

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1454 OF 2003**

The State of Maharashtra	... Appellant
Vs.	
Balasaheb Tanaji Lad	... Respondent

Ms. S. S. Kaushik APP for the Appellant.
None for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 8TH DECEMBER 2022.

PC:-

1. Yesterday this Appeal was listed. After going through record, it is revealed that the Respondent-accused could not be served and there is a report of the year 2004, which says that accused is not residing on the said address. Thereafter no further steps were taken.

2. Considering this, in order to ascertain whether there is merit in Appeal, this Court heard learned APP in part yesterday and today, the matter is fixed for further hearing.

3. Learned APP has taken me through the judgment as well as evidence. After going through them, I find that the conclusion drawn by the trial Court are probable, hence, there is no merit in the Appeal and no purpose will be served by keeping the Appeal pending and taking efforts in securing presence of the Respondent-accused. I will

give reasons for this conclusion.

4. After going through the judgment, it appears that the Respondent-accused was prosecuted for harassing the deceased—Manjusha by suspecting her character and abetting her to commit suicide. She committed suicide by pouring kerosene on 27th January 2001, in the matrimonial house and she succumbed to the injuries on 30th January 2001. Initially, the offences came to be registered under section 498-A, 323, 504, 506 of the Indian Penal Code on 29th January 2001.

5. The statement of deceased was recorded two days after the incident and earlier to that also she gave statement to the Special Executive Magistrate in intervening night of 27th January 2001 and 28th January 2001.

6. The accused came to be arrested. He was charge-sheeted. He has denied committing the offence. The prosecution in all, examined 7 witnesses. On the point of dying declaration recorded on 28th January 2001, the prosecution examined

PW 1 Jayant Shetye, Special Judicial Magistrate and

PW 2 Dr. Vilas Nalawade.

The dying declaration is at Exhibit-24. Whereas in order to prove the second dying declaration, the prosecution has examined

PW 5 PSI Mohan Bhosale attached to the Old S.T. Stand Police Chowky, who recorded it and

PW 7 Dr. Avinash Asthekar.

Apart from them, the prosecution examined the father of deceased PW

4 Baburao Salpe. PW 6 PI Kashinath Salvi is the Investigating Officer.

7. After going through the evidence, the trial Court has found certain inconsistencies in between these two dying declarations and there are also certain launas, in these dying declarations individually. It is important to note that PW 4 Baburao Salpe is father of deceased and unfortunately, he has not supported the prosecution case.

8. The deceased and accused married on 18th June 1998. Initially, they were residing at village Kupwad, District Sangli and thereafter they have shifted to Satara. The accused is maternal brother of mother of deceased. During cross examination taken by accused, the father has said about good relation with his daughter and accused. One Vithal Kavare was real brother of the mother of deceased and he dislike deceased marrying accused. The trial Court noticed that this Vithal Kavare has visited the Civil hospital. So evidence of material witness is not available before the trial Court.

9. The Medical Officer who had certified about fitness of the deceased has given only one endorsement about fitness of these two individual dying declarations. There is no endorsement at the end that throughout recording she was in a fit mental condition. The trial Court in paragraphs 15 to 18 has discussed about inconsistencies in dying declarations.

10. It is true that dying declarations are admissible under section 32 of the Indian Evidence Act and they can be read in evidence even though the maker is not available for cross examination, provided it

should be voluntary and not tutored by any one and procedural formalities have been complied with. I agree with the observations of the trial Court about these lacunas.

11. In addition to that there are no other witnesses available who have been examined, who could have thrown light on relationship of the deceased and accused. It is important to note that both of them cohabited together for one and half year. The accused was working as a cook and the deceased was working in the hospital. The reasons for differences was coming late by deceased and habit of accused to consume alcohol. It is also important to note that the deceased was pregnant, however, there was miscarriage. There is one more factor which is in favour of accused and it is he who helped deceased in extinguishing fire and in fact, he also received injuries. So the reasons for harassment mentioned in dying declarations even may not fall within the meaning of the word "abetment" as laid down in section 107 of the Indian Penal Code. There is reason to believe that they are not of such kind so as to drive the deceased to commit suicide. There was miscarriage, so probably the deceased may not be in mental condition.

12. So for the aforesaid reasons, I do not find any fault in the conclusion drawn by the trial Court. Hence the Appeal in the Appeal is dismissed.

(S. M. MODAK, J.)