

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

CRIMINAL APPEAL NO. 568 OF 2004

The State of Maharashtra

... Appellant

V/s

Bhagwan Sukhadeo Bhandalkar

Age about 30 yrs., Occ: Nil,
R/o. In front of Pankaj Medical,
Pashangaon, Dist.: Pune.

... Respondent
(Ori. Accused No.1).

Mr. H. J. Dedhia, APP for the State-Appellant.

None for Respondent.

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

**RESERVED ON : 16th December, 2020
PRONOUNCED ON: 15th January, 2021**

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

The instant criminal Appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (Cr.PC.) has been preferred by the State assailing the judgment and order dated 17th January, 2004 passed by the 8th Additional Sessions Judge, Pune in Sessions Case No.225 of 2003, whereby the respondent-accused was acquitted of the charge under Section 302 of the Indian Penal Code ('IPC' for short).

2 The facts as brought out in the case of prosecution are that:

(a) On 13/03/2003 PSI Ravindra Dadasaheb Jadhav, investigating officer, visited the Sasoon Hospital where Smt. Sadhana Bhagwan Bhandalkar(since deceased) was admitted for burn injuries. After satisfying from Dr.Mangesh Sundarrao Tandale (PW-4) that the deceased was conscious and well oriented, he recorded her statement/dying declaration. He then proved the dying declaration at Exh.17.

(b) On bare perusal of the dying declaration at Exh. 17, it would be seen that on 10/03/2003 after she returned to conjugal home from parental home, she found accused-husband consuming liquor. Even the accused told her as to why she had returned, however, she overlooked the said comment. The accused then went out of the house. At about 7-00 p.m. to 7-30 p.m. while she was cooking, the accused-husband came along with Ashwini @ Mangal Swamy Kulkarni (absconding accused) to which deceased objected. She then alleged that when she started driving away Ashwini from her house, both of them picked up a

kerosene can and poured on her person. When she started running towards bathroom, her husband set her ablaze by means of a matchstick. She started raising shouts, as a result of which neighbours gathered and her husband extinguished the fire by throwing water on her person. She further explained that earlier she had told police that the incident took place because of stoking the flames of stove as she was threatened by the accused- husband.

(c) It then appears from the record that Crime No. 79/2003 under Section 302 r/w 34 of the IPC came to be registered by Chatushrungi Police Station, Pune against the accused- husband and the said Ashwini @ Mangal Swamy Kulkarni.

3 PW-5 during the course of investigation visited the place of occurrence and drew spot panchanama (Exh. 21) and recorded statements of witnesses. As the deceased succumbed to the burn injuries, he got the postmortem done and converted the crime from 307 of IPC to 302 of IPC and after completion of investigation PSI J.V.

Mandlik charge-sheeted the accused.

4 To substantiate the charge against the respondent-accused, the prosecution has examined 5 witnesses and exhibited number of documents. It is seen from the record that the respondent-accused was questioned under Section 313 of the Cr.P.C. about the incriminating evidence and circumstances and he denied all the circumstances as false.

5 Mr. Dedhia, learned APP, seriously assailing the impugned judgment and order of acquittal contended that the learned trial Judge wrongly disbelieved the evidence of prosecution witnesses and as also failed to appreciate the dying declaration in its true sense. There being total failure on the part of the trial judge and the fact that an erroneous judgment of acquittal is passed, the same is liable to be set aside, argued learned APP.

6 When the matter was called out, none appeared for the respondent-accused.

7 At the very outset, it may be noted from the record that
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Postmortem report pertaining to the deceased is duly admitted in evidence (Exh. 13) by the respondent-accused during the course of trial. The cause of death opined is shock due to burn injuries. Again, there is no dispute on this count.

8 In the present case in all there are four dying declarations. The first dying declaration is at Exh. 20. The second dying declaration is in the form of oral dying declaration allegedly given by the deceased to her father when latter visited the deceased in the hospital. The third dying declaration is at Exh. 11 recorded by the then Nayab Tahasildar and the fourth dying declaration came to be recorded by PW-5 investigating officer at Exh. 17 during the course of investigation.

9 In the case of **Nallam Veera Satya Nandam and Ors. V/s Public Prosecutor, High Court of A.P.**¹, 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

¹ AIR 2004 SC 1708

correct perspective and satisfy itself which one of them reflects the true state of affairs.

10 Similarly, in **Sudhakar V/s State of M.P.**², 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

² 2012 Cri.LJ 3985.

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.

11 Keeping in mind, the aforesaid governing principles, we wish to scan and scrutinize the dying declarations involved in the present case one by one.

12 We have noted from the record that the first dying declaration at Exh. 20 was duly admitted in evidence by defence without any formal proof and rightly so because the said dying declaration does not make any allegation against the respondent-accused. Rather, it completely absolves him, if we may say so and spells out that the deceased was accidentally burnt. There is the endorsement of concerned medical officer on the dying declaration that at the time of examination she was fully conscious and well oriented and was in good presence of mind before giving and after giving of the statement. This also, therefore, rules out any possibility of the deceased not being aware of what she had stated at the relevant time.

13 The prosecution has questioned the said dying declaration on the ground that the same was given under threat advanced by the respondent-accused to the deceased. This aspect would be taken note of by us at the later part of our judgment when we would be dealing with the other dying declarations.

14 We now come to the evidence of PW-1 Ramdas Khandu Makar, father of the deceased, with whom the deceased, according to prosecution, confided of having been set ablaze by the accused-husband.

15 PW-1 father states in his evidence (Exh. 8) that three days prior to the incident i.e. on 07/03/2003 he had been to the house of deceased-daughter. His wife was also accompanied. Deceased disclosed that accused was having extra-marital clandestine relations with a woman and used to cause physical violence to her since she was objecting the relations.

16 It is his further evidence that on 08/03/2003 accused-husband returned home in the state of drunkenness and started quarreling with the deceased in their presence. They tried to convince accused and also

requested him to allow them to take the deceased at their house at Warje. Accused permitted them to take her to their house. The deceased stayed with them till 9th March, 2003. In the evening hours of 10/03/2003 his son-Bapu took the deceased to the house of accused and dropped her there.

17 It is his further evidence that on the next day i.e. on 11/03/2003 his parental uncle informed that the deceased had sustained burn injuries and was admitted to Sasoon Hospital. He along with his wife then rushed to the hospital. The deceased informed them that on the earlier day in the evening hours when she was cooking food, the accused came there with that woman and at that point of time altercations between her and that woman took place and she (deceased) started driving her out of the house. She further disclosed that when she was driving Ashwini out of her house, her husband and Ashwini took a plastic can containing kerosene kept there and the accused-husband poured kerosene from it on her person. While she started running towards the bathroom, accused-husband set her ablaze by means of matchstick. When she raised alarm Ashwini fled away and neighbours rushed there. The accused then poured water on her person from a pitcher and then she was taken to Sasoon Hospital by accused and

others.

18 His evidence further shows that the deceased further disclosed that accused while taking her to Sasoon Hospital had threatened her that she should not disclose the incident to anybody and she should disclose that while cooking food her saree caught fire due to the flickering of stove and sustained burn injuries. According to him, his statement came to be recorded on 14/03/2003.

19 Innately we are struck with pertinent facts while reading the evidence of PW-1 father. First of all, it appears to us that the relations between the deceased and her husband were strained on account of alleged illicit relations between accused and the said Ashwini. We note here with pertinence that this witness was told by the deceased to give a particular statement which we believe was the first dying declaration (Exh. 20) wherein she absolved the accused completely and rather, stated of having sustained burn injuries accidentally. According to PW-1 father the deceased was compelled to state so because of the threats allegedly given by the accused. Surprisingly, the nature of threats is not at all disclosed by PW-1 father in his evidence. Therefore, we have

nothing on our hand to assess whether in fact those threats by there very nature were hard enough to persuade or compel the deceased to give a particular statement on a particular line suiting to the purpose of accused-husband. This is one crucial aspect of the evidence of PW-1 father.

20 Equally important and rather significant fact emerging from his evidence is that till 14/03/2003 he (PW-1) did not bother to lodge report against the respondent-accused. It is obvious to note from his examination-in-chief that after having been briefed by the deceased as to the circumstances leading to the burn injuries, he met the concerned medical officer, who directed him to contact police station Chatushrungi. It is further seen from his evidence that he then went to police station and gave that information to police. What is baffling is that despite giving information, as has been told to this witness by the deceased-daughter, the police took almost three days to record the two dying declarations simultaneously. Those dying declarations are at Exh.11 and Exh. 17. Both theses dying declarations came to be recorded on 13/03/2003. There is no explanation forthcoming from the mouth of PW-5, investigating officer, as to why they kept mum despite the informant-father informing them about the incident in question.

21 Therefore, the conduct of PW-1 father is also shrouded with all kind of suspicion and as also that of police machinery. There are more reasons to follow. The cross-examination of PW-4 Dr. Mangesh Sundarrao Tandale (Exh. 16) goes a long way in substantiating the first dying declaration whereby the accused was absolved by the deceased. He states in his cross-examination that deceased was admitted in the hospital on 10/03/2003 in the evening hours. She furnished the history of accidental burns. She even disclosed that when she was preparing food on stove, she caught fire due to the flickering of stove. The burning injuries on the person of the deceased were not emitting the kerosene smell and if the clothes of such victim emit kerosene odour, they are preserved.

22 From the cross-examination of this witness, it is very much clear that the history given by the deceased was of accidental burns. Here, if we assume for the sake of argument that the said history was given under threats as is alleged by the prosecution, then in that event, burn injuries ought to have exhibited the smell of kerosene which was absent and as noted by this witness. Even if it is to be assumed that the deceased was drenched in kerosene as is claimed by the prosecution, then in that event also the clothes of the deceased would have emitted

odour or smell of kerosene and necessarily preserved. Again that was not so in the light of cross-examination of this witness. Therefore, there is something terribly wrong with the theory of prosecution.

23 Exh.11 is a written dying declaration recorded by PW-3 Krishna Nathu Thigale (Exh. 14). It appears that this witness at the relevant time was Resident Nayab Tahasildar and on the request of the police yadi he visited Sasoon Hospital and recorded the dying declaration (Exh.11) of the deceased. This dying declaration came to be recorded, as earlier noted by us, as late on 13/03/2003 in between 10-45 to 11-00 a.m. We have already assigned the reasons for doubting this dying declaration and another dying declaration at Exh. 17 which came to be recorded immediately after the dying declaration at Exh.11 for the reasons stated herein-above. Even then we would like to say a word or two about this dying declaration.

24 Exh. 11 tries to cover two infirmities. Firstly, about the threats, which is again nowhere explained under which the first dying declaration at Exh. 20 was given by the deceased and as also why the threat factor was not revealed before the medical officer. Here also the

theory of dousing of the deceased with kerosene is discounted on the ground that neither injuries nor the clothes were having the odour of the kerosene.

25 This dying declaration shows that as both of them had poured kerosene on her person and as she had rushed towards the bathroom, her saree was completely on flames. Interestingly, it nowhere shows as to who out of them had set her on fire.

26 Coming to dying declaration (Exh.17), it was recorded by PW-5, investigating officer during the course of investigation. It is also on the lines of dying declaration at Exh.11 with a difference that it clearly spells out that it was respondent-accused, who had set her on fire by a matchstick.

27 We have given our cogent reasons for disbelieving not only the dying declarations at Exh.11 and Exh. 17 but also the oral dying declaration allegedly given before PW-1 father.

28 In our considered opinion, learned trial judge has also given

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cogent and convincing reasons for disbelieving the case of prosecution. We find no infirmity in the appreciation of evidence and law in the impugned judgment of the learned trial judge.

29 For the aforesaid reasons, we find no merit in the Appeal and dismiss the same accordingly.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)