

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPEAL NO. 1032 OF 2013

1. Devendra Chandrakant Bhoir
Age-29 years,
2. Sou. Sharada Chandrakant Bhoir
Age- 62 years.

All R/o. Rabgaon, Taluka- Sudhagad
District Raigad.
Presently at Central Prison Taloja

: Appellants
(Accused No.1 & 3)

Versus

The State of Maharashtra
Through: Pali police Station,
District Raigad, vide C.R. No. 38 of 2011.

: Respondent

Mr. Ganesh Bhujbal for Appellant.
Mr. S. S. Hulke, APP for State.

CORAM : S. S. SHINDE,
SARANG V. KOTWAL, JJ.

DATE : 28th MARCH, 2022

ORAL JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The appellants have challenged the impugned Judgment and Order dated 21st August 2013 passed by the Additional Sessions Judge, Mangaon, District-Raigad in Sessions Case No. 52 of 2011 by which order the accused No.1 Devendra Chandrakant Bhoir and the accused No.3 Sou. Sharada Chandrakant Bhoir were convicted for the offence punishable under section 302 read with 34 of the Indian Penal Code, 1860 and both of

them were sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine amount to suffer rigorous imprisonment for the period of 6 months. Both of them were acquitted of the offence punishment under section 498-A read with 34 of the Indian Penal Code. The appellants were original accused Nos.1 and 3. Besides the appellants, there was one more accused i.e. Accused No.2 Chandrakant Bhoir who was acquitted of all the charges levelled against him. The accused No.2 was father of appellant No.1 and husband of appellant No.2.

2. The prosecution case is that deceased Yogita was the wife of Accused No.1. On 20/09/2011 as she sustained burn injuries, she was admitted in Primary Health Center, Pali for medical treatment. It is alleged that accused No.1-Devendra Bhoir i.e. husband of the deceased had poured kerosene on her and appellant No.2 – the original accused No.3 had given match-box to accused No.1 and he had set Yogita on fire, due to which she had sustained burn injuries. The offence was registered. She died due to burn injuries. Investigation was carried out and the chargesheet was filed. The case was committed to the Court of Sessions.

In support of its case, the prosecution examined eleven witnesses, including the father, the uncle and the mother of the deceased. The other witnesses were:-

- PW-7 Dr. Jaiswal, was the medical officer, who had issued the medico legal certificate and proved the two endorsements made by

him on the dying declarations;

- PW-8 Mr. Sanjay Patil, was the Tehsildar, who had recorded the dying declaration of the deceased;
- PW-9 Dr. Bhushan Vilasrao Jain, was the medical officer, who had conducted the autopsy and had prepared memorandum of postmortem examination of the deceased Yogita.
- PW-10 ASI Arun Saigaonkar had recorded another dying declaration, which was treated as the F.I.R.
- PW-11 PI. Jadhav was the Investigating Officer.

Besides the oral evidence, the prosecution produced C.A. report on record in support of its case.

3. In his deposition, PW-1 Gunaji Vithal Walanj, the father of the deceased, stated that Yogita was married with accused No.1 on 18.05.2011. After her marriage, she started residing with the accused at Mangaon. For about 3 months she was treated properly. Thereafter, Yogita fell ill, however, the accused were not ready to incur expenses for the medical treatment. PW-1 took Yogita to his house prior to 15 days of the incident. When PW-1 took his daughter to the house of the accused for cohabitation, the accused told him that they wanted to arrange a meeting. Therefore, the meeting was held on the previous day of incident. After the meeting, on 20.09.2011, in the morning, deceased Yogita went to the house of the accused at Rabgaon. PW-1 had accompanied her to Rabgaon.

After leaving her with the accused, PW-1 went back to Thane. When he was on the way to Thane, he received a phone call from his brother asking him to go back to house of the accused at Rabgaon. They went to Alibag. PW-1 saw that Yogita was admitted in the Civil Hospital, Alibag. She had sustained burn injuries. Yogita told PW-1 about the incident and told him that the accused No.1 poured kerosene on her and accused No.3 set her on fire by using match-stick. After four days of the incident, Yogita was shifted to MGM hospital at Airoli from Alibag. She survived for some more days and on the 7th day of the incident Yogita died.

In the cross-examination, PW-1 has stated that prior to 19/09/2011 there was a meeting at village Rabgaon and in that meeting it was alleged that Yogita had tried to administer poison to the accused No.1 through tea. That dispute was resolved and thereafter Yogita had started residing with the accused. He admitted that there was no quarrel between the accused and the deceased during the stay of the deceased with the accused. The quarrel, if at all, was of petty nature and was resolved. Importantly, PW-1 has admitted in his cross-examination that when he met Yogita in the Hospital, she was not in a position to talk.

4. The next important witness is PW-3 Vandana Gunaji Walanj, who was the mother of the deceased Yogita and wife of PW-1. She has narrated the same incident as deposed by PW-1. She has also referred to the meeting held on 19.09.2011. She has stated that Yogita started residing

with the accused since 20.09.2011. After leaving her there, PW-3 went to Thane. PW-3 further deposed that when she was about to enter her house, her brother-in-law told her that they had to go back to village Rabgaon. Thereafter PW-3, PW-1 and other eight relatives went to the house of the accused at Rabgaon. When they were on the way to Rabgaon, they came to know that deceased Yogita was admitted in the Civil Hospital at Alibag. PW-3 went to the hospital and saw her daughter. Yogita had sustained burn injuries. PW-3 further deposed that Yogita told her that accused No.1 poured kerosene on her from a plastic-can and when she came down to ground floor, accused No.3 set her on fire by lighting a match-stick.

In her cross-examination, she has stated that there used to be quarrels between the accused and the deceased because Yogita was refusing to take medical treatment. The quarrel between accused and Yogita was of petty nature. Subsequently in the meeting of 19/09/2011, Yogita had expressed that she was not willing to cohabit with the accused No.1 and, against her will and wish; PW-3 had forced her to stay with the accused on 20/09/2011.

5. PW-2 Pandurang Narayan Walanj is the another important witness. He was the uncle of the deceased Yogita. He has referred to the meeting which has been taken place four days prior to the incident. He had attended that meeting. Yogita was not willing to reside with the accused No.1. PW-2 has clearly deposed that in that meeting Yogita disclosed that

she did not like accused No.1 as her husband. It was decided in that meeting that Yogita should reside with her parents. The parents of the deceased Yogita sent her to the house of the accused and then they went back to Thane. The deceased Yogita came to the house of the accused at 10:00 a.m. and the incident took place between 1:00 to 2:00 pm. At that time this witness was in the meeting with Tahsildar. He was informed by somebody that Yogita had set herself on fire. He went to the house of the accused and at that time, Yogita was seen outside the house of the accused. She had sustained burn injuries. This witness had taken Yogita to Rural Hospital at Pali. He has clearly deposed that Yogita was not in a position to talk at that time. He has further stated that accused No.1 was suspecting that Yogita had given poison through a cup of tea and on that count there was a quarrel. He has further stated that, in the hospital, Yogita told to the police that accused Devendra and her in laws poured kerosene on her and set her on fire. Yogita died on 26.09.2011 in the hospital.

During his cross examination, he has admitted that Yogita was not willing to reside with accused No.1. Most significantly, he has stated that on 20.09.2011, the accused No.2 Chandrakant Bhoir - father-in-law of Yogita was with him in the meeting with the Tahsildar. As he came to know about the incident, PW-2 along with accused No.2 Chandrakant went to Chandrakant's house. He has further admitted that Yogita was not in a position to talk when this witness saw her. PW-2 further deposed that

when Yogita was taken to the hospital, he and Chandrakant were outside the hospital. This witness did not know as to what statement the police had reduced into writing. He admitted that Yogita did not tell before the police that accused poured kerosene on her and set her on fire.

6 The deposition of this witness PW-2 is crucial. He was the uncle of the deceased and he had no reason to depose false. Therefore, his evidence will have a strong bearing on the decision of this case.

7. The other witnesses are the panch witnesses who have been examined by the prosecution to prove the panchnamas in respect of arrest of the accused and seizure of clothes. Their evidence is not of much importance.

8. The prosecution examined PW-7 Dr. Bharti Jaiswal, who had given endorsement on the two dying declarations. She has stated that she was working in Primary Health Centre, Pali as the Medical Officer. On 20.09.2011 at about 1:40 p.m. patient Yogita was brought to the hospital for medical treatment. She had sustained 90% burn injuries. She disclosed the history of burns. P.W.7 informed the police. On examination, Yogita was found in a position to talk. The concerned police constable recorded the statement of Yogita. P.W.7 put her endorsement over the statement. That endorsement was shown to the witness and it was marked as Exhibit-39. After that, Tehsildar, Pali came to P.H.C. Again this witness examined Yogita and found her conscious and oriented. In the presence of P.W.7, the

Tehsildar recorded Yogita's statement. She gave her endorsement on that statement. The endorsement was shown to the witness, and is at Exhibit-40.

In her cross examination, she admitted that she could not tell as to what time Tehsildar came to PHC after the police had reached there. She admitted that there was no time mentioned below the endorsement and there was nothing to show whether she had examined Yogita before or after recording of her statement.

9. The prosecution examined PW-9 Dr. Bhushan Vilasrao Jain. He had conducted postmortem examination. He found that deceased had suffered 91% burn injuries and final cause of death was "septicemic shock due to burns". Therefore, there is no doubt that the deceased had died because of her burn injuries.

10. The prosecution examined Uddhav Dnyanba Jadhav (PW-11). He was attached to Pali police station. He was the Investigating Officer. He deposed about various steps taken during the investigation.

11. PW-8 Sanjay Patail was the Tahsildar at Pali at the relevant time. The police requested him to record Yogita's statement on 20.9.2011 in C.R. No.38/2011 of Pali police station. He then made enquiries with Dr.Jaiswal. He requested the Medical Officer to examine Yogita and give opinion as to whether she was in a position to talk. Accordingly, he examined Yogita and told this witness that she was conscious and was

oriented. PW-8 has thereafter categorically stated that he directed the Medical Officer, the police and Yogita's relative to go out and then he recorded Yogita's statement. The recording started at 1.40 p.m.. Before recording, he himself verified as to whether Yogita was in a position to talk. Yogita told him that after serving food to accused No.1 and her brother-in-law, accused No.1 asked her to give his clothes. She went to the upper floor. Accused No.1 followed her and poured kerosene on her. She pushed him and came down to the ground floor. Accused No.3 then set her on fire by using a match-stick. Yogita then came out of the house and gave shouts for help. She laid herself in the puddle of water in the court-yard. The neighbours poured water on her and extinguished fire. Yogita's version was recorded by this witness. It was read over to Yogita. Yogita admitted it to be true and put her signature on it. PW-8 also obtained Yogita's thumb impression. On that statement, the medical officer put her endorsement. The dying declaration was produced on record at Exhibit-43.

In the cross-examination, PW-8 Sanjay Patil denied the suggestion that Yogita was not in a position to talk.

Exhibit-43 is just the opening note of this witness that he was about to record Yogita's statement at 1.40 p.m. That note is dated 20.9.2011. There is endorsement of the Doctor on this note that the patient was conscious and oriented for her statement.

On the dying declaration itself is mentioned that it is Exhibited at Exhibit-50/C. Narration in that dying declaration is similar to this witness's deposition. There is further noting on that dying declaration that the recording of statement was over at 1.50 p.m.. There is no endorsement of the doctor on Exhibit-50/C which is the written dying declaration recorded by the Tahsildar. Whereas endorsement at Exhibit-40 is given only on a separate note. It does not appear that the doctor was present throughout the recording. PW-8 himself has stated that he had asked the doctor to go out of the room.

12. PW-10 is ASI Arun Sayegaonkar. He is another important witness because the statement recorded by him was treated as the FIR. He has stated that on 20.9.2011, at about 1.00 p.m., he received a phone call from Dr. Jaiswal from PHC Pali about Yogita being admitted in the hospital. PW-10 went there and met the doctor. PW-10 then put questions to Yogita in presence of the medical officer. Yogita told him that when she was in the house there was quarrel between herself and accused No.1 on the earlier day and the meeting was called in the village. On the day of the incident, she served food to accused No.1. He told her to bring his clothes. She went to the first floor. She saw kerosene-can in the hands of accused No.1. Her in-laws were standing near the stair-case. When she was coming down by the stair-case, accused No.1 poured kerosene on her and accused No.3 gave match-box to accused No.1; and he set her on fire

by using the match-stick. PW-10 has further deposed that he then had obtained endorsement and signature of the medical officer to show that the patient was in a position to talk. The statement was read over to Yogita. Her signature was obtained on it. The dying declaration was produced on record at Exhibit-50. It was treated as FIR and the offence was registered.

In the cross-examination, PW-10 has stated that Yogita's relatives and members of Mahila Dakshata Committee were present in the hospital. He himself had called the members of Mahila Dakshata Committee. He went to the hospital at 1.15 p.m. and recorded the statement within fifteen minutes. According to this witness, the medical officer put her endorsement on the statement after recording the dying declaration. The dying declaration-cum-FIR is produced on record at Exhibit-50.

13. There is material difference in the written dying declaration Exhibit-50 recorded by PW-10 and the version of the dying declaration deposed by PW-10 in his deposition. In the written dying declaration, Yogita has stated that after giving lunch to accused No.1 he asked her to get his clothes. She went to the upper floor. Accused No.1 followed her with the kerosene-can. She got scared and started running. In that statement, it is further mentioned that her father-in-law i.e. accused No.2 came there and held her and poured kerosene on her. When Yogita came down, her mother-in-law i.e. accused No.3 held her and gave match-box to

the accused No.1, who set Yogita on fire. This version is entirely different from PW-10's deposition. The specific role is attributed to accused No.2 in the written dying declaration.

14. Apart from this evidence, the C.A. report is produced on record which shows that there were kerosene traces on clothes of the accused and the deceased.

15. Learned counsel for the Appellants submitted that the written dying declarations are not consistent. Motive is not established. As Yogita was not in a position to talk, there was no possibility of Yogita telling her parents about the incident. Accused No.2 is falsely implicated as he is acquitted by the trial Court. Therefore, there is no guarantee that other accused are not falsely implicated.

16. On the other hand, learned APP submitted that the two written dying declarations and two oral dying declarations themselves are sufficient to prove the prosecution case.

17. We have considered these submissions. As is observed earlier, the prosecution case heavily relies on the two written dying declarations. There are irreconcilable contradictory versions in both these dying declarations. The FIR recorded by PW-10 gives specific serious role to accused No.2 i.e. father-in-law of Yogita, however, he is not even mentioned in the dying declaration recorded by PW-8 Tahsildar. Accused

No.2 is acquitted of all the charges. PW-2 Pandurang Walanj, in fact, has stated that accused No.2 was with him in a meeting at a different place and both of them came to know about the incident at the same time. Thus, accused No.2's *alibi* was proved by PW-2 Pandurang Walanj, who was uncle of the deceased. Accused No.2 was given benefit and was acquitted. Thus, there is a clear attempt to involve accused No.2 falsely. Therefore, it is not safe to rely on the prosecution case in convicting the other two accused.

18. As far as the dying declaration recorded by PW-8 Sanjay Patil, the Tahsildar, is concerned, he has stated that he had asked the doctor and others to leave the room when he had recorded the dying declaration. However, the medical officer has stated that she was present when the dying declaration was recorded. This simple but important contradiction in this evidence also throws serious doubt about the actual recording of this dying declaration. The evidence is also not clear as to when exactly the endorsement was made by the doctor. The endorsement itself does not mention any timing of that endorsement. The endorsement was given on a separate note prepared by PW-8 when he was about to start recording of the dying declaration. The dying declaration itself does not bear any such endorsement. It was separately exhibited on a separate note. Thus, there is no consistent version, as far as the prosecution case is concerned regarding recording of the two written dying declarations.

19. PW-2 Pandurang Walanj's evidence is also very important. He had taken Yogita to Hospital and he was present throughout. He has categorically stated that Yogita was not in a position to talk. PW-2 was Yogita's uncle and as mentioned earlier he has no reason to depose against the prosecution case. PW-2 himself has admitted in his cross-examination that when he met Yogita, she was not in a position to talk. Therefore, the oral dying declarations mentioned by PW-1 and PW-3 are doubtful.

20. PW-1, PW-2 and PW-3 have stated that Yogita was not willing to stay with accused No.1. PW-3 Vandana, the mother of Yogita, has in fact deposed that Yogita was forced by her to reside with accused No.1. The incident has occurred soon after PW-1 and PW-3 had left Yogita in the house of the accused. This fact and Yogita's reluctance to stay with the Appellants probabilise the theory that Yogita could have committed suicide. Though a specific defence is not taken in that behalf; the accused can rely on the evidence of prosecution itself to develop the theory of innocence within the parameters of preponderance of probability. PW-1 and PW-3 have deposed that there were no serious quarrels. There are no allegations of any acts which would fall within the meaning of Section 498-A of IPC. The accused are infact acquitted from such charges. Therefore, there is no motive for the Appellants to commit this offence. Considering all these factors, benefit of doubt must go to the Appellants and they deserve to be acquitted. Hence the following order :

ORDER

- (i) Criminal Appeal No. 1032 of 2013 is allowed.
- (ii) The impugned Judgment and Order dated 21st August 2013 passed by Additional Sessions Judge, Mangaon, District-Raigad in Sessions Case No. 52 of 2011 is set aside and the Appellants are acquitted of all the charges.
- (iii) The Appellants are on bail. Their bail bonds shall stand cancelled.
- (iv) The Appellants shall execute PR bonds before the trial Court, under Section 437A of Cr.PC., in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each, within a period of six weeks from today.
- (v) Criminal Appeal is disposed of accordingly.

[SARANG V. KOTWAL, J]

[S. S. SHINDE , J]