

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

CRIMINAL APPEAL NO. 702 OF 1997

Indubai Rangrao Pawar	 Appellant
v/s.	
The State of Maharashtra	 Respondent

Mr. Umesh Mankapure for the Appellant.
Mr. P.H. Gaikwad, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 01st DECEMBER, 2021.

ORAL JUDGMENT :-

. This Appeal is directed against the judgment and order dated 17/11/1997 passed by the learned 2nd Additional Sessions Judge, Sangli in Sessions Case No.125/1994.

2. By the impugned judgment, the learned Judge has held the Appellant guilty of offences under sections 498A and 306 r/w. 34 of the Indian Penal Code. She has been sentenced to undergo rigorous imprisonment for three years with fine of Rs.500/- in default to suffer rigorous imprisonment for three months for offence punishable under section 498A and rigorous imprisonment for five years with fine of Rs.500/- in default rigorous imprisonment for three months for offence punishable under section 306 of the Indian Penal Code.

3. The Appellant (who shall be hereinafter referred to as 'the accused') is the mother-in-law of the deceased-Sujata. Said Sujata set herself ablaze on 21/01/1994. She succumbed to the burn injuries on 22/01/1994. The father of the deceased-Sujata, PW4 – Shivaji Atmaram Rede, lodged the first information report (Exhibit – 22) alleging that Sujata had committed suicide because of the harassment meted out to her by her husband and his parents, pursuant to which, crime was registered against the husband and his parents for offences under sections 306, 498-A r/w. 34 of IPC.

4. Ramesh Pawar, the husband of the deceased Sujata died pending trial. Charge was framed and explained to the accused and her husband – Rangrao Pralhad Pawar. They pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case, examined 10 witnesses. The statements of the accused and the co-accused – Rangrao Pralhad Pawar were recorded under section 313 of Cr.P.C. The defence of the accused is that of total denial.

5. Upon appreciating and analyzing the evidence on record, the learned Judge acquitted the co-accused – Rangrao Pralhad Pawar of

offences under sections 498-A and 306 r/w. 34 of the Indian Penal Code. The learned Judge, however, held the accused guilty of both these offences. The conviction of the accused is based mainly on the dying declaration of the deceased and oral evidence of the father and brother of the deceased. Being aggrieved by the conviction and sentence, the accused has filed this Appeal under section 374 of the Code of Criminal Procedure, 1973.

6. Heard Mr. Umesh Mankapure, learned counsel for the accused and Mr. P.H. Gaikwad, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. The records reveal that the deceased Sujata was married to Ramesh Pawar on 05/05/1992. They have one child from the said wedlock. The deceased Sujata set herself ablaze on 21/01/1994 at about 10:30 p.m. She was admitted to Sangli General Hospital and her statement was recorded by PW5 – Ramchandra D. Jadhav, the Special Executive Magistrate at Sangli. He has deposed that on 21/01/1994, the police had informed him that one lady was admitted in the civil hospital in burnt condition and her statement was to be recorded.

Accordingly, PW5 proceeded to the hospital. He requested the medical officer to examine the patient and confirm whether she was conscious to give her statement. He has deposed that the medical officer examined the patient and stated that the patient was conscious and made an endorsement to that effect. He has deposed that when asked about the cause of burn injuries, Sujata told him that she committed suicide because of ill-treatment meted out to her by her husband and in-laws. He recorded the statement of Sujata and read over the contents of the same to her. He has stated that he once again requested the medical officer to examine the patient and accordingly, the medical officer examined her and made an endorsement. He has stated that the dying declaration at Exhibit – 27 was recorded between 11:00 p.m. to 11:55 p.m.

8. In his cross-examination, PW5 has admitted that the dying declaration was not recorded in the question-answer format. He has further admitted that the patient was already given medical treatment before his arrival in the hospital. He has admitted that the endorsement on the dying declaration is not in the hand writing of the medical officer. He has also stated that he had not requested the medical officer to make an endorsement in the dying declaration in his

own hand writing. He has admitted that he had not confirmed that the patient was conscious and able to give the statement. He has further admitted that he has not recorded in the dying declaration that the statement was read over to the deceased and the same was as per her say.

9. It is on record that the deceased had sustained 96% burn injuries and she had expired on 22/01/1994 at about 10:00 to 10:30 a.m. It is also in the evidence of PW9 – Dr. Santosh Vasantrao Patil that said Sujata was admitted in serious condition and that her condition was deteriorating. He had admitted that Sujata was given fortwin injection. He has admitted that fortwin injection relieves pain and makes the patient drowsy and sleepy. PW9 has admitted that the first endorsement that he had examined the patient and that she was conscious is not in his hand writing. He has further admitted that he was not present when the dying declaration was being recorded.

10. It is trite law that conviction can be based on dying declaration provided the dying declaration is clear, unambiguous, true and voluntary and not a result of tutoring, prompting or imagination. Corroboration is merely a rule of province. In *Smt. Paniben vs. State of*

Gujarat AIR 1992 SC 1817, the Apex Court has summarized the case law relating to the principles governing dying declaration. In the case of ***Jayamma and Anr. Vs. State of Karnataka (2021) 6 SCC 213***, the three Judge Bench of the Hon'ble Supreme Court has reiterated these principles thus :-

14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P-5), it will be beneficial to brace ourselves of the case-law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

14.1. In P.V. Radhakrishna. v. State of Karnataka (2003) 6 SCC 443, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

14.2. In Chacko v. State of Kerala (2003) 1 SCC 112, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying

declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded “patient conscious, talking” in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

14.3. *In Sham Shankar Kankaria v. State of Maharashtra, (2006) 13 SCC 165 it was re-stated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in Paniben v. State of Gujarat (2006) 13 SCC 165 wherein this Court summed up several previous judgments governing dying declaration, the Court in Sham Shankar Kankaria(Supra) reiterated:(Sham Shankar Kankaria SCC pp.172-73, para 11*

“11...(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P [(1976) 3 SCC 104]);

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav[(1985)1 SCC 552 and Ramawati Devi v. State of Bihar [(1983)1SCC 211]);

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K.Ramachandra Reddy v. Public Prosecutor[(1983) 1 SCC 211]);

- (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264]);*
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25]);*
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654]);*
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455]);*
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769]);*
- (ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152]);*
- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390]);*
- (xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700])”*

15. *It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a “dying declaration” is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction.*
16. *We may also take note of the decision of this Court in the case of Surinder Kumar v. State of Haryana (2011) 10 SCC 173. In the said case, the victim was admitted in hospital with burn injuries and her dying declaration was recorded by an Executive Magistrate. This Court, first doubted whether the victim could put a thumb impression on the purported dying declaration when she had suffered 95.97 per cent burn injuries. Thereafter, it was noted that “at the time of recording the statement of the deceased.....no endorsement of the doctor was made about her position to make such statement”, and only after the recording of the statement did the doctor state that the patient was conscious while answering the questions, and was “fit to give statement”. This Court lastly noticed that before the alleged dying declaration was recorded, the victim in the course of her treatment had been administered Fortwin and Pethidine injections, and therefore she could not have possessed normal alertness. It was hence held that although*

there is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration, the Court must nonetheless be satisfied that the dying declaration is true and voluntary, and only then could it be the sole basis for conviction without corroboration.

17. *Consistent with the cited principles, this Court refused to uphold the conviction in the case of Sampat Babso Kale and Another v. State of Maharashtra (2019) 4 SCC 739. The dying declaration in that case was made by a victim who had suffered 98 percent burn injuries, and the statement was recorded after the victim was injected with painkillers. This Court adopted a cautious approach, and opined that there were serious doubts as to whether the victim was in a fit state of mind to make the statement. Given the extent of burn injuries, it was observed that the victim must have been in great agony, and once a sedative had been injected, the possibility of her being in a state of delusion could not be completely ruled out. Further, it was specifically noted that: (SCC p. 744 para 14) “14.....the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way around.”*

(emphasis supplied)

11. In ***Paparambaka Rosamma & Ors vs State of Andhra Pradesh, (1999) 7 SCC 695***, the three Judge Bench of the Apex Court has held that “ In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. ” Similarly, in ***Laxmi Vs. Omprakash and Ors., (2001) 6 SCC 118***, the Apex Court has reiterated that the dying declaration is relevant and admissible in

evidence provided the Court is satisfied that the deceased was in a fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and or recorded. The Apex Court has held that if the court finds that the capacity of the maker of the statement to narrate the facts was impaired or the court entertains great doubt whether the deceased was in a fit physical or mental state to make a statement, the court may in the absence of corroborating evidence lending assurance to the contents of the declaration, refuse to act on it.

12. Reverting to the facts of the present case, the deceased Sujata had sustained 96% burn injuries and was in critical condition. The Doctor had certified that she was conscious. In the instant case, the Doctor was not present at the time of recording of the statement. The endorsement and the dying declaration that the patient is conscious, is not in his hand writing. He had not confirmed whether the deceased Sujata was in a physically and mentally fit condition to make a statement. He has further admitted that she was administered fortwin injection before recording her statement. The statement of Sujata was not recorded in his presence. Under these circumstances, it is difficult to believe that Sujata was in fit state of mind to give the

statement. In view of these serious lacunas, it would not be safe to rely upon the dying declaration.

13. As regards the oral evidence, PW4 – Shivaji Atmaram Rede, the father of the deceased Sujata has deposed that Sujata was treated well for about four to five months after the marriage and thereafter she was being ill-treated particularly by her husband. He has stated that the husband of Sujata used to abuse her. He has deposed that the parents of the deceased were insulting her. He has deposed that the accused i.e., the mother-in-law of Sujata was complaining that Sujata could not work and she used to also complain that her son i.e., the husband of Sujata was also not doing any work. This is the only allegation of ill-treatment made against the accused and her husband.

14. In his cross-examination, PW4 has admitted that Sujata would always complain that her husband – Ramesh Pawar was not doing any work. He has deposed that Sujata would say that her husband should work and not burden his parents. He has further stated that Sujata used to say that she is not interested in living since her husband was not doing any work. The evidence of this witness thus indicate that Sujata had no grievance against her parents-in-law. Her

main grievance was that her husband was not doing any work. In this fact situation, the comment of the accused that Sujata and her husband are not doing any work cannot be construed as an insult or a scornful abuse. It can be at the most treated as an expression of frustration.

15. PW4 had produced letters at Exhibit – 11 to 15 allegedly written by Sujata. In none of these letters, Sujata had accused her parents-in-law about ill-treatment. PW4 has also admitted in his cross-examination that in these letters at Exhibit – 11, 12 and 15, Sujata had not made any complaints against her parents-in-law. The allegations of ill-treatment are only in letter dated 14/12/1992, which are vague, omnibus and stale. Furthermore, no such allegations have been levelled against the accused and her husband in the subsequent letters. It is also pertinent to note that the accused had disputed genuineness of these letters. The prosecution has not adduced any evidence to prove the authenticity of these letters. In such circumstances, no reliance can be placed on these letters.

16. PW3 – Suresh Shivaji Rede, the brother of the deceased, has deposed that the husband and parents-in-law of Sujata had tried to kill her by throttling. It is to be noted that the evidence of PW1 does

not indicate that Sujata had made any such accusations against her parents-in-law. He has deposed that Sujata had told him that her husband had tried to kill her by throttling. PW3 – Suresh Rede has further stated that Sujata had told him that her husband doubted her chastity and that her parents-in-law were insulting and ill-treating her because of her dark complexion. He has further stated that the husband of Sujata had demanded dowry of Rs.10,000/-. The allegations of demand of dowry were not made in the statement made in section 161 of Cr.PC and this is a material improvement. Furthermore, the evidence of this witness is not in tune with the evidence of PW4.

17. PW7 – Raghunath Ramu Jagatap, the uncle of the deceased has also made omnibus allegations against the parents-in-law of the deceased. He has stated that Sujata had told him about the ill-treatment meted out to her by her father-in-law and mother-in-law. In his cross-examination, he has stated that the only complaint of Sujata against her parents-in-law was that they were insulting her because of her dark complexion and were accusing her of not doing any household work. He has stated that except this, there was no other complaint. He has admitted in his cross-examination that Sujata did

not have dark complexion and hence, there was no question of insulting her because of dark complexion. He has admitted that Sujata did not want to go to her matrimonial home because of the quarrel with her husband. He has deposed that his brother had come from Delhi and that they had gone to Vijaynagar and brought Sujata to his home at Gomewadi. He therefore called PW4, the father of Sujata. He intervened and told Sujata and accused no.1 – Ramesh to seek employment and live happily with Sujata. He has admitted that about two days prior to the death of Sujata, the accused no.1 had come to his house. He had told him that his parents, the accused nos.1 and 2 had sent him to bring back Sujata. He had stated that Sujata did not return to matrimonial home because her husband was not doing any work. The evidence of this witness thus indicates that dispute was mainly between Sujata and her husband. There were no allegations and ill-treatment against this accused and the co-accused. In the absence of any evidence of ill-treatment or abetment within the meaning of section 107 of Indian Penal Code, this accused cannot be held guilty of offence under section 498-A and 306 of IPC.

18. Under the circumstances and in view of discussion supra, the Appeal is allowed. The impugned judgment dated 17/11/1997

passed by the learned 2nd Additional Sessions Judge, Sangli in Sessions Case No.125/1994, is quashed and set-aside. The accused is acquitted of offences under sections 498-A and 306 of Indian Penal Code. Bail bonds stand discharged. The accused shall furnish bonds before the Trial Court under section 437(A) of Cr.P.C. within a reasonable time.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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