

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 208 OF 2004

The State of Maharashtra)
(Through Shikrapur Police Station) ...Appellant
(Orig. Complainant)

VERSUS

1. Smt. Vimalbai Namdeo Kand,)
Age about 58 yrs., Occ. Household,)
R/o. Koregaon Bhima, Tal.: Shirur,)
District Pune.)
2. Smt. Anita Sahebrao Gavane,)
Age about 27 yrs., Occ. Household,)
R/o. Koregaon Bhima, Tal.: Shirur,)
District Pune.) ...Respondents
(Orig Accused)

Mr A.R. Patil, APP for the Appellant – State.
Mr J.S. Yadav i/by Mr. V.B. Tapkir for the Respondents.

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

RESERVED ON : DECEMBER 15, 2020.
PRONOUNCED ON : JANUARY 28, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the
06th Ad-hoc Additional Sessions Judge, Pune in Sessions Case No.
538/2002, dated 12nd November, 2003, whereby respondents herein

(Original Accused) were acquitted of the charges for committing offences punishable under Sections 302, 498A read with Section 34 of the IPC (for short “IPC”), the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. Heard learned APP, Mr A.R. Patil, for the Appellant – State and Mr J.S. Yadav, appearing for the Respondents.

3. It may not be out of place to state at the outset that case of the prosecution IS largely based on dying declaration.

4. The case of the prosecution can be summarized as follows:

Marriage of one Ashwini Madhukar Kand (victim/deceased) daughter of Sau. Kamal Rambhau Sathe (PW 2) was solemnized with Madhukar Kand, resident of Koregaon Bhima, Tq. Shirur, Dist. Pune in the year 2002. Accused No. 1 – Smt. Vimalbai Kand is the mother of Madhukar Kand and mother-in-law of the victim. Accused No. 2 – Anita Gavane is the sister of Madhukar Kand and sister-in-law of victim. It is the further the case of prosecution that though for initial period of couple of months victim was treated well subsequently, the victim was subjected to an ill-treatment and harassment at the hands of accused

persons. Husband of victim i.e. Madhukar Kand being physically handicapped person was unable to take up some job and earn his livelihood at his own. The family of Madhukar Kand was running a grocery shop and accused no. 1 used to look after the grocery shop. It is further the case of prosecution that the matrimonial relations of victim were insisting upon victim to bring an amount of Rs. 50,000/- and for that demand victim was subjected to an ill-treatment by accused person.

It is further the case of prosecution that on 21.08.2002, quarrel took place between the victim and accused persons. Accused no. 1 i.e. mother-in-law was alleging that victim stole some food articles from grocery shop and ate those articles. It was also alleged that accused no. 1 raising the ground that husband of victim Madhukar is not doing any job and then accused no. 1 poured kerosene on the person of victim and accused no. 2 threw an ignited matchstick on the person of victim. Victim suffered the burns and made hue and cry. Neighbours gathered on the spot. Water was thrown on the person of victim so as to extinguish fire. Victim was immediately shifted to one Surya hospital in the vehicle of one A.R. Kashid (PW 4).

5. On admission of victim in hospital, Dr. Vaishali attached to

the hospital at the relevant time immediately informed the police station officer at Faraskhana Police Station being a medico legal case. On receipt of information, PSO promptly registered MLC No. 19/8/2002 and police head constable S.K. Jadhav (PW 6) who was attached to the said police station at the relevant time availed the assistance of Special Executive Magistrate Shri. B.L. Shahane (PW 1) and the duo proceeded to Surya Hospital for recording the dying declaration. Shri. B.L. Shahane (PW 1) then requested Dr. Sachin (PW 5) who was in the Surya hospital at the relevant time to examine the victim and thereafter recorded the dying declaration of victim. The said dying declaration is at Exhibit 13. In this dying declaration the above referred incident of quarrel, abuses and the acts of accused person are stated by the victim. Dying declaration at Exhibit 13 was then forwarded to the police station officer at Faraskhana Police station for transmission to Shikrapur police station along with report. On receipt of these documents Vitthal Pawar (PW 7) police head constable attached to Shikrapur police station proceeded to Surya Hospital. Vitthal Pawar (PW 7) then in presence of Dr. Satish (PW 3) obtained report and recorded statement of victim and the same is treated as first information report. It is interesting to note that in the said

first information report there is departure from Exhibit 13 and it is stated in the report that at the time of occurrence while victim was sleeping in her bedroom, accused persons came there and said that victim always sleeps and then by alleging that victim failed to bring Rs. 50,000/- for construction of the house and then after some altercations accused no. 1 mother-in-law poured kerosene from a big lamp on the person of victim and accused no. 2 sister-in-law threw ignited matchstick on person of victim, due to which victim sustained burn injuries. On the basis of that statement i.e. first information report bearing Crime No. 94/2002 was registered for commission of offence punishable under Section 307, 498A read with 34 of the IPC at Shikrapur police station.

6. API – Suresh Mane (PW 8) who was attached to Shikrapur police station at the relevant time took over the investigation and as the investigation agency set in motion Shri. Suresh Mane took further steps in the investigation. Shri. Mane (PW 8) visited the spot of occurrence, seized the articles from the spot, drew the necessary panchanamas, recorded the statement of witnesses. Shri. Mane effected arrest of both the accused. Accused persons were referred for medical examination after their arrest. Meantime, victim succumbed to burn injuries as such, Shri.

Mane (PW 8) drew inquest panchanama and the offence was then converted into an offence punishable under Section 302 of IPC. Dead body was subjected to postmortem. Shri. Mane (PW 8) collected the postmortem report and chemical analyzer's report. On completion of all the necessary formalities and the investigation charge-sheet was filed against accused persons in the Court of JMFC, Ghodnadi. The offences are being exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions. Learned Additional Sessions Judge framed the charges against accused persons. Accused persons were subjected to statement under Section 313 of the Cr.P.C. The defence of the accused persons is of total denial.

7. On appreciation of evidence brought by the prosecution before the Court below the learned Additional Sessions Judge was of the opinion that the evidence brought by the prosecution was not cogent, reliable and sufficient enough to hold accused persons guilty of the charges leveled against them. Learned Additional Sessions Judge framed points for consideration and answered those in negative by assigning detailed reasons to his ultimate opinion and recorded the judgment and order of acquittal.

8. On going through the record and on thorough assessment of the evidence, we are of the opinion that learned Ad-hoc Additional Sessions Judge committed no error in appreciation of evidence and arrived at just and proper conclusion.

9. Learned APP vehemently submitted that the prosecution brought before the Court reliable evidence in the form of oral testimony of witnesses as well as documentary evidence. It is also submitted by learned APP that the witnesses have submitted a consistent version of demand and ill-treatment suffered by the victim. Learned APP further submitted that the learned Trial Court failed to appreciate the evidence in its proper perspective and prayed for allowing the appeal.

10. Learned Counsel appearing for the Respondents vehemently submitted that learned Trial Court properly scanned and assessed the evidence. Learned Counsel submitted that the evidence brought before the Court was clearly indicative of the suicidal death of the victim. Learned Counsel further submitted that the witnesses, more particularly, Dr. Sachin (PW 5) admitted in the cross-examination that while recording the history victim itself disclosed that she herself poured

kerosene on her person and set herself on fire. Learned Counsel further submitted that the so called dying declaration are clearly unacceptable as they smack for tutoring. Learned Counsel also submitted that so called evidence on the aspect of ill-treatment or cruelty is too weak and clearly unacceptable. Learned Counsel, thus, prayed that appeal be dismissed.

11. The prosecution has examined as many as 8 witnesses in support of its case.

12. Now we may refer to evidence brought by the prosecution before the learned Trial Court.

13. Shri. B.L. Shahane (PW 1) was posted in the Court of CJJD and JMFC, Pune Court no. 9 as an Assistant Superintendent at the relevant time and at the same time he was also working as Special Judicial Magistrate. He stated before the Court that on 21.08.2002 at about 04.00 pm when he was present in his house police personnel reached his house to fetch him for the purpose of recording dying declaration of one Ashwini Kand who was admitted in Surya Hospital, Pune. He further stated that he proceeded to Surya Hospital in jeep brought by the police personnel. On reaching the hospital he contacted the receptionist and by

disclosing his identity sought for the case papers and requested the receptionist to call the doctor. Doctor then led Mr. Shahane to burn ward. Then in presence of Mr. Shahane (PW 1) doctor examined the patient and told Mr. Shahane (PW 1) that patient is conscious and he can record statement of patient. Mr. Shahane (PW 1) then obtained endorsement of the doctor. Then Mr. Shahane made preliminary inquiries to the patient such as, her name, residence etc. On satisfying himself that the patient is conscious, Mr. Shahane (PW 1) disclosed his identity to patient and asked as to how the incident took place. The patient replied that at about 09.00 am on 21.08.2002 a quarrel took place between herself and her mother-in-law. On an allegation of the mother-in-law that she (victim) stole food items from the shop and ate the same then accused no. 1 mother-in-law poured kerosene on her person and accused no. 2 sister-in-law ignited matchstick and threw on her person. She raised hue and cry. Neighbours gathered their and threw water on her person to extinguish fire. Mr. Shahane (PW 1) then states that he had scribed narration of patient in her words and had obtained left toe impression on it. On completion of her narration Mr. Shahane (PW 1) sought endorsement of the doctor.

Now it is important to note that in the cross-examination Mr. Shahane (PW 1) stated that when he reached the hospital relatives of the patient were present near her and he asked them to go outside. Mr. Shahane (PW 1) further admitted in the cross-examination that on going through the case paper he found that written history was given by the patient wherein patient stated that after a quarrel with mother-in-law, she herself had poured kerosene on her person and set herself on fire. This admission assumes much importance.

14. Now we may refer to evidence of Mr. Sudhakar Jadhav (PW 6) PHC attached to Faraskhana police station at the relevant time. Mr. Sudhakar (PW 6) stated before the Court that on 21.08.2002 he was on duty at Faraskhana police station and on receipt of information that one Ashwini is admitted in burn condition at Surya Hospital he immediately proceeded there. He further stated that on finding that the patient was in speaking condition he immediately approached to Special Judicial Magistrate Mr. Shahane and took him to Surya Hospital for recording dying declaration. He further stated that the dying declaration Exhibit. 13 recorded by Mr. Shahane was handed over to him. The same was then submitted to police inspector of Faraskhana police station along with his

report.

It is again interesting to note that in the cross-examination Sudhakar Jadhav (PW 6) stated that he made an inquiry with the patient in view of the information received by him and he further stated that the information that was received by him from PSO was that the patient had poured kerosene on her person and set herself on fire. Then again it is interesting to note that in the cross-examination Sudhakar Jadhav (PW 6) stated that he brought police jeep to Court no. 9 to fetch Special Judicial Magistrate. He further stated in the cross-examination that Mr. Shahane had accompanied him after disposal of his work. He further stated in the cross-examination that he had been to Court no. 9 at about 04.30 pm and left Court no. 9 for Surya Hospital at about 05.45 pm. Then Sudhakar (PW 6) then stated in the cross-examination that it did not happen that he had been to Kothrud to fetch Shri. Shanae and further stated that after recording dying declaration he had reached Shri. Shahane at his house at Kothrud.

It may not be out of place to state here that there is material discrepancies in the version of these two witnesses. As stated above, Mr. Shahane (PW 1) stated that on 21.08.2002 at 04.00 pm he was present

in his house and police had come their to fetch him for the purpose of recording dying declaration whereas Sudhakar Jadhav (PW 6) in his cross-examination stated before the Court that he went to Court no. 9 to fetch Mr. Shahane and after disposal of his work he left Court no. 9 for Surya hospital at about 05.45 pm along with Mr. Shahane (PW 1).

15. Sau. Kamal Rambhau Sathe (PW 2) is mother of victim Ashwini. Kamal Sathe (PW 2) stated before the Court in her examination-in-chief that Ashwini was given good treatment by her in-laws during the first three months of her marriage and thereafter accused persons started abusing Ashwini. It is further stated by Kamal (PW 2) that during her visits to her parental home Ashwini used to tell about the abuses and quarrels and Kamal (PW 2) further stated that she advised Ashwini to ignore such treatment of in-laws. It is stated by Kamal (PW 2) that Ashwini stayed with her parents for nearly 7 months. Madhukar husband of Ashwini then came to fetch Ashwini. She further stated that she told Madhukar about the behaviour of accused persons and requested him to convince them. Then she stated that on 21.08.2002 at about 02.00 pm she received a telephonic message that Ashwini sustained burns and admitted in Surya hospital hence she along with her

husband and son immediately rushed to Pune. They reached Surya hospital by 03.00 pm and met Ashwini. Then victim told to PW 2 that her mother-in-law came their and stated that she always sleeps and does not do any work. Her sister-in-law also came their and both of them started abusing Ashwini. Then mother-in-law poured kerosene on her person and sister-in-law by igniting matchstick set her on fire. Ashwini then raised shouts. Neighbours gathered their and she was then admitted to Surya Hospital.

In the cross-examination Kamal (PW 2) admitted that the financial condition of family of accused is good. She further stated in the cross-examination that in-laws of Ashwini are having their own shop, agricultural land and house. Then she stated that marriage of Ashwini was settled by one Sukhdev Kotwal who happens to be son-in-law of accused no. 1. Then she stated that her relatives reside within radius of 20 k.m. around her village. She further admitted that Ashwini was educated upto 8th standard and was fair looking girl whereas Madhukar was a handicaped person. Kamal (PW 2) then stated that accused person though spent money for treatment of Ashwini in Surya Hospital she had also contributed Rs. 10,000/- towards the treatment. Then she admitted

that she was on almost daily visiting terms to Sukhdev Kotwal. Then she further admitted that police reached Surya Hospital at about 06.00 pm. Kamal (PW 2) then stated that Ashwini had sustained burns to her chest, both hands etc. Ointment was already applied to her burn injuries.

16. Dr. Satish Terdare (PW 3) was attached to Surya Hospital at the relevant time. Dr. Satish (PW 3) deposed before the Court that on 22.08.2002 while he was present as a resident medical officer in Surya Hospital and was performing his night duty one patient Ashwini was admitted in the burn ward. At about 1.00 am police head constable from Shikrapur Police station visited him in relation to record the statement of patient. He had examined the patient and found that patient was conscious. Then the statement of patient was scribed in presence of Dr. Satish (PW 3). On completion of the statement he obtained right thumb impression of patient, at that time also patient was oriented and accordingly Dr. Satish (PW 3) certified it in the statement. Document i.e. certificate Exhibit 16 was shown to him. He admitted that the said certificate is in his handwriting and that bears rubber stamp of Surya Hospital.

In the cross-examination, Dr. Surya (PW 3) stated that both

hands of the patient were having burns. Then he admitted in the cross-examination that in case ointment is applied to the skin it cannot bear ink for its impression.

17. Anil Kashid (PW 4) is the person in whose vehicle victim was shifted to the hospital. This witness in his cross-examination stated that while carrying Ashwini to Surya Hospital he made inquiry with Ashwini on the way as to how she sustained burns to which Ashwini replied that an altercation took place between herself and mother-in-law and she herself poured kerosene on her person and set herself on fire. This witness is declared hostile and therefore, is of no help to the prosecution.

18. Dr. Sachin Patil (PW 5) is another medical officer who was attached to Surya Hospital. He stated before the Court that on 21.08.2002 he was attending his duty in Surya Hospital in second shift. Then he states that Ashwini was already admitted in the hospital and she was in burn ward ICU. He further stated that Ashwini had sustained his burns to the extent of 70%. Then he states that Special Judicial Magistrate reached hospital at about 06.30 pm for recording the

statement of patient. He took Special Judicial Magistrate to the patient Ashwini then he examined the patient as to ascertain whether the patient was in condition to give statement. He found that the parameters, namely, BP, pulse were normal and her vital senses were okay. Thus on assessment and finding that the patient was in a fit state to make statement, he put his endorsement on statement Exhibit 13 along with date and time. He then states that the Magistrate asked the relatives of the patient to leave the ward and then in his presence statement of patient was recorded. On completion of the statement he again examined the patient and on finding that the patient was fully oriented and conscious, made endorsement on the statement.

In the cross-examination, Dr. Sachin Patil (PW 5) admitted that at the time of admission of the patient doctor usually seek for the injuries of patient. He further admitted in the cross-examination that in the original medical case papers patient had disclosed history and had informed that there was dispute between herself and her mother-in-law at about 09.30 am and she herself poured kerosene on her person and set herself on fire. He further admitted in the cross-examination that the patient had reiterated the same history at 02.30 pm before him when he

had examined patient. Then he further admitted in the cross-examination that due to 70% burns the patient was having severe pain and was not coherent in her speech. Then he stated in cross-examination that as both the hands of patient were having complete burns and it was not possible to obtain thumb impression, impression of her toe was obtained at Exhibit 13. He further admitted that in the certificate endorsed by him the words “patient is physically fit and having mental capacity to give statement were missing”. He further admitted that there was no note in the medical case papers that the statement i.e. dying declaration Exhibit 13 is recorded in his presence.

19. Perusal of postmortem report which is admitted by the defence show that the victim sustained 80% burn superficial to deep burns. The affected portion by burns was the entire body and the postmortem report refers to the burns such as, head, neck, face 4%, right upper limb 9%, left upper limb 9%, anterior trunk 16, posterior trunk 18%, right upper limb 10% and left lower limb 18% i.e. total 80% superficial to deep burns.

20. Vitthal Pawar (PW 7) police head constable was attached to

Shikrapur Police Station at the relevant time and stated before the Court that on 22.08.2002 while he was present in the police station, Shikrapur, the police station officer directed him to go to Surya Hospital for recording report of patient admitted in burn ward and accordingly he proceeded to Surya Hospital. He stated before the Court that he introduced the complainant himself and then on assurance of doctor that he can record the statement of patient he recorded the statement of Ashwini as per her say. He stated that he had obtained thumb impression of right hand of complainant and said statement bears endorsement of the doctor. He further stated that he handed over the complaint to PSO and on the basis of complaint offence vide C.R. No. 94/2002 was registered.

It would be useful to note here that this witness states before the Court that he had obtained thumb impression of right hand of the complainant whereas, Dr. Sachin Patil (PW 5) admitted before the Court in his cross-examination that both hands of the patient were burned and it was not possible to apply ink so as to take thumb impression. Then in the cross-examination this witness admitted that before writing down the complaint he had not obtained certificate of the doctor and only the

signature was obtained on the report. In the cross-examination he further admitted that when he reached the ward relatives of the complainant were present and he had asked relatives to go out of the ward. He stated in the cross-examination that he had obtained one thumb impression of complainant on completion of writing of the complaint and further admitted that the hands of the complainant were having burns. He also admitted that there was a sufficient blank space on the page and in spite of blank space being available he failed to obtain certificate of the doctor allowing him to record the complaint.

21. Though in our earlier part of the judgment we have referred to the steps taken by this witness, i.e. Suresh Mane (PW 8) IO we may now refer to other aspects of the version of Suresh Mane (PW 8). he admitted that in the inquest panchanama there is reference about the quarrel between the victim and her mother-in-law and the victim herself poured kerosene on her person and set herself on fire.

22. While appreciating the evidence, learned Additional Sessions Judge rightly observed that there are inherent discrepancies in the dying declaration. As stated above, Dr. Sachin Patil (PW 5) admitted in the

cross-examination that in the case papers while referring to the history it was specifically stated that there was a quarrel between the patient and her mother-in-law and the victim herself poured kerosene on her person and set herself on fire. Learned Counsel for the accused while making submissions before the Trial Court was justified in submitting before the Court that the version disclosed in the dying declaration that the mother-in-law poured kerosene on the person of victim from one big lamp and the other accused i.e. sister-in-law threw an ignited matchstick on the person of victim is unacceptable. Considering the fact that the victim was comparatively young lady and she could have certainly made an attempt to resist the act of throwing kerosene or could have made an attempt to run away for saving her life.

23. Learned Additional Sessions Judge was justified in drawing support to the conclusion that the death of victim was suicidal one in view of the history reflected in the case papers and also reflected in the version of Dr. Sachin Patil (PW 5). In addition to this, the support was rightly drawn from the intimation received by the Faraskhana Police Station. It has come in the evidence that an intimation provided to Faraskhana police station was about suicide by the victim. Learned

Additional Sessions Judge was also justified in not placing reliance on these dying declarations implicating accused persons on account of relatives of victim present in the ward before recording dying declaration. It has come in the evidence that the relatives reached Surya Hospital at about 03.00 pm and the dying declarations were recorded at about 06.00 pm and on wards. Thus, for sufficient period the relatives were in company of victim and as such possibility of tutoring the victim at the instance of the relatives cannot be ruled out. Learned Additional Sessions Judge was also justified in observing that the allegations of ill-treatment and harassment on account of demand is also an afterthought theory because these allegations were not made when the dying declaration i.e. Exhibit 13 was recorded. Dying declaration Exhibit 25 was recorded on the say of victim on 01.40 am on 22.08.2002. At the cost of repetition, we state that the relatives reached in the hospital on 21.08.2002 at about 03.00 pm and all along for more than 3 hours before recording Exhibit 13 dying declaration they were in company of the victim. It has come in the evidence that marriage of the victim was settled by son-in-law of accused no. 1. It has also come in the evidence that mother of victim was visiting son-in-law i.e. Sukhdev Kotwal almost daily. In view of these

facts no explanation is coming forth as to if there was an ill-treatment caused to the victim. Why mother of victim Kamal (PW 2) made no attempts to seek intervention of Sukhdev Kotwal and in a question put to Pw 2 she denied of any such attempt being made. It has also come in the evidence that the victim spent very short time in her matrimonial home after her marriage till her unfortunate death, for most of the time she was in her parental home. It has also come in the evidence that the victim was educated upto 8th standard and was fair looking girl whereas her husband was physically handicapped person. It has also come in the evidence that for the initial period of 3 months victim was treated well in her matrimonial home and thereafter for most of the time she was in her parental home. Thus, the possibility of the victim feeling depression cannot be ruled out. Learned Additional Sessions Judge was also justified in placing reliance on the judgments reflecting principles to test the dying declaration for its acceptability. Learned Additional Sessions Judge was also justified in making following observations :

21. It is further interesting to note that no only P.W. 1, 5 and 6 etc. have admitted in their cross-examinations that at the time of recording of D.D. Exh. 13, 25 they were aware about the attempt to

suicide disclosure made by the victim but in that regard they made no query with the victim for changing the version. P.W. 1 has admitted that when he went to the victim a commotion was there but he cannot say if the victim was tutored by her relatives.

24. Thus, on going through the evidence brought before the Court thoroughly, we are of the opinion that the learned Additional Sessions Judge committed no error in in appreciation of the evidence and arrived at just and proper conclusion. The judgment is based on sound reasoning and neither perverse nor calls for any interference at the hands of this Court. Appeal, thus, being merit-less deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(V.G. BISHT, J.)

(PRASANNA B. VARALE, J.)