

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 4 OF 2004

The State of Maharashtra

... Appellant
(Orig. Complainant)

V/s

Balu Valu Chaudhari

Age 35 yrs.,
R/o. Khambale, Tal. Igatpuri,
Dist. Nashik.

... Respondent
(Ori. Accused).

Mr. V.B. Konde-Deshmukh, APP for the Appellant-State.

Mr. Shriram S. Kulkarni, for the Respondent.

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

DATE : 5TH JANUARY, 2021.

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

This Appeal is filed by the State challenging the judgment and order of acquittal dated 16th August, 2003 passed in Sessions Case No. 117 of 2002 by learned Sessions Judge, Nashik, for the offence punishable under Sections 302 of the Indian Penal Code (for short "IPC").

2 Briefly stated, the prosecution case is as under:

(a) On 18/04/2002 PW-9 PI Ramesh Nimbaji Patil was attached to Ghoti Police Station. He received a message from Ghoti Rural Hospital regarding admission of Chandrakala (since deceased) having suffered burn injuries. He rushed to Ghoti Rural Hospital and with the help of Medical Officer (PW-5) recorded the statement of of the deceased.

(b) It appears from the statement of the deceased that on 18/04/2002 the deceased along with her husband, namely, Balu Valu Choudhari (accused) and her *savat* (a rival wife) Manda were residing at Khambale, Taluka-Igatpuri. At about 10-00 a.m. while the deceased was going to work in the field of her uncle,namely, Pandharinath Choudhary, the accused passed remark “ तु पासली पडायला चालली आहे.” The deceased asked the accused not to speak wrong things and that since he does not bring the essentials for the use of house whether she should remain starved. After hearing this, it is alleged, the accused got annoyed and told her that he would kill her and then he brought a can of Kerosene,

poured on her person, set her ablaze and ran away.

(c) It then appears from the record that on the basis of the said statement-cum-dying declaration, PW-9 registered the offence vide CR No. 47 of 2002 under Section 307 of the IPC. However, during the course of treatment the deceased succumbed to the burn injuries and therefore, the offence under Section 307 came to be converted into an offence under Section 302 of the IPC.

3 To substantiate the charge against the respondent-accused, the prosecution has examined as many as 9 witnesses and exhibited number of documents. The respondent-accused was questioned under Section 313 of the Code of Criminal Procedure (for short, 'Cr.P.C.') about the incriminating evidence and circumstances appearing against him and he denied all of them as false. According to him, a false case is filed against him.

4 Mr. Konde-Deshmukh, learned APP, took us through the evidence adduced by the prosecution and vehemently submitted that the learned

trial judge erred in coming to the conclusion that the respondent-accused is entitled to have benefit of doubt. According to learned APP, it was wrong on the part of learned trial judge to disbelieve the dying declaration which is duly proved by PW-9 investigating officer and there being no infirmity in the said dying declaration, learned trial judge ought to have placed reliance and have convicted the respondent-accused. In view of this, the present Appeal deserves to be allowed, argued learned APP.

5 Mr. Kulkarni, learned counsel for the respondent-accused, on the other hand, supported the impugned judgment and order of acquittal. According to learned counsel, the learned trial judge has taken into consideration all the relevant aspects of prosecution case and rightly disbelieved the so called dying declaration. Since neither there is perversity nor illegality, the impugned judgment and order should not be interfered with, argued learned counsel.

6 Before we look into the dying declaration which is being relied on by the prosecution, we think it proper firstly to go through the medical evidence.

7 PW-6 Dr. Sanjay Sampat Kadam states in his evidence that on 18/04/2002 he conducted postmortem on the dead body of the deceased which was totally burnt. According to him, the cause of death was 100% burns. He then proved the contents of postmortem report at Exh. 31.

8 It may not be out of place to mention here that there is no dispute from the side of defence that the deceased had sustained burn injuries. It is also apparent from the medical evidence which is again not disputed by defence that the cause of death was 100% burns. Now, whether the death in question is homicidal or suicidal will have to be ascertained from the other evidence available on record including so called dying declaration heavily pressed into service by the prosecution.

9 PW-3 Bhagwanta Santu Borade, father of the deceased, is a material witness from the prosecution point of view, in our considered opinion, could have thrown ample and satisfactory light on the life of the deceased. Reading his evidence as a whole, we are despaired and disappointed.

10 PW-3 father states in his evidence (Exh. 24) that the deceased was ill-treated by accused after the marriage and, therefore, she returned to him. However, the deceased was taken back by accused to his house. But, accused again subjected her to cruelty and even married second time. The accused and his second wife then started ill-treating the deceased.

11 He came to know from a person of his village about the burning of the deceased and, therefore, he rushed to Civil Hospital, Nashik however, the deceased was dead.

12 What we could see from the evidence of PW-3 father is that after the deceased was married to accused she was constantly ill-treated by the latter. Even during the life time of the deceased the accused remarried and then the second wife also joined the accused in ill-treating the deceased. The nature of cruelty and the reason therefor is not revealed by PW-3 father. There is absolutely no evidence as to the kind and the dimensions of ill-treatment to which the deceased was subjected to. Rather, his cross-examination shows that the second wife of the accused, namely, Salubai, the accused and the deceased resided

together for 5-6 years. It appears that when the accused remarried there was no dissent or protest from the side of the deceased. Even there was no dispute between said second wife and the deceased during the said period they all resided together. This being so, we are at a loss to understand as to why the deceased at all was subjected to cruelty and if at all she was subjected then there is no clear evidence as to the nature and kind of ill-treatment or harassment allegedly at the hands of accused and Salubai. It is also not the case of prosecution nor that of PW-3 father that because of constant and continuous harassment the deceased was very much disturbed. Therefore, in this disturbing scenario we do not find the testimony of this witness very encouraging and that it helps in any manner to the cause of prosecution.

13 The next important witness is PW-5 Dr. Murlidhar Vithoba Dhande. The Medical Officer states in his evidence (Exh. 27) that on 18/04/2002 he was medical officer at Ghoti Rural Hospital. He received a letter from Ghoti Police Station requesting him to examine one lady. Accordingly, he visited the Rural Hospital and examined Chandrakala Balu Chaudhary i.e. deceased. He found that the deceased was in a position to make statement. Accordingly, he made an endorsement thereon in his handwriting and under his signature. He then proved the

endorsement at Exh. 29.

14 However, in the cross-examination, he states that the general condition of the deceased was poor. Her B.P was not recordable. Her pulse rate was low and she was in a shock. She had 100% burns. He then denied the suggestion that the statement of deceased was not recorded in his presence.

15 His cross-examination further shows that it is necessary to see mental condition of patient before recording the statement and that he had not made any noting of mental condition of the deceased anywhere in his endorsement.

16 We have carefully gone through the endorsement given by PW-5 Medical Officer at Exh. 29 which reads as under:

*“ Statement taken in front of me and that
time patient conscious to give statement.”*

From the endorsement so given, it is quite apparent that the witness was very much present when the statement of the deceased was recorded. Interestingly, he nowhere states through out in his evidence as to what

kind of statement the deceased had given in his presence. This is one material aspect. Secondly, according to his own cross-examination the general condition of deceased was poor and she was in a shock apart from the fact that she had 100% burns. Besides these nagging aspects, what should concern us is his statement that it was necessary for him to ascertain mental condition of the deceased and that his endorsement or for that matter his evidence as well nowhere shows he had ascertained the mental condition of the deceased. This certainly aggravates the situation particularly when the patient had 100% burns and was in a shock apart from her general condition being very poor. It is also not made clear as to under what circumstances when admittedly the deceased was having 100% burns, she could put her thumb impression on her so called dying declaration.

17 Having regard to above disturbing and questionable features of the evidence of this material witness, we have our own serious doubts as to the mental condition of the deceased and whether she was in a fit state of mind to give the statement.

18 Now, let us find out what PW-9 Investigating Officer, has to say

about the dying declaration of the deceased inasmuch as it was he who had recorded the dying declaration of the deceased. PW-9 states in his evidence (Exh. 35) that on 18/04/2002 he was present in Ghoti Police Station. A message from Ghoti Rural Hospital regarding admission of the deceased following burn injuries was received telephonically. He, therefore, rushed to Ghoti Rural Hospital and gave a letter to Medical Officer Dhande i.e. PW-5. PW-5 then examined the deceased and stated that the deceased was in a position to make statement. He accordingly recorded the statement of the deceased. He then proved the statement at Exh. 36.

19 From the above short evidence, we are unable to find as to what had transpired between the deceased and this witness. We say so because PW-9 Investigating Officer was the person in whose presence the deceased allegedly gave a statement as to the cause and person behind burn injuries sustained by her. However, much to our discomfiture this material witness nowhere says as to what kind of statement was given in his presence and pursuant to that he reduced the same into writing.

20 It is also pertinent to note from the cross-examination of PW-9 Investigating Officer that during the course of investigation it revealed that the deceased was speaking when flames on her person were extinguished. It is also to be noted from the cross-examination of PW-1 Ramdas Bhavani Shingote (Exh-20), who acted as a witness over the spot panchanama, that the house of accused is situated in the heart of village Khambale and there are about 100-125 houses. According to him, area around the house of accused is always crowded. The cross-examination of investigating officer itself goes to show that since the deceased after sustaining the burn injuries was still speaking, she must have spoken to the neighbours, who might have gathered after the incident. However, not a single witness is examined by the prosecution for the reasons best known to it. It is also not the case of prosecution nor that of PW-9 Investigating Officer that at the time of incident none of the neighbours had gathered and therefore, he could not find any witness to the incident. In such circumstances, the contents of dying declaration showing that it was accused, who poured kerosene on the person of deceased and set her ablaze, is difficult to be accepted.

21 Not only the prosecution has not been able to prove satisfactorily that the deceased was in a fit state of mind to give statement but also

there is failure to prove the contents of dying declaration. Even if it is held for the sake of argument that the contents are duly proved, then as we have hold that the mental condition of the deceased while making the said declaration was not found to be established satisfactorily, the whole dying declaration goes away.

22 The view taken by the learned trial judge, in the facts and circumstances of the case, in our considered opinion is a plausible view and even on an independent evaluation of the prosecution evidence, we have also assigned our own reasons as to why the prosecution has not been able to establish its case convincingly.

23 For the foregoing reasons, we affirm the findings of acquittal recorded by the learned trial judge. Consequently, the Appeal is liable to be dismissed. The Appeal stands dismissed accordingly.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)