



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.385 OF 2018

Laxman Dharamraj Shendge
Age 40 years, Occ.: Labour,
R/o Hivargavhan, Taluka Wadwani,
Dist.Beed.

... Appellant

Versus

The State of Maharashtra
Through Station Officer, Police Station
Wadwani, Taluka Wadwani, Dist.Beed.

... Respondent

.....
Mr.Prakash S. Paranjape, Advocate for Appellant
Mr.S.D.Ghayal, APP for Respondent-State

.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

**RESERVED ON : 31 OCTOBER, 2023
PRONOUNCED ON : 07 NOVEMBER, 2023**

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Aggrieved by the judgment and order of conviction passed by the learned Additional Sessions Judge, Majalgaon, Dist.Beed in Sessions Case No.65 of 2013 dated 31-03-2015 holding present appellant guilty for offence under Sections 498-A, 302 and 506 of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for one year, imprisonment for life, rigorous imprisonment for six months and to pay fine respectively, the

convict has preferred instant appeal by invoking Section 374 of the Code of Criminal Procedure.

CASE OF PROSECUTION IN BRIEF

2. Crime was registered on the basis of dying declaration of deceased at Exd.28/1 on 20-08-2013 wherein deceased Meera gave statement about her marriage with accused convict, about having two children namely Shubham and Narayan. She gave statement that appellant husband was addicted to liquor and under its influence, he used to abuse her in filthy language and suspect her character.

On 19-08-2013, while she was sleeping, appellant husband came home under influence of liquor, questioned her fidelity, abused her and when she back answered by saying that he does not work, he poured kerosene on her and ignited her. Her brother-in-laws and their wives, hearing shouts, came and doused the fire and she was taken to the hospital where PW5 Vijay Jagtap (PHC) recorded her statement and crime was registered on the basis of the same.

PW7 Arun Jagtap (PI) carried out investigation and on gathering sufficient evidence, accused was chargesheeted, tried by the learned Additional Sessions Judge, Majalgaon and on appreciation of oral and documentary evidence, found appellant guilty and convicted as above.

SUBMISSIONS

On behalf of Appellant :

3. Learned Counsel for the appellant submitted that except dying declarations, there is no other evidence or direct evidence. He pointed out that there are two dying declarations and the same are admittedly not consistent. That dying declarations allegedly recorded by PW2 Mrs. Bundele, Special Executive Magistrate is not in question-answer form. He further pointed out that children of accused and deceased were not examined for the best reasons known to the prosecution even when they were material witnesses. He further pointed out that so called other witnesses have not supported prosecution. He further submitted that it has come in dying declarations that door was closed and so it was required to be broke open for gaining entry and as such it is his submission that it is a clear case of suicide and not homicidal as alleged. He criticized findings and conclusion of the learned trial Court by submitting that law on dying declaration has not been correctly appreciated and applied by learned trial Court and hence, he prayed to allow the appeal.

On behalf of State :

4. In answer to above, learned APP, canvassing in favour of impugned judgment, would submit that admittedly there are two dying declarations but

the same are consistent as regards to role of husband is concerned. He submits that in both dying declarations, it is stated that appellant was addicted to liquor and he used to abuse and suspect character of deceased. That incident had taken place in the house. That there is no explanation inspite of opportunity to explain the circumstances. That while answering questions under Section 313 of the Code of Criminal Procedure, according to him, there is nothing to show that both children of accused and deceased were there in house and inspite of so they were not examined. Lastly, he submitted that deceased died due to “septicemia due to burns”. That deceased has named appellant husband. That there was no reason for false implication and therefore, according to him, there is no merit in the appeal.

5. Admittedly case is based on dying declarations and there is no direct evidence.

Before adverting to the evidence, we propose to give brief account of settled legal position regarding evidentiary value of dying declarations as well as settled principles which are culled out by the Hon’ble Apex Court from the various landmark cases like *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, *Paniben v. State of Gujarat*; (1992) 2 SCC 774, *Laxman v. State of Maharashtra*; (2002) 6 SCC 710, *Ganpat Bakaramji Lad v. State of Maharashtra*; 2011 ALL MR Cri. 2249. *Surendrakumar v. State of Punjab*;

(2012) 12 SCC 120, Jagbir Singh v. State (NCT of Delhi); (2019) 8 SCC 779, Madan v. State of Maharashtra; (2019) 13 SCC 464.

Off late in the case of *State of Uttar Pradesh v. Veerapal and another; (2022) 4 SCC 741* while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, the Hon'ble Apex Court has reiterated the principles to be borne in mind while analyzing and accepting dying declaration. The settled principles are as under:

- “1. It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;*
- 2. Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;*
- 3. It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;*
- 4. A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;*
- 5. A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character : and*

6. *In order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”*

Similarly, in the case of ***Uttam v. State of Maharashtra; (2022) 8 SCC 576***, again certain principles are enunciated which are to be borne in mind in a case wherein the evidence is in the form of dying declaration. These principles are as under :

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The Supreme Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.”

Very recently certain principles of law with regard to case involving multiple dying declarations are spelt out in the case of ***Abhishek Sharma v. State (Govt. of NCT of Delhi)*** [Criminal Appeal No.1473 of 2011, decided on 18-10-2023]. These principles read thus :

- “9.1 *The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;*
- 9.2 *All dying declarations should be consistent. In other words, inconsistencies between such statements should be ‘material’ for its credibility to be shaken;*
- 9.3 *When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purpose of corroboration of the contents of dying declarations.*
- 9.4 *The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.*
- 9.5 *Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.*
- 9.6 *When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.*
- 9.7 *In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”*

The ratio that is settled is that dying declaration must be firstly voluntary, truthful and secondly it should not be tutored and further the same

should inspire the confidence of the Court. These are the basic principles which are to be borne in mind while appreciating dying declarations.

6. Here case of prosecution is rested on oral evidence of in all seven witnesses.

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Harishchandra Dnyanoba Dhavale is Spot Pancha. His evidence is at Exh.17. He has no supported case of prosecution.

PW2 Padmawati Shriramsinha Bunde is Naib Tahsildar (Special Executive Magistrate) and she recorded dying declaration Exh.23. Her evidence is at Exh.20. She deposed about receiving message from Police Chowky Amaldar, Civil Hospital, Beed, she going to Civil Hospital, approaching Doctor, obtaining fitness certificate and recording dying declaration and obtaining thumb impression. This witness stated that in dying declaration Exh.23, deceased stated that at around 11:45 p.m., her husband poured kerosene on her person and set her on fire.

PW3 Dr.Rajesh Vijaykumar Kachre is the Doctor, who conducted post mortem and opined about death of Meera due to “Septicemia due to 40% of superficial to deep burns” which are ante mortem in nature. His evidence is at Exh.25.

PW4 Macchindra Rangnathrao Wagh (ASI) is Police Officer, who stated that since 2012, he is posted at Wadwani Police Station as the PSO. He deposed about receipt of MLC including dying declaration and on its strength

registering crime bearing no.113 of 2013 for offence under Sections 307, 498-A, 504 and 506 of the IPC. His evidence is at Exh.27.

PW5 Vijay Sopan Jagtap is the Police Head Constable (PHC), who recorded dying declaration Exh.28/1. He deposed about receiving MLC, visiting burn ward, seeking Doctor's endorsement about fitness and recording dying declaration of Meera wherein she reported that her husband came in house at about 11:45 p.m. after consuming liquor, she woke up and at that time quarrel taking place on account of her husband doubting her character. That after quarrel accused brought kerosene can, poured kerosene on her person and ignited her. His evidence is at Exh.30.

PW6 Rambhau Dharmaraj Shendge is brother of accused. He has not supported prosecution. His evidence is at Exh.33.

PW7 Arun Suresh Jagtap (PI) is the Investigating Officer, who carried out investigation and chargesheeted accused. His evidence is at Exh.37.

7. Here solitary piece of evidence is two dying declarations. In the light of above legal requirement, we visited both the dying declarations. For proper comprehending and analyzing the same, we reproduce both the dying declarations in translated form.

FIRST DYING DECLARATION

First dying declaration Exh.28/1 is recorded by PW5 Vijay Jagtap (Police Head Constable).

“EXHIBIT 28/1

**Civil Hospital, Beed
Burns Ward.
20-8-2013**

**Patient is conscious and fit for statement.
Signed/- 20-8-2013 AT 3.40 AM
Medical Officer, Dist. Hospital Beed.**

DYING DECLARATION

I, Meera Lakshman Shendage, aged 32 years, Occ. Labourer, R/o Hivargavan, Tq. Wadawani, Dist. Beed do hereby state in person that, my marriage with Lakshman Dharmaraj Shendage took place some [not legible] years. I have two sons, 1. Shubham aged 14 years 2. Narayan aged 10 years. Dharmaraj is my father-in-law. My mother-in-law Chandrakala is expired. My husband has four brothers: Balaji, Bharat, Ram and Vitthal. My parental home is at Bori-Sawargaon and my father Rambhau Devmane is a farmer. My husband Lakshman is a habitual drunkard from four years and abuses me in filthy language very often and suspects my fidelity.

On 19-8-2013 at about quarter to twelve in the night, I was in the tin-roofed house at Hivargavhan, my husband came home drunk, woke me up and started abusing me and saying that, “ There’s something going on between you and somebody!” and started abusing. I said to him, “why do you not work? It is I who runs the house by making household work. Why you are harassing me under influence of liquor?” As I uttered this, my husband took the white can of kerosene kept in the house and poured the kerosene from my left side and by saying that he would burn me to death, he struck of a match stick and set me ablaze. I was shouting. Then my nephew and neighbour, Rambhau and his wife, Randhavni, brother-in-law Meeththu, Bharat, their wives, Meera Sanjavani, Prayagbai Bhagwat Shendage, cousin brother of my husband Datta Shedge rushed and kicked the door open. They doused the fire with water. The jeep belonging to one Bandu Naikwade of the village was brought and taken to the Govt. Hospital and Chichvan. After treating there, I was referred to the Civil Hospital Beed

and has been admitted in the Burns ward. My face, throat, chest, both hands, legs from the thighs to calf and the back from the left side have been burnt and I am injured. I have a complaint against my husband Lakshman who used to drink alcohol very often and out of suspicion of fidelity on my part, he said to me that he would burn me to death, poured kerosene on my person and set me ablaze with a match stick. Therefore statement is made. The statement has been read over to me and admitted to be true and correct. I am fully conscious and made the statement without any pressure from anyone.

Thumb impression of right thumb
Of Meera Lakshman Shendage,
R/o Hivargavhan, Tq. Wadwani

Before,
Signed/-
Chowki Officer, Civil Hospital, Beed.

Statement is closed; patient is conscious. 20-8-2013
Medical Officer
[Dr. Nikesh Gosrani] Time: 4.20 AM

Dated 20-8-2013
No. 232/2013
Entry no. 25 at 21.30 hrs
Crime No. 113/2013 u/s 307,498[A], 504. 506 of IPC
is registered and further investigation is taken up
by Shri. Jagtap, PSI.
Signed/-
Station House Officer,
Wadavani Police Station”

(As translated by Sr. Translator, High Court, Aurangabad)

SECOND DYING DECLARATION

Second dying declaration Exh.23 is recorded by PW2 Mrs.Bundele
(Special Executive Magistrate).

“DYING DECLARATION

Civil Hospital, Beed.
Dated 20-8-2013
Exhibit 23

20-8-2013

4.45 AM

Patient is conscious and fit for
[making] statement.

Signed/- [Dr.Ghosrani] Medical Officer,
Dist. Hospital, Beed.

I, Mrs. Meera Lakshman Shendage, r/o Hivargavan, Tq. Wadwani, Dist. Beed aged 32 years, do hereby state in person that, I have two sons 1. Shumbham Lakshman and 2. Narayan Lakshman aged 14 years and 10 years respectively. Lakshman Dharmaraj Shendage is my husband and is habitual drunkard. He abuses and beats me often. Also, he is suspicious of my fidelity. [He] Has been separated from my parents-in-law, brothers-in-law and their wives.

On 19-8-2013 at 11.45 hrs., my husband came home drunk and abused me and out of suspicion of my fidelity, he poured the kerosene from a white can on me saying that he would burn me alive and set me ablaze by igniting a match stick. I started shouting. My elder brother-in-law, Rama and Bharat and their wives, Vrindavani and Sanjivani, Meera rushed there. The cousin brother of my father-in-law, Bhagwat Shendge and his wife Prayagbai also came. They kicked open the door and entered the house. They doused the fire with water. The jeep belonging to one Naikwade of the village was brought and taken to the Govt. Hospital and Chichvan. After treating there, I was referred to the Civil Hospital Beed and has been admitted in the Burns ward. My face, throat, chest, both hands, legs and the back from the left side have been burnt. I have a complaint against my husband Lakshman. Therefore statement is made. The statement has been read over to me and admitted to be true and correct. I am fully conscious and made the statement without any pressure from anyone.

Thumb impression.

Of Meera Lakshman Shendage,
R/o Hivargavan, Tq. Wadwani

Before, Signed/-

SMT. BUNDELE P.S.

NAIB TEHSILDAR, TEHSIL OFFICE, BEED

Statement is closed; patient is conscious.

20-8-2013, 5.20 AM Medical Officer

[Dr. Nikesh M.Gosrani]”

(As translated by Sr. Translator, High Court, Aurangabad)

ANALYSIS

8. If we juxtapose both dying declarations, it is noticed that they cannot be said to be consistent. In first dying declaration Exh.28/1, deceased Meera speaks about husband coming home drunk, quarrel taking place and husband saying to her that something is going on between her and someone. It is thereupon she stated that she questioned him for not working and earning, and further saying that it is she who runs the house and even does household work. On her such utterance, she claims that he poured kerosene and ignited her. Hearing her shouts, neighbours, brother-in-law, sister-in-law and others came and she was brought to hospital. Whereas in second dying declaration Exh.23 recorded almost in quick succession, she gave statement that husband came home drunk, suspected her fidelity, poured kerosene and set her ablaze. The quarrel part on she alone working and he not working and thereafter he getting annoyed is not stated in the second dying declaration.

9. It is also to be taken note of that in both dying declarations, she speaks of neighbours, relatives kicking the door to open it. Such material indicates that house was closed from inside. If it is so then those neighbours would have noticed the presence of accused in the house. None of those neighbours have been examined. It is not stated in dying declaration that after setting her on fire, accused went by closing door. In that case latch would have been from outside which would not have required breaking it open. Therefore, there is

reason to infer, as submitted by learned Counsel for appellant, that possibility of suicide cannot be ruled out.

10. It is also pertinent to note that both children are also surprisingly not examined. They were material witnesses, but neither their statements are recorded nor they are examined in the Court and even PW7 Jagtap (PI), Investigating Officer has admitted to that extent in the cross-examination. It is not brought on record where the sons aged 14 and 10 years were at night time. If they would have been in the house, they would become eye witnesses and they would have definitely resisted father from doing such act. Further none of the neighbours or relatives named by her in both dying declarations are examined by prosecution. Apart from above, spot panchanama Exh.18/1 refers to husband suffering burns but medical paper to that extent does not seem to have been gathered by the Investigating Officer. Even bed ticket and treatment papers containing history are not placed on record.

SUMMATION

11. Therefore, taking above discussed material into consideration, firstly dying declarations are not consistent; secondly both dying declarations are not believable also as deceased had sustained 40% burns, was able to speak as per prosecution story, still material information like presence or absence of sons is not clarified; thirdly material witnesses have not been examined by

prosecution, and as such except dying declarations, there is no other trustworthy oral evidence. Therefore, in our opinion, story of prosecution is not proved beyond reasonable doubt and therefore, benefit is required to be extended for the same.

12. We have gone through the judgment under challenge, the crucial aspects noticed by us are not borne in mind while analyzing the evidence by the learned trial Judge. In our view, totality of the circumstances involved in the case are unfortunately lost sight of by the learned trial Judge and hence interference is called for. Accordingly, we proceed to pass following order:

ORDER

- (I) Criminal Appeal No.385 of 2018 stands allowed.
- (II) Conviction awarded to appellant Laxman S/o Dharamraj Shendge by the learned Additional Sessions Judge, Majalgaon in Sessions Case No.65 of 2013 on 31-03-2015, after holding him guilty for committing offence under Sections 498-A, 302 and 506 of the Indian Penal Code, stands quashed and set aside.
- (III) The appellant stands acquitted of the offence punishable under Sections 498-A, 302 and 506 of the Indian Penal Code.
- (IV) The appellant be set at liberty, if not required in any other case.

(V) Fine amount deposited, if any, be refunded to him after the statutory period is over.

(VI) We clarify that there is no change in the order passed by the learned Additional Sessions Judge, Majalgaon regarding disposal of Muddemal.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)