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Shambhavi  
N. Shivgan

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

**CRIMINAL APPEAL NO.511 OF 1998**

Dattaji Sambha Kendre,  
Age: 28 yrs., Occ: Service,  
R/o. Village: Kekatsindagi  
At Post Jamb (bk) Tal: Mukhed,  
Dist. Nande, Pin Code 431716

... Appellant

Vs

1 The State of Maharashtra  
(Inspector of Police,  
Uran Police Station)

2 Chandrakala Sangram Jaybhay  
3 Sangram Sopan Jaybhay  
Both r/o. Village: Hiparga,  
Dist. Nanded

... Respondents

...

Mr. Narayanganesh M. Nadar i/by Mr. S.V.Marwadi for  
the Appellant.

Mr. S.R.Agarkar, APP for the Respondent-State.

**CORAM : SANDEEP K. SHINDE J.**  
**DATE : 4<sup>th</sup> MARCH, 2021.**

**ORAL JUDGMENT :**

Heard.

2           Question, that falls for my consideration is, whether the Trial Court was justified in founding conviction, under Section 498A of the Indian Penal Code, 1860 solely on three inconsistent dying declarations of the deceased ?

3           Appellant herein has been convicted of the offence punishable under Section 498A of the IPC and sentenced to suffer rigorous imprisonment for two years and fine of Rs.1,000/- in default to undergo simple imprisonment for one month by the judgment and order dated 30<sup>th</sup> April, 1998 passed by the learned Additional Sessions Judge, Alibag-Raigad.

4           Consistency in the dying declaration is very relevant factor and it cannot be ignored. When contradictory and inconsistent stand is taken by the deceased herself in different dying declarations, they

should not be accepted on their face value. As a rule of prudence, corroboration must be sought from the other evidence brought on record.

5           In **Samadhan Dhudhaka Koli v. State of Maharashtra<sup>1</sup>**, the Supreme Court laid down as under:

*“15. A judgment of conviction can be recorded on the basis of a dying declaration alone, but the court must have been satisfied that the same was true and voluntary. Indisputably, for ascertaining the truth as regards the voluntariness of making such a dying declaration, the court is entitled to look into the other circumstances but the converse may not be true. It is not a case where the deceased and appellant were living separately. It is also in dispute, and as would appear from the statements made by the deceased in her first dying declaration that, even on the night in question appellant was not in the house; she was brought to the hospital by her husband and his family. If the intention of the appellant was to cause death to her, the fire would not have been extinguished by his family members.*

6           In the case in hand, deceased was admitted in the hospital at Uran on 23<sup>rd</sup> December, 1995. A constable attached to local police station recorded her

1   2009 ALL MR (Cri.) 229 (S.C.)

statement on 23<sup>rd</sup> December, 1995 (Exhibit 17). On 24<sup>th</sup> December, 1995, Special Executive Magistrate recorded her dying declaration after ascertaining health and mental state of the deceased. In both the dying declarations, deceased stated that she suffered and sustained burn injuries by accident and due to bursting of stove. She made no allegation against the appellant on 24<sup>th</sup> December, 1995. For better treatment, deceased was shifted to hospital at Mumbai, from Uran. On her admission, local police recorded her statement whereupon crime was registered for the offence punishable under Section 498A of the IPC vide Crime No.219 of 1995 against the appellant.

7            Statement of the deceased recorded by the police at Mumbai is pressed into service by the prosecution as her 3<sup>rd</sup> dying declaration. It is at Exhibit 10. In this dying declaration, deceased alleged that recurring harassment and beatings by husband for one

reason or another, was unbearable and it left her with no option but to commit suicide. Deceased succumbed to the injuries on 26<sup>th</sup> December, 1995 due to terminal burn injuries whereafter the offence under Section 306 of the IPC came to be added.

8            Prosecution in support of the charge framed under Section 498A and 306 of the IPC, adduced evidence of Special Executive Magistrate, medical officers and parents of the deceased, I.e, her mother (P.W.3) and father (P.W.4). The testimonies and assertion of these two witnesses was inconsistent with dying declarations of the deceased. Both these witnesses exaggerated their version, and would depose that accused was demanding valuables like gold locket, on the eve of festival - Makar Sankranti and since deceased could not give it, she was repeatedly beaten up by the appellant. However, deceased said nothing about 'unlawful demand' in her three dying

declarations. Therefore, having found testimonies of parents were not worthy, to rely upon, the learned Trial Court kept their testimonies out from consideration.

9           However, the trial Court has largely relied on the 3<sup>rd</sup> Dying Declaration at Exhibit 10 wherein the deceased alleged that her husband was recurrently harassing/assaulting her.

10           It is settled law that Dying Declaration should inspire confidence of the Court and the Court should be satisfied that such declaration had been made voluntarily and should have been made uninfluenced. Courts have also maintained that the deponent at the time of making such a declaration should be in a fit state of mind. If there is one dying declaration or there are number of dying declarations, which are consistent with each other, then the Court is only required to

examine whether such dying declaration had, in fact, been made and had been made voluntarily. But when there are number of dying declarations, which are contradictory to each other and it cannot reconcile to each other, the task of the Court becomes much more difficult. One of the ways to accept one version as against another version given in a dying declaration is to find the corroborative evidence.

11 In the present case, there are three dying declarations at Exhibits 17, 19 and 10. The first two Dying Declarations are consistent with each other wherein she made no allegations against the husband. Third Dying Declaration is inconsistent with the first two Dying Declarations, meaning thereby in the last dying declaration, she alleged that her husband was physically harassing her. Obviously, as stated above, when there is inconsistency in the dying declarations, the Court has to find corroborative evidence. In the

case in hand, there is no other evidence to corroborate the allegations of harassment made in the third dying declaration. In fact, it appears, third dying declaration was made only after her parents came to see her in the hospital. Her parents in the testimonies exaggerated their version and said something more than what their daughter told to Special Executive Magistrate. Therefore, in consideration of nature and kind of evidence, in my view, it was not safe to rely on third dying declaration and convict accused of the offences punishable under Sections 498A of the IPC. Thus, to be stated, the learned Trial Court, erred in founding conviction only on the third dying declaration at Exhibit 10 by ignoring that earlier two dying declarations were inconsistent with the third dying declaration and allegation in their dying declaration were not corroborated by the other evidence.

12           As a result, in my view, prosecution has not

proved offence under Section 498A of the IPC beyond the reasonable doubt.

13           Appeal is allowed. Impugned conviction and sentence passed in Sessions Case No.155 of 1996 is quashed and set aside. Bail bonds of the appellant stand cancelled. Sureties are discharged. Fine amount, if any, paid be refunded to the appellant.

14           Appeal is disposed of in aforesaid terms.

**(SANDEEP K. SHINDE, J.)**