

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 86 OF 2003

1. Krushna S/o Dashrath Choudhary
Age : 28 years, Occu. : Labour
2. Muktabai W/o Dashrath Choudhary (Abated)

Both R/o, Lonwadi, Tq. Bodwad,
Dist. Jalgaon. .. Appellants

Versus

The State of Maharashtra .. Respondent

Mr. G. V. Wani, Advocate for the Appellants.
Smt. P. V. Diggikar, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 11th October, 2022.

Date on which judgment pronounced : 15th November, 2022.

JUDGMENT :-

1. This appeal is preferred by the appellants/original accused Nos. 1 and 2 (now deceased) challenging the judgment and order of conviction passed by the learned 2nd Additional Sessions Judge, Jalgaon dated 27.12.2002 in Sessions Case No. 5/2002. The appellants are held guilty of an offences punishable under Sections 498-A and 306 r/w Section 34 of the Indian Penal Code (for short "I.P.C."). The accused No. 1 – Krushna is sentenced to undergo rigorous

imprisonment for a term of five (05) years and to pay fine of Rs. 300/- (Rs. Three Hundred only) in default to undergo rigorous imprisonment for a period of three (03) months for the offence punishable under Section 306 of the I.P.C. He is directed to undergo three (03) years rigorous imprisonment and to pay fine of Rs. 200/- (Rs. Two Hundred only) in default to undergo rigorous imprisonment for a period of two (02) months for the offence punishable under Section 498-A of the I.P.C. So far as accused No. 2 – Muktabai (now deceased), was sentenced to undergo simple imprisonment for one day that is till rising of the Court for offence punishable under Sections 306 and 498-A of the I.P.C. and to pay fine of Rs. 25/- (Rs. Twenty Five only) for each of the sections.

2. During the pendency of the appeal, appellant No. 2 died and by order dated 04.08.2016, appeal stood abated to her extent. Thus, now the case is to be considered only with respect to appellant No. 1 – Krushna.

3. In short the prosecution story is that deceased Mayabai married to appellant on 01.05.2001. She was not treated well by the husband and mother in law. There was a demand of Rs. 50,000/- (Rs. Fifty Thousand only) and gold ring. On 04.10.2001, it is alleged that the deceased was beaten up by the husband and mother in law. Because of

this incident she poured Kerosene and set herself on fire. The deceased succumbed to the burn injuries on 09.10.2001. The burn injuries were to the extent of 84%.

4. The FIR came to be lodged by father of the deceased. After registering an offence investigation was carried and charge-sheet came to be filed and case was tried. In support of the prosecution, the prosecution examined ten (10) witnesses. The prosecution through these witnesses have proved two dying declarations, one dated 04.10.2001 recorded by the API - PW-6, Bodwad in rural hospital. Second dying declaration came to be recorded on 05.10.2001 again by API - PW-8.

5. The defence of the accused is of total denial. It is a case of defence that the deceased received burn injuries while cooking food and the death is not a case of suicide, but a case of accidental death.

6. PW-1 is Pandharinath Choudhari who proved inquest panchanama dated 05.10.2001. He stated in the cross-examination that the deceased and accused were leading happy married life. He further stated that he came to know from the gossips in the village that the deceased died due to burn injuries while cooking food.

7. PW-2 - Kashinath Choudhari is maternal uncle of the deceased.

He stated that when he used to visit house of parents of the deceased, deceased used to tell him about the demand at the hands of accused No. 1 and on that count he used to beat her. The demand was for getting a job to the accused. On 04.10.2001 at 02.00 a.m. parents of the deceased told him that the deceased is burnt and is admitted to Civil Hospital, Jalgaon. They went to the hospital at Jalgaon where the deceased told that she was beaten up by the accused since morning for demand of money and because of this by pouring Kerosene she set herself on fire. In the cross-examination, he stated that this marriage was the second marriage of deceased after taking divorce from the first husband. She had filed petition for maintenance against the first husband. Though he is thoroughly crossed nothing is brought on record to shake his version in the chief. On the contrary, in the cross he gave all the answers consistent to his chief examination and prosecution story. This witness also acted as Panch to inquest panchanama which is admitted by the defence. From the inquest panchanama it is seen that both the hands of the deceased were burnt from shoulder to palm.

8. PW-3 is mother of the deceased. She also stated about the ill treatment and the demand of Rs. 50,000/- (Rs. Fifty Thousand only) and that she was beaten up for the demand. On 04.10.2001, she

received an information that deceased was burnt. On receiving this information she went to Civil Hospital where deceased told her that she set herself on fire because of the alleged incident. Some improvements in the statement are brought on record in the cross-examination as regards demand of money for a job. It has come that she was present in the hospital till the deceased was in hospital. She stated that entire body was burnt including her palms. It has come that the dying declaration was recorded by the Police in the presence of this witness. It has further come that the deceased had earlier married to one Pravin Choudhari, however, she did not cohabit with him and for that reason there was a divorce. She has also further stated that the deceased wanted accused No. 1 to come and reside at the house of her parents, however, accused No. 1 refused as his mother was old aged. She accepted that the accused No. 2 was blind.

9. PW-4 is Police Constable who carried Muddemal property to C.A. His evidence is not material and it is not necessary to discuss.

10. Father of the deceased is examined as PW-5. His evidence is consistent to the story of prosecution. He deposed about the demand of Rs. 50,000/- (Rs. Fifty Thousand only) and on that count the deceased was ill treated. On 04.10.2001, he received information. On receiving the information he went to Civil Hospital, Jalgaon where

deceased told him the incident. From the cross-examination, omission is brought on record about the demand of money by the accused. He accepted fact of her first marriage. He accepted that at the time of marriage dowry of Rs. 6,000/- (Rs. Six Thousand only) was demanded looking to the financial condition of the parents and that the said demand was not much. It has come in his evidence that deceased was totally burnt, however, he specifically stated that her palms and foot were not burnt. He accepted that the dying declaration was recorded in his presence.

11. PW-6 is Tolachand Narekar who was working as Police Head Constable at Bodwad Police Station. He deposed that he received information from the Primary Health Centre, Bodwad that the deceased was admitted in burnt condition. He immediately went to the hospital and recorded the statement and took signature of the deceased on his statement. He proved first dying declaration (Exh. 28). He accepted that the entire body of the deceased was burnt.

12. PW-7 is Himmatrao Jadhav, PI. Bodwad Police Station. He stated that while he was going for some work Police Patil of village met him on the way and told about the incident. On hearing this he went to the house of deceased who was lying in burnt condition. The accused were

present on the spot. The deceased told that she poured Kerosene on her and set herself on fire. It is this witness who took the deceased to Rural Hospital and thereafter she was referred to Civil Hospital. He carried the investigation. He arrested both the accused persons etc. Through his cross-examination, omission is brought on record in respect of demand of money by the accused for a job.

13. PW-8 is Bharat Kakade who was posted as API, Zilla Peth Police Station recorded the dying declaration (Exh. 35) and proved the same through his evidence. He stated in the chief that he recorded dying declaration by obtaining certificate from the doctor that she was in a fit condition to give dying declaration. From the cross-examination he denied that contents of dying declaration are as per the dictate of father of the deceased. This witness registered crime at 0 number at Zilla Peth Police Station and forwarded the same to Bodwad Police Station.

14. The doctor who first admitted deceased is examined as PW-9. He stated that when police wanted to record dying declaration, he examined the deceased and found that she was conscious and was fit to give statement and accordingly her statement was recorded. From the cross, as per this witness the extent of burn injuries was 92%. It is again specifically taken on record by defence through cross that her

palms were burnt. He accepted that his remark was taken after the dying declaration was recorded. However, he specifically stated that he was present near the patient all the time while recording the dying declaration.

15. Last witness is Dr. Girish Patil working as Medical Officer, Rural Hospital, Jalgaon. He examined the condition of patient and told the Police that she was in a fit condition to give dying declaration. In the cross nothing much is taken out by the defence except that on the dying declaration, time of starting of dying declaration is not written and that he has not made endorsement in writing on Exh. 35 that the deceased was in a fit condition to give statement.

16. In this matter P.M. notes are admitted by defence and therefore, Medical Officer who conducted autopsy is not examined by the prosecution.

17. The defence has not examined any witness.

18. Learned advocate for the appellants submitted that from the spot panchanama, it is clear that the deceased died while cooking food as he pointed out from the cross of PW-1 that in the village there was a whisper/gossips that the deceased died while cooking food. Thus, he submitted that it was a case of accidental fire and not a case of suicide.

From the evidence of PW-2, uncle of the deceased, the learned advocate submits that he has improved the story about beating of the deceased which does not find place in his police statement. From the inquest panchanama he pointed out that even the palms of both the hands were totally burnt and under such circumstances it was not possible for the deceased to sign dying declaration. In this case, both the dying declarations do show that those are signed by the deceased. About the dying declaration, his next submission is that while recording both the dying declarations uncle and father of the deceased were present. He has also tried to canvass that the dying declarations were recorded as per dictate of father of the deceased. Even mother of the deceased i.e PW-3 has improved her story about beating of the deceased. It is PW-5 i.e. father of the deceased, in his submission, who has prompted deceased/Mayabai and it is as per his prompting the deceased has given a statement. From the cross of PW-6 he pointed out that first dying declaration (Exh. 28) recorded at Bodwad was signed by the deceased when entire body of the deceased was burnt and stated that the deceased could not have signed. From the statement of PW-7 – Himmatrao Jadhav he pointed out that this witness has not said anything about demand of dowry though this witness is first to see the deceased in the house after the incident took place. From the evidence of PW-8 he submits that this witness has recorded second dying

declaration in presence of father of deceased and therefore, this dying declaration does not inspire confidence and therefore same needs to be discarded. His specific case is that PW-9 – Medical Officer has accepted that he took the endorsement about the fitness of deceased only after recording of dying declaration is completed. He further submitted that deceased was not talking properly and thus, it creates doubt about contents of the dying declaration whether are as per the say of the deceased which makes theory of defence probable that it is the father of the deceased who narrated contents of the dying declaration. About the last witness he submitted that this witness accepted in the cross that he has not made written endorsement upon the dying declaration (Exh. 35) that the woman was in a fit condition to give statement. Thus, in absence of such endorsement, he submits, this dying declaration cannot be considered as evidence. If at all, the deceased had set herself on fire because of harassment or dowry demand then she would have disclosed this to PW-7 as he was the person who saw her first. He pointed out that looking at the injuries recorded in P.M. notes and to panchanama both defer about the injuries on the palm. He thus submits that the prosecution has totally failed to prove its case beyond reasonable doubt.

19. The learned APP vehemently argued that in this case there are

two dying declarations recorded by the Police which inspire confidence. Both dying declarations are consistent to each other and supports the case of prosecution. This itself is sufficient to prove the case of prosecution. She submitted that the marriage has taken place on 01.05.2001 and the incident has taken place on 04.10.2001 i.e. within a period of six (06) months of marriage. It is further submitted that there was a demand of Rs. 50,000/- (Rs. Fifty Thousand only) and in view of this presumption under Section 113-B of the Evidence Act is rightly invoked. This is a case of dowry death. She also relied upon the oral evidence of PW-2, PW-3 and PW-5 i.e. maternal uncle, mother and father about ill treatment, harassment and demand of dowry. From the evidence of PW-7 she points out that he is the first person who saw the deceased and has clearly stated that the deceased has told that she poured Kerosene on her person and set herself on fire because of harassment at the hands of the accused persons and because of the incident of beating that took place in the morning. She ultimately submits that the time gap between the marriage and the alleged incident clearly shows that since beginning there was harassment and ill treatment at the hands of the accused persons.

20. I have considered the evidence, material on record and the submissions of the learned advocates for both the parties. This Court

finds that though there are certain omissions, but those are not material. The prosecution has proved both the dying declarations which are consistent to each other. Though it appears that there is no endorsement about the fitness of the patient on dying declaration (Exh.35) and thus even if it is discarded still dying declaration (Exh. 28) is there on record. The contents of dying declaration are corroborated by the evidence of PW-3, PW-5 and PW-7. The omission is only in respect of the demand of the amount for getting a job. That omission will not be fatal to the case of prosecution. What needs to be seen is the time gap between the marriage and the date of incident which is hardly about five (05) months. The prosecution has rightly invoked the presumption under Section 113-B of the Evidence Act. The fact of demand is duly corroborated and thus is proved by the prosecution and this Court has no reason to disbelieve the case of prosecution merely because of some minor omissions.

21. Thus, there is no difficulty in accepting the finding of the conviction as recorded by the learned Trial Court. Only question remains is about quantum of punishment. Though the appellant No. 2 is dead, but note can be taken that the Trial Court had found role of appellant No. 2 and had directed her to undergo punishment of simple imprisonment for a day. As against the present appellant No. 1,

allegation is of demand by him and the incident of beating at his hands. In view of this quantum of punishment needs to be considered on the background of the incident of alleged cruelty. One of the factors that needs to be considered while considering the quantum of punishment is that the incident had taken place in the year 2001. Now, it is more than 22 years since thereafter. During the trial the accused has already undergone imprisonment for more than three (03) months. Thereafter, he was on bail. There is no any complaint about his conduct after the appeal was filed and was pending before this Court. The appellant No. 1 must have been settled in life. It would not be proper to send him to the jail again after such a long period. This could be considered to be a mitigating circumstance to reduce the sentence. Hence, the following order.

ORDER

(I) The judgment and order passed by the learned 2nd Additional Sessions Judge, Jalgaon dated 27.12.2002 in Sessions Case No. 5/2002 is upheld to the extent of holding accused guilty and convicting him for offences punishable under Section 306 and 498-A of the I.P.C.

(II) The sentence is modified to the sentence already undergone. Rest of the sentence in respect of fine shall remain as it is.

(III) Bail bonds of the accused stand cancelled.

(IV) The accused to furnish fresh bail bond in the sum of Rs. 15,000/- (Rs. Fifteen Thousand only) with P.R. bond and one surety in the like amount.

(V) Criminal appeal is disposed of.

(KISHORE C. SANT, J.)

PS.B.