

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1356 OF 2002**

The State of Maharashtra  
(Through PSO, Tasgaon Police Station).

... Appellant

V/s

1. Mohan Raghunath Gavade  
Age about 36 years.

2 Raghunath Dnyanu Gavade  
Age about 68 years.

Both are Agriculturists  
and R/a. Warchee Galli,  
Dhangarwada, Tasgaon,  
Dist: Sangli.

... Respondents  
(Ori. Accused 1 to 2).

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

None for Respondents.

**CORAM : A.S. GADKARI &  
V. G. BISHT, JJ.**

**DATE : 1<sup>st</sup> October, 2020.**

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

This Appeal is filed by the State challenging the judgment and order of acquittal dated 1<sup>st</sup> October, 2001 passed in Sessions Case No.

116 of 1999 by learned 2<sup>nd</sup> Additional Sessions Judge, Sangli for the offences punishable under Sections 302, 498A r/w 34 of the Indian Penal Code (for short “IPC”).

2 Narrated in nutshell, it appears from the evidence of PW-2 Arjun Abaji Punadikar, Police Head Constable, Miraj City Police Station that on 23.09.1998 he was posted at Civil Hospital, Sangli. He received a telephonic message that one Vijaya Mohan Gavade ( “deceased” for short) was admitted in the hospital for burn injuries and was asked to record her dying declaration. He accordingly visited the deceased and after satisfying from the concerned Medical Officer as to her fitness to make her statement, he recorded her statement. Accused Mohan Raghunath Gavade (A-1) is the husband of deceased while accused Raghunath Dnyanu Gavade (A-2) is the father-in-law.

3 While recording the dying declaration it transpired that A-1 was addicted to liquor and was jobless and because of this there used to be frequent quarrels between the deceased and A-1. On 23.09.1998, as usual deceased woke up early in the morning. As deceased told A-1 that he was not earning and was consuming liquor every day, a quarrel ensued. A-1 allegedly started abusing and beating the deceased. At

this point of time A-2 came and asked them to go away from there. The prosecution alleges that A-1 took a plastic can containing kerosene and put it on the saree of the deceased. Coincidentally, her saree fell on the *shegadi* (make shift hearth) and caught fire leading to the burn injuries.

4 It may be noted that on the basis of above said declaration (Exh.22), PW 10-Maruti Dattu Patil, Police Head Constable, registered the Crime No. 218 of 1998 under Section 498A r/w 34 of the IPC and handed over to PW-7 Mohan Yashwant Waghmare, the then Police Head Constable, for investigation.

5 It appears that PW-7 visited the spot of occurrence, prepared spot panchanama and seized various articles from the spot under panchanama (Exh. 20).

6 It further appears that PW-8 Yashwant Sambhaji Jadhav, the then API of concerned police station, carried out further investigation. He recorded the statements of witnesses and after completion of investigation submitted the charge-sheet after adding Section 302 of IPC as during the course of investigation witness had succumbed to the

injuries.

7 To substantiate the charge against respondents-accused, the prosecution has examined as many as 10 witnesses and exhibited number of documents. The respondents-accused were questioned under Section 313 of the Code of Criminal Procedure (for short “Cr.P.C.”) about the incriminating evidence and circumstances and they denied all of them as false. It is the further statement of A-1 that at the time of incident, he was standing in *parade* (the back-yard) and chewing tobacco. His son Prashant called him inside. His father was extinguishing fire on the person of deceased with the help of water and had received burn injuries on his chest and hands. Then, he tried to extinguish fire. Thereafter, people gathered. According to him, he never ill-treated or had beaten the deceased and that a false case is lodged against him. Similarly, A-2 submitted that at the relevant time he was doing *devpooja*. He saw big fire in the kitchen and went there and found deceased was burning. According to him, he tried to extinguish fire and in that attempt he sustained burn injuries on his chest and hands. People poured water on the person of deceased and extinguished fire.

8 Mr. Patil, learned APP, for the appellant-State, submitted that the prosecution is based on three written dying declarations. There is also an oral dying declaration which was given in the presence of brother (PW 4) by the deceased. Apart from these dying declarations, son of deceased, namely, Prashant Mohan Gavade (PW-5) had witnessed the incident. Despite the overwhelming evidence, the learned trial Court committed grave error in rejecting those dying declarations and as also the ocular version of PW-5 son. According to learned APP, there is an ample and encouraging evidence on record which not only prove that the deceased was subjected to cruelty but the act of cruelty culminated into setting of fire of deceased leading to her death. Since the act of respondents-accused are allegedly linked to the offences with which they were charged, they deserve to be punished in accordance with law by setting aside the order of acquittal, argued learned APP.

9 When the matter was called out, none appeared for the respondents-accused.

10 At the very outset, it may be noted from the record that postmortem report pertaining to the deceased is duly admitted in evidence (Exh.15) by the respondents-accused during the course of trial.

The cause of death opined is shock due to 97% burn. Again, there is no dispute on this count.

11 The prosecution case rests on multiple dying declarations, out of which, three dying declarations are written while one dying declaration was made orally by the deceased to her brother (PW-4). Apart from this, there is an eye witness also (PW-5), namely, the son of the deceased to the incident. 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.**<sup>1</sup>, 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.

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<sup>1</sup> AIR 2004 SC 1708

13 Similarly, in **Sudhakar V/s State of M.P.<sup>2</sup>**, 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 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.

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<sup>2</sup> 2012 Cri.LJ 3985.

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. The first and second dying declarations were recorded by PW-3 Ibrahim Abbasmiya Shaikh at Exh. 25 and 27, respectively.

15 PW-3 states in his evidence (Exh. 23) that at the relevant time, he was Taluka Executive Magistrate and Nayab Tahasildar at Miraj. He got a telephonic message from Vishrambag Police Station that he should record dying declaration of the deceased, who was admitted for burns in Civil Hospital, Sangli. He visited the hospital and met the doctor. He enquired whether deceased was conscious and was able to give answer to which doctor replied in the affirmative. He then recorded the statement of the deceased in question-answer form and after completion of same obtained her left leg big toe impression on the dying declaration. He then proved the said dying declaration at Exh. 25.

16 It is his further evidence that at about 5-00 p.m., he again received telephonic message from Vishrambag Police Station informing that the brother of deceased had made complaint that dying declaration of the deceased was required to be changed and therefore, his presence was required to record one more dying declaration. He again visited the

hospital and after satisfying about the health of deceased, recorded her statement.

17 It is his further evidence that he asked the deceased what was the need of recording one more dying declaration to which she replied that her dying declaration recorded in the morning was given by her under coercion of her husband's mother, husband and father-in-law. It is his further evidence that she narrated that her husband poured kerosene on her person and her saree caught fire from the flames of *shagadi* (make shift Hearth ). This witness then proved second dying declaration at Exh. 27.

18 Third material aspects which emerge from the evidence of this witness are thus, first, immediately after the admission of the deceased in the hospital the services of this witness were requisitioned by the concerned police station pursuant to which he recorded the first dying declaration. Second, at about 5-00 p.m., he again received the message from the concerned police station that the brother of the deceased was not satisfied with the first dying declaration and therefore, second dying declaration is required to be recorded and, thirdly, he recorded dying declaration after having been told by the deceased that the earlier dying

declaration was given under coercion exercised by husband and her in-laws.

19 As far as the first dying declaration at Exh. 25 is concerned, this witness has not given oral account as to what was told to him at the time of first dying declaration but on going through the dying declaration (Exh. 25) it appears that neither she was troubled by the family members including husband and in-laws nor there was any quarrel amongst themselves. It is further seen that while preparing tea on a stove she was wearing terricot *morpankhi saree* and because of the stoking flames of the stove she sustained burn injuries. Thus, the first dying declaration outrightly exonerated the accused persons which was made immediately after the admission of the deceased in the hospital.

20 Even PW.3 states in his cross-examination that the deceased had told him that she was burnt accidentally flickering of kerosene stove and that she had no grievances against anybody.

21 It is quite disturbing to note from the evidence of this witness that again at 5-00 p.m., he got message from the concerned police station to record second dying declaration of the deceased on the ground that the

brother of the deceased had made a complaint. What was the nature of complaint is not revealed by this witness. The evidence of this witness is very much clear to the fact that the message was to the effect that the earlier dying declaration was required to be changed and therefore, his presence was solicited by the concerned police station. The message was not in the fashion that the earlier dying declaration of the deceased was recorded under any duress.

22 Be that as it may, if the second dying declaration is read carefully then it would reveal that the deceased had quarreled with her husband and because of addiction of A-1 to liquor the quarrel used to happen. The deceased then narrated the incident by stating that on 23.09.1998 at about 7.00 a.m., her husband i.e. A-1, came after consuming liquor, beat her and poured kerosene on her person. There was an earthen *shagadi* nearby and end of her saree fell on it and caught fire. She further stated that her father-in-law then put water and extinguished fire it and asked both of them to go out of house. She further clarified that in the morning, she had told that she sustained burn injuries because of blazing of stove due to pressure of maternal mother-in-law, father-in-law and husband. She then again stated that her husband poured kerosene and ignited earthen *shagadi* and therefore, she caught

fire. The concluding part of the statement shows that she had a complaint against her husband and father-in-law.

23 What is pertinent from this second dying declaration is that there used to be quarrel between deceased and A-1-husband on account of A-1 being habituated to liquor. The incident in question occurred because A-1 in the morning came after consuming liquor, quarreled with deceased and then poured kerosene and as end of her saree fell on *shegadi*, she caught fire. This dying declaration is quite inconsistent with the third dying declaration (Exh. 22) which was recorded by PW-2 Police Head Constable and on the basis of which the First Information Report came to be registered. At an appropriate stage, we would be dwelling upon that. Before that, we are quite perturbed to note wavering mind of deceased which is reflected from her second dying declaration itself when in the concluding part of her declaration she alleges that after pouring kerosene on her person, A-1 ignited earthen *shegadi* and therefore, she caught fire, a case which is not put forth by the prosecution through out. Besides, she also had a complaint against her father-in-law but why she was not happy with her father-in-law or what made her to say so is nowhere explained in the said dying declaration.

24 The third dying declaration in point of time which was an oral dying declaration given by the deceased before PW-4 brother is also not free from blame. PW-4 Satish Balkrishna Metkari, brother of the deceased, states in his evidence (Exh. 28) that after one year of the marriage of deceased with A-1, the deceased started telling him that A-1 was not earning and was in habit of demanding moneys apart from being addicted to liquor and used to ask moneys in order to satisfy his lust of drinking and was also beating her.

25 According to this witness, on 23.09.1998 after having received a telephonic message about the burning incident, he rushed to Civil Hospital, Sangli at about 2-00 p.m. His parents and brother had already reached there. When he asked the deceased as to what had happened, the deceased told that after taking bath, she was doing domestic work and her husband was chewing tobacco. She then told A-1 that he should earn for his livelihood and that he was demanding money and was drinking every day. There was exchange of words between them. A-1 got annoyed and took a plastic can containing kerosene from the kitchen platform and poured kerosene on her. At that time, her saree fell on the *shegadi* and she was burnt. While burning she ran out and people extinguished the fire and then she was taken to hospital.

26 The evidence of this witness then shows that he was also told by deceased under what circumstances she gave the first dying declaration and that the same was given under duress.

27 Now, if this so called oral dying declaration is juxtaposed the earlier written dying declaration at Exh. 27, we find that both are mutually at great variance. First of all, it appears from the evidence of PW 4- brother that the deceased was not happy from the marital life as A-1 was neither earning nor doing anything and was addicted to liquor. The accused used to ask her to bring moneys so as to satisfy his drinking habit and also beat her. Interestingly, these material facts are nowhere disclosed in the second dying declaration at Exh. 27.

28 Most importantly, according to this witness, the incident took place because A-1 had got annoyed when he was told by deceased that he was not doing anything for livelihood and rather was demanding money for consuming liquor leading to quarrel between them and in a fit of rage poured kerosene on her person and as her sari fell on an earthen *shegadi*, she caught fire. Contrarily enough, the second dying declaration shows that in the morning the accused came under the influence of liquor, beat the deceased and then poured kerosene on her

person. Thus, both these declarations differ in material aspect. Note to be mentioned here is the fact that according to second dying declaration it was A-2, who had poured water and extinguished the fire whereas according to PW-4, the deceased had ran out of the house and the people extinguished the fire.

29 In our considered opinion, there is absolutely no corroboration between these two dying declarations, namely, written dying declaration and the oral dying declaration, as claimed to have been made before PW-4, by the prosecution.

30 The last dying declaration (Exh. 22) is recorded by PW-2 Arjun Abaji Punadikar. PW-2 states in his evidence (Exh. 21) that on 23.09.1998, he was assigned duty at Civil Hospital, Sangli. At about 6-00 to 6-15 p.m., he received a telephonic message that the deceased was admitted in the hospital for burns and was asked to record her dying declaration. He along with writer went to burns ward and after satisfying the health of deceased he recorded her statement. According to him, the deceased told that after taking bath she kept water for warming on the earthen *shogada* for her husband. She told her husband that why he was drinking liquor everyday and was not bringing articles

and how she could run the domestic affairs. She further told that her husband abused and beat her. Her father-in-law came there and asked them to go out and also told as to why they were picking up quarrel as usual. A-1 then brought a plastic can containing kerosene from kitchen platform and poured kerosene on the saree of the deceased. Then, her saree fell on the earthen *shegadi* and caught fire and thus, she was burnt.

31 It is pertinent to note here that the second dying declaration at Exh. 27 was recorded by PW-3, Executive Magistrate, in between 6-25 p.m. to 6.45 pm. The third written dying declaration came to be recorded by PW-2 in between 6-50 p.m. and 7.15 p.m. i.e. immediately after 5 minutes of recording of second dying declaration. When second dying declaration incorporating all the details were duly recorded by PW 3- Executive Magistrate, then what was the necessity to immediately record third dying declaration by PW-2 is nowhere made clear by the prosecution. It appears to us that since the second dying declaration was itself riddled with contradictions and in order to over come those pitfalls probably the third dying declaration at the hands of PW-2 came to be recorded. But the fact remains that the third dying declaration is also not in consonance and in corroboration to the second dying

declaration (Exh. 27).

32 Even PW-2 was also kept in dark as to recording of second dying declaration (Exh. 27) inasmuch as his evidence nowhere shows that he was aware of recording of any earlier dying declaration.

33 At the very beginning we have pointed out as to how dying declaration at Exh. 22 which has been made the basis of FIR and dying declaration Exh. 27 recorded by Executive Magistrate are at loggerheads. Both these dying declarations have its own reasons relating to the onset of incident. While Exh. 27 points out that the accused came under the influence of liquor, beat the deceased and then poured kerosene, the oral dying declaration at Exh.22 shows that A-1 abused and beat deceased when the deceased told him that he was drinking liquor everyday and was not bringing any articles to make it difficult for her to run domestic affairs and it is only then and thereafter he poured kerosene on her person and as her saree fell on the earthen *shagadi* , she caught fire.

34 In the above circumstances, we are not, therefore, satisfied with the nature of dying declarations at Exh. 27 and Exh. 22 and so also the

oral dying declaration. Those dying declarations do not look probable and natural to us.

35 This brings us to the evidence of PW 5-Prashant Mohan Gavade, son of the deceased (Exh. 29), and the eye witness to the alleged incident as claimed by the prosecution. It appears from record that PW-5 was 10 years old when his deposition came to be recorded. It is his evidence that at the time of incident he was in the house. In the morning, there was a quarrel between his parents and father and grand-father were beating his mother. Then, his father poured kerosene on the person of his mother. The end of the saree of his mother fell on the *shegadi*. His mother bent down and then his father ignited a match stick and threw the same on the person of his mother. There was big fire. His mother rushed out and some persons extinguished the fire.

36 The evidence of this witness is quite contradictory vis-a-vis the dying declaration at Exh. 22 and Exh. 27. His evidence showing that his grand-father was also beating his mother on the day of incident has come on record by way of omission and when this fact was confronted to this witness in the cross-examination, she insisted of having said so before police but this omission is duly proved by PW-8, investigating

officer, in his cross-examination by stating that this witness had not stated before him that his grand-father was also beating his mother at the time of incident.

37 His evidence also makes it clear that after pouring kerosene on the person of his mother, A-1 father ignited a match stick and threw it on the person of his mother which is not at all the case of prosecution. His evidence then shows that after the incident his mother rushed out of house and some persons extinguished the fire. However, in the cross-examination his attention was invited to the portion marked 'A' of his statement recorded under Section 161 of Code of Criminal Procedure, by the investigating officer, but he denied of having said so before the investigating officer. The portion marked 'A' of his statement shows that at the time of incident his father and grand-father along with father of one Pinky threw water on the person of his mother and extinguished the fire. PW-8 investigating officer, on his part, in his cross-examination, however, has proved the portion marked 'A' from the statement of this witness at Exh. 33 by stating that this witness had in fact stated portion marked 'A' before him during the course of recording of his statement. This in itself goes to show the conduct of this witness.

38 The conduct of this witness can be seriously questioned not only because of inherent inconsistencies vis-a-vis dying declarations as pointed out by us but his very presence as claimed by him is duly disproved by none other than by PW-8 investigating officer. PW-8 investigating officer in his cross-examination states that none of the witnesses had stated before him that Prashant Mohan Gavade i.e. the present witness was very much present at the time of incident. It may also be noted from his cross-examination that after the incident he was taken to Vita by his maternal uncle, namely, PW-4 Satish Balkrishna Metkar and since then he was residing with him. Having regard to his age and the fact that he was residing with his maternal uncle and as also looking at the nature of evidence, the possibility of he being tutored cannot be ruled out altogether. Even otherwise on merits, we are not prepared to accept his testimony.

39 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.

40 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.

41 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.)**

**( A.S. GADKARI, J.)**