him in the year 1999. He states that the letter was written by his daughter, he identifies handwriting of his daughter. Now it is interesting to note that in the second letter written by Snehalata it is stated that they are in need of Rs. 5,000/- and the reason is also assigned in the letter i.e., purchase of the house. It is further stated that the amount would be returned in the next month. Now in this letter there is not a single word of complaint against either the husband or any in-laws. Then Ramdas (PW 2) states that after receiving the letter he had been to Lakhampur, at that time Snehalata was taking her lunch and her brother-in-law asked for a tin full of water as he wanted to attend nature's call. Now this statement is made to submit that this act was an act of an ill-

treatment. Ramdas (PW 2) stated that he was enraged and anguished and left house of Snehalata. There is no justifiable explanation made as to how brother-in-law who had asked tin full of water as he wanted to attend the nature's call would be an act of ill-treatment to Snehalata when there is no such response shown by Snehalata herself. Then he states about receiving the information about setting Snehalata ablaze through his nephew Sanjay on 25.04.1999. Then he stated that he along with his wife and his other two neighbours went to Lakhampur. He reached Lakhampur at about 3.30 am as the house was locked he went to Dindori hospital. As he found that Snehalata was not admitted there he proceeded to Civil Hospital, Nashik. On finding that Snehalata was not in Civil Hospital, Nashik and he overheard that burn injury patients might have been admitted to Deepjyoti hospital, he proceeded next to Deepjyoti hospital. He was unable to tell the name of persons from whom he heard that the burn patient might have been admitted in Deepjyoti hospital. He further stated before the Court that he met son-in-law who was standing in the gate of hospital and his son-in-law let him to meet daughter. Though her full body was burned, her face was intact and she was undergoing treatment. Then he stated that on 22nd day

morning, Snehalata expired. Then he stated about the oral declaration made to him by Snehalata and he states that on first day when he had been to hospital to see his daughter on inquiry to Snehalata, Snehalata told him that her father-in-law poured kerosene on her and set her blaze. Then he brought her to Deepjyoti hospital.

In the cross-examination he admits that he was in the hospital for all 22 days and police made inquiry with him on 27th and 28th. Then it is brought on record by way of an omission about the incident of brother-in-law asking for tin full of water so as to attend nature's call. It also came on record though Ramdas (PW 2) denied before the Court that he was not aware of the dying declaration being recorded by the Judicial Magistrate and in that dying declaration Snehalata stated about accidental burns. He made complaint and insisted for recording of the dying declaration again.

11. Now we may refer to documents placed on record i.e., Exhibit 27 and 28. These are the applications submitted at the instance of police personnel to Chief Judicial Magistrate, Nashik. Perusal of these documents shows that dying declarations were recorded by Special Judicial Magistrate – Shri. Sonawane and in that dying declaration

Snehalata stated about the accidental burns. Snehalata made no complaint against any person and her father Ramdas submitted a complaint to the police authorities in view of that complaint police authorities sought permission from the learned Chief Judicial Magistrate to record the dying declaration again.

12. Now we may refer to evidence of Raghunath Waliba Wagh (PW 3). It is interesting to note that Raghunath stated before the Court that on 26.04.1999 police authorities of Sarkarwada Police Station approached him, he made aware of the order passed by the CJM to re-record dying declaration of Snehalata. Then he proceeded to Deepjyoti hospital, he met Dr. Deore there and told him the purpose of his visit i.e. for recording the dying declaration of Snehalata. He further stated that along with Dr. Deore he went to the ward, Dr. Deore examined Snehalata and his endorsement on the form that Snehalata was able to speak properly. Then Dr. Deore made his signature below endorsement in his presence. Then on assurance that there is nobody in the ward except himself and doctor he requested the doctor to left the ward and then he proceeded to record the statement of Snehalata. He made preliminary inquires about her name, occupation, place of resident,

members residing with her in the house. Then he read over the questions put by him and the answers given by Snehalata. Then he obtained her left thumb impression below the statement. Then he made signature below statement with the words in presence and again called doctor. Doctor again examined the patient and made his endorsement below statement and after recording statement patient was in condition to speak. Then he stated that original dying declaration i.e. Exhibit 29 was sent to the CJM in a sealed envelop and first carbon copy was sent to police station. In the said dying declaration Exhibit 29 Snehalata stated that while she was taking her meals in the house her father-in-law accused no. 1 came there, he poured kerosene on her person and set her on fire. She stated that the incident took place at about 08.30-08.45 and at that time she herself and her father-in-law only present in the house.

13. Nana Umaji Sonawane (PW 4) he is the panch witness and in whose presence the accused took out the kerosene can which was lying near the bed. As the said article was not treated as an incriminating article, it is not necessary to refer his evidence in detail.

14. Haribhau Bombale (PW 5) is the panch in whose presence

two letters were seized. As we have already referred to the contents of those letters wherein there is nothing objectionable nor those letters disclosed any act of ill-treatment, it is not necessary for us to refer to this witness in detail.

15. Bhagwan Shinde (PW 6). He stated that on 25.04.1999 he sold milk to a hotelier and thereafter he went to pan shop. Then he states that at pan shop there were 2-3 persons standing and while he was chewing pan, he heard noise “Dhava re Dhava”. He rushed to an open place which was near about, in front house of Dr. Shevale. He stated that a girl was lying there and she was burning. He made an attempt to extinguish the fire with blanket. A jeep came there and girl was put in the jeep. Then he stated that the girl was saying that she was set on fire by her father-in-law. He also stated that he had rough acquaintance with father-in-law of the girl and he then identified the accused no. 2.

In the cross-examination this witness admits that he had not approached the police to give the information immediately. He also admits that after three days of the incident police came to his farm and recorded his statement. Then in the next breath he denies that any statement was made by him to police and then the omission is brought

on record about this witness running to the spot i.e. open space. Then again an omission is brought on record that victim stating that she was set on fire by her father-in-law. Learned Trial Court find that the version of this witness is wholly unreliable on the backdrop of the omission. There is another reason and that is the brother of Snehalata was also examined who also reached to the spot immediately, and states that Snehalata was put in Jeep and was referred to the hospital but this witness is silent on the utterance of Snehalata that she was set on fire by her father-in-law.

16. Dr. Sunil Shah (PW 7) is the autopsy surgeon who performed autopsy on the dead body of Snehalata and found following injuries:

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|----|------------------|-----|
| 1. | Right Upper limb | 9% |
| 2. | Left Upper limb | 9% |
| 3. | Chest & abdomen | 14% |
| 4. | Back | 14% |
| 5. | Right Lower limb | 9% |
| 6. | Left Lower limb | 9% |

Then this witness stated that all the burn injuries were antemortem and in his opinion the cause of death was shock due to burn.

Defence decline to cross-examine this witness.

17. Ganpat Patade (PW 8) is the witness examined by the prosecution to show that the accused no. 1 had purchased five liter of kerosene on 22.03.1999. Now the purchase of kerosene is much prior to the incident, precisely two months prior to the date of incident and kerosene being an article / commodity used on daily basis for cooking etc in the rural ares. The evidence of this witness, in our opinion, is neither supports the case of prosecution nor of any consequence.

18. Sanjay Jagtap (PW 9) examined by the prosecution on alleged oral dying declaration. At the relevant time Sanjay was residing at Lakhamapur. He stated in his deposition that on the day of incident that while he was sitting in his house after finishing dinner at about 08.30-08.45 a woman residing in the neighbourhood came there and told him that his sister was burned by her father-in-law. He immediately rushed to house of Ravikant. He found that his sister was lying in the courtyard. She had received burn injuries on chest, abdomen and upper limb. Then he states that his brother and husband of deceased Dr. Ravikant took Snehalata to dispensary. He then proceeded to Civil Hospital, Nashik.

Then he stated that his cousin uncle, i.e. father of Snehalata made an inquiry to him as to how the incident took place to which Snehalata told that she served the tea to her father-in-law, favour dinner after tea. She gave him dinner and after dinner he was sitting outside on a bed. She was sitting in the kitchen taking dinner. Her father-in-law came in kitchen when she was taking dinner by lifting kerosene can he poured kerosene from behind and set her ablaze. Then he states that his statement was recorded by the police on 27.04.1999.

In the cross-examination an omission is brought on record about the information was given to him by one woman and it is interesting to note that when a question was put to him that he was telling lie before the Court about the information received by him through that woman that father-in-law of Snehalata set her on fire, he admitted before the Court that it was a lie on his part. It is also interesting to note that there is remarkable variance in the so called dying declaration given to the father by Snehalata and oral dying declaration given to this witness. Now considering this fact the conclusion was drawn by the learned Trial Court that none of this oral dying declaration is acceptable due to a major variance in the statements.

At the cost of repetition, we may state that this witness admitted before the Court that while making the statement before the Court he made a casual statement and accepted that his statement was lie. On the backdrop of this facts, the version of this witness lost its truthfulness as the credentials of this witness are doubtful. It can safely be state that this witness is not an independent and worthy witness.

19. Ramu Khandavi (PW 10) is the police havaldar attached to Vani Police Station at the relevant time. On 25.04.1999 he was informed through another police havaldar Ghule to proceed to house of Dr. Shevale as his wife was set on fire. He stated before the Court that when he reached to spot he found that some persons were gathered their and on had caught hold father of Dr. Shevale and they were making allegations that he is the person who set his daughter-in-law on fire. Then he states that he entered inside the house and in the room he found that kerosene was split on the ground floor. There were burnt clothes lying on the ground floor. Then he further stated that on 26.04.1999 an information was received through wireless that Snehalata admitted to Deepjyoti hospital. He proceeded to Deepjyoti hospital, the Magistrate had recorded the statement of Snehalata gave the statement to him and in

turn he gave that statement to Vani Police station. Then he stated that on the basis of the statement offence was registered. It reveals from the statement of this witness that though an information was received about a lady set on fire the police authority took sufficient time to registered the offence. There was also sufficient delay in effecting arrest of accused no. 1.

20. Dr. Deepak Deore (PW 11) who was attached to Deepjyoti hospital. He is the doctor who made endorsement on the dying declaration exhibit 29 certifying the fitness of the patient to make the statement. He admitted in the cross-examination that when he examined the patient the patient was given oxygen and there was a mask on her face. He also admitted that due to mask the patient was not able to breath easily. He further admits that the patient was not mentally fit to make the statement till her statement was completed. He also admitted that mental state is different than persons capability to speak. Thus the evidence of this witness show that there was serious doubt on aspect of the fit mental condition of the patient and ability of the patient to speak coherently.

21. Dr. Satish Gharte (PW 12) was working as RMO in the

Deepjyoti hospital at the relevant time. On 27.04.1999 police officer approached him and made inquiry as to whether the patient is in a condition to speak. On examination, he told the police officials that the patient was in condition to speak and was able to give answers to the question. Then he states about his endorsement on the report.

In the cross-examination he admitted that the persons may be conscious but may not be mentally fit. He denied the suggestion that he made endorsement on a statement which was already prepared by the police. Now the statement recorded on an endorsement of this witness is a lengthy one. The patient gave information in detail about her initial matrimonial period. Then the abuses given by accused no. 1. She also stated about a pregnancy carried by her after a year of her marriage and termination of her pregnancy. Then she stated that on 25.04.1999 husband Ravikant was in his dispensary. Accused no. 1 father-in-law returned from his work. Then she stated that as she was unable to remove stick which was used as support stick to mosquito net, accused no. 1 gave abuses to her on that ground. Then she stated that she gave tea to her father-in-law and thereafter he father-in-law took dinner. Then her husband came to the house and asked her cousin Shridhar to stay with

Snehalata and proceeded to attend patient. Then she stated that her father-in-law gave abuses to her cousin and asked him to go out of the house. She told her cousin to call one Balukaka Shevale. Then she stated that when she was taking dinner at that time accused no. 1 took out kerosene from the can and poured it on her person and set her on fire. Then she rushed to the open space and as her clothes caught up fire she became unconscious. Thereafter she was taken to Nashik in Hospital. Then she states when her statement was recorded by magistrate, due to pressure of her in-laws she avoided to make any complaint against her in-laws and on reaching of her parents she stated true facts.

22. Balasaheb Nirbhavane (PW 13) is the panch witness to the arrest panchanama. It shown that accused no. 1 was arrested in his presence on 27.04.1999.

23. Balasaheb Muthe (PW 14) is the investigating officer. He states about the steps taken in the process of investigation. Though this witness denies re-recording of dying declaration of Snehalata on the insistence of the relative of Snehalata, as stated above, the material placed on record clearly show that after recording the first dying declaration

wherein there are no allegations against accused persons and which is immediately recorded after the incident, meaning thereby first in point of time, subsequently father visited firstly to the matrimonial home of her daughter and then to the hospital and insisted upon the police authorities for re-recording the dying declaration and the police authorities on his insistence submitted an application to the magistrate and on seeking permission from the magistrate the subsequent dying declarations are recorded.

At the cost of repetition, we state that there is a marked difference in all dying declarations i.e. written dying declaration and oral dying declaration. Though, learned Sessions Judge referred to certain judgment while appreciating evidence, more particularly, the evidence in the form of dying declarations, we refrain ourselves to refer to these judgments so as to avoid repetition.

24. It can be stated here that there cannot be any dispute on the proposition of law that while appreciating the evidence in the form of dying declaration, the Court is required be very cautious, and in cases of multiple dying declaration, court can pass order of conviction provided that these dying declarations are consistent to each other and inspire

confidence of the Court. Here in the present case, none of the dying declaration inspires the confidence of the Court. It will not be out of place to state that the victim who gave her first dying declaration and stated that it was an accident that the incident of burn was result of exploding of stove and takes a somersault in her subsequent declaration and alleges that it was the act of accused No. 1. Needless to state here that only accused no. 1 was charged for commission of offence under Section 302 whereas the accused nos. 2 and 3 were charged for the offence under Section 498A read with Section 34 of the IPC. Learned Trial Judge found no evidence against either the accused no. 1 for the commission of offence under Section 302 and against other accused persons for commission of offence under Section 498 A read with Section 34 of IPC and recorded the judgment and order of acquittal. On perusal of the evidence, we are of the opinion that the learned Trial Judge committed no error in arriving at conclusion that death of victim Snehalata was an accidental and also committed no error in observing that the dying declarations (written recorded at the instance of father of victim as well as oral) do not inspire confidence of the Court as such, the accused are entitled for their acquittal of the offences charged against

them.

25. In our opinion, learned Trial Judge thoroughly scrutinized the evidence and appreciated the evidence in its proper perspective. We are unable to find any fault in the conclusion arrived at by the learned Trial Judge. Learned Trial Judge on appreciation of evidence adopted the possible view as such, there is no perversity in the judgment. Appeal thus, being devoid of any merit deserves to be dismissed. Accordingly, Criminal appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)