

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 20 OF 2017

1. Parubai @ Parvatibai Dnyandeo Pawle,
Age 45 years, Occupation Household,
[original accused no.1]
2. Narendra @ Laxman s/o Dnyandeo Pawle,
Age 20 years, Occupation Labour,

both resident of Indira Nagar,
Malegaon, Taluka Ardhapur,
District Nanded.

... Appellants

Versus

The State of Maharashtra,
Through Police Station Ardhapur,
Taluka Ardhapur, District Nanded.

... Respondent

.....

Ms. A. N. Ansari, Advocate for the Appellants.
Mr. S. D. Ghayal, APP for the Respondent-State.

.....

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

DATED : 07 JULY 2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. The appellants-convicts, by invoking Section 374 of the Code of Criminal Procedure [Cr.P.C.], are hereby assailing the judgment and order of conviction dated 06.12.2016 passed by learned Sessions Judge, Nanded in Sessions Case No. 94 of 2015, by which the appellants herein are held guilty for commission of offence punishable

under Section 302 r/w 34 of the Indian Penal Code [IPC] and sentenced to suffer imprisonment for life.

FACTS GIVING RISE TO THE SESSION TRIAL

2. Deceased Kavita was married to Lakhan on 29.05.2011. Everything was smooth for a year and half. Thereafter, husband, mother-in-law and brother-in-law put up demand of money and on failure to meet the said demand, Kavita was subjected to maltreatment. She promptly reported this to her family members. In spite of giving understanding, accused persons did not mend their ways and maltreatment continued.

3. On 20.05.2015 in the backdrop of above demand of Rs.10,000/-, deceased was set on fire by pouring kerosene, due to which she suffered 54.5% burns and was shifted to hospital. While in hospital, her dying declaration was recorded and on the strength of the same, crime was registered by Ardhapur Police Station.

4. Crime was investigated and after gathering sufficient evidence, chargesheet was filed and case was tried by learned Sessions Judge, who carried out trial, recorded the evidence adduced by prosecution and after conclusion of trial, on hearing both sides, reached to a

conclusion that husband did not participate in setting deceased on fire, however, mother-in-law and brother-in-law were responsible for the burns and accordingly, convicted them. It is said judgment and order of conviction of appellant nos. 1 and 2 which is now assailed before us by way of instant appeal.

EVIDENCE ON RECORD

5. In order to bring home the charge, prosecution has adduced evidence of in all 12 witnesses. Their status and role is as under:

PW1 Raju Barse is the pancha to seizure of clothes Exhibits 45 and 46.

PW2 Ankush Pawale is the pancha to spot panchanama Exhibit 48. He has not supported the prosecution.

PW3 Bhaurao Kamble is a rickshaw owner who shifted deceased Kavita to the hospital. According to him, husband and father-in-law of deceased shifted the lady to the Civil Hospital, Nanded on account of burns.

PW4 Ramkishan Gobhade, cousin of deceased, at Exhibit 50 stated that Kavita was treated well by her husband and in-laws and that she caught fire while cooking. Finding him not supporting, he was cross-examined by prosecution.

PW5 Shaikh Hameed is the Special Judicial Magistrate, who on receipt of communication from police, visited the Civil Hospital, Nanded, approached the Doctor and on certification of fitness, he recorded dying declaration of the deceased which he identified to be at **Exhibit 53**. According to him, deceased informed that mother-in-law, brother-in-law and husband set her on fire by pouring kerosene as demand of Rs.10,000/- was not fulfilled.

PW6 Jairajsingh Choudhary is the carrier.

PW7 Dr. Pratap Chavan is the autopsy doctor, according to whom, death of Kavita was due septicemia due to burns.

PW8 Venkati Gobhade, father of deceased, gave evidence that a message was received about his daughter suffering burns while cooking. He denied any ill-treatment and demand. Therefore, not finding him supporting, he was cross-examined by prosecution itself.

PW9 API Dilip Gade and **PW11** API Deepak Dantulwar are the Investigating Officers.

PW10 Manoj Maslekar, Police Head Constable, who on 20.05.2015, on receipt of telephonic message about a lady sustaining burns, visited Civil Hospital, Nande and recorded dying declaration **Exhibit 91**.

PW12 Dr. Gurunam Girniwale is the medical officer on whose certification of fitness, dying declaration Exhibit 91 was recorded.

SUBMISSIONS

On behalf of the appellants.

6. Referring to the above discussed evidence, learned Advocate for the appellants would point out that here, case of prosecution is doubtful. According to her, the entire case of prosecution is based on dying declarations, however, according to her, both dying declarations are involuntary, tutored and are inconsistent with each other. She took us through both the dying declarations Exhibits 53 and 91 and would submit that different versions are given at two different times. That, in fact there is sufficient evidence from the prosecution's own

witnesses, more particularly father of deceased that she had suffered accidental burns while cooking. However, only due to annoyance, at the instance of relatives, crime has been registered. Learned Advocate pointed out that except dying declarations, which are inconsistent, there is no other evidence either on the point of demand or ill-treatment. Learned Advocate pointed out that in spite of such weak evidence on record, learned trial Judge has failed to appreciate it in correct perspective and has recorded guilt on assumptions and presumptions and in absence of cogent and reliable evidence. Therefore, she prays for interference at the hands of this Court by allowing the appeal.

On behalf of the State.

7. Supporting the impugned judgment and order of conviction, learned APP would strenuously submit that prosecution has brought on record not one but two dying declarations which are recorded by police official and Special Executive Magistrate respectively. The role of accused mother-in-law and brother-in-law is consistent. It is pointed out that learned trial Judge has acquitted accused husband as he was not present at the spot and thus, it is strenuously submitted that there is correct appreciation of available evidence. Appellants being responsible for the burns resulting into death of deceased, they

are rightly held guilty and as such, it is prayed that no interference is required in the impugned judgment and order.

ANALYSIS ON APPRECIATION OF AVAILABLE EVIDENCE

8. Here is a case which is based on dying declaration. There are two dying declarations at Exhibits 53 and 91. The incident of catching fire seems to have taken place on 20.05.2015. There is no dispute that incident had taken place while deceased Kavita was residing with husband, parents-in-law and brother-in-law.

FIRST DYING DECLARATION

9. First dying declaration **Exhibit 91** seems to be recorded at 5.00 p.m. on 20.05.2015 and it is on the strength of the same that Ardhapur Police have registered crime. This dying declaration is recorded by **PW10** Police Head Constable Manoj Maslekar.

10. The sum and substance of this dying declaration is that on 20.05.2015 at 11.00 a.m., everybody was in the house. Mother-in-law questioned her for not bringing Rs.10,000/- for Bolwan. Brother-in-law Laxman also asked her to bring money from her maternal house saying that credits are due to others. There was quarrel on this count.

She informed that deliberately her husband went out of the house for bringing tobacco and while her father-in-law was sitting outside with her child, mother-in-law and brother-in-law shut the door and beat her. Mother-in-law poured kerosene on her head and person and demanded match box from brother-in-law Laxman, who went and brought it and thereafter, mother-in-law ignited her by use of burning match stick. Father-in-law managed to open the door and thereafter, fire was doused by use of water. Thereafter, husband and father-in-law shifted her to hospital. In the conclusion, she stated that all persons i.e. mother-in-law, brother-in-law, husband and father-in-law, in the backdrop of money demand, set her on fire.

11. **PW10** PHC Manoj Maslekar in his substantive evidence Exhibit 90 has narrated all the steps taken by him from receipt of information about burnt lady patient admitted in the hospital till recording of dying declaration. In cross, he answered that he received message from API Gade at about 3.30 to 3.45 p.m. He is unable to give name of the doctor who was treating the patient and he was also unable to give exact time when deceased Kavita was admitted to the hospital. He answered that there were people in the premises of hospital, but he was not knowing her relatives. He answered that it took 30 to 45 minutes for recording the dying declaration. He answered that he

asked injured whether she can sign and according to him, she told that she wanted to put thumb impression. However, he answered that fingers of both hands had caught fire.

SECOND DYING DECLARATION

12. Second dying declaration **Exhibit 53** is recorded by **PW5** Special Judicial Magistrate Shaikh Hameed. This dying declaration is in question-answer form. It also seems to be recorded on 20.05.2015 at 6.40 p.m. i.e. on the same date.

13. To a question as to how burns were suffered, deceased answered that mother-in-law poured kerosene and asked brother-in-law Laxman to bring match box and thereafter, mother-in-law ignited her. When asked as to why she was set on fire, answer is noted that on account of failure to bring Rs.10,000/- for Bolwan.

14. **PW5** Shaikh Hameed, Special Judicial Magistrate, at Exhibit 51 stated about recording dying declaration and according to this witness, deceased informed that her mother-in-law, father-in-law and husband set her on fire by pouring kerosene. They made demand of Rs.10,000/- which she could not fulfill and therefore she was set on fire.

15. Apart from above dying declaration, **PW9** API Dilip Gade seems to have recorded **supplementary statement Exhibit 69** of deceased on the next day i.e. on 21.05.2015, wherein there is detail narration about marriage, husband and in-laws insulting her on petty counts, taunting her on her looks, about being cheated. She stated that after husband went for work, her in-laws used to subject her to severe ill-treatment and they used to instigate her husband when he returned home to beat her. She spoke about informing her parents and relatives about such treatment. Regarding occurrence, in supplementary statement, it is stated that on 20.05.2015 at around 11.00 a.m., husband said that she did not bring Rs.10,000/- from her father and saying so he left the house on the pretext of purchasing tobacco and thereafter, brother-in-law and mother-in-law poured kerosene and ignited her, resulting into burns.

16. Though father of deceased i.e. **PW8** Venkati Gobhade has been examined, he spoke about receiving message regarding his daughter suffering burns while cooking. Therefore, her father himself has not supported prosecution.

17. Learned Advocate for the appellants would vociferously submit that dying declarations are not consistent and moreover, supplementary statement, which is also inconsistent, itself has given serious dent to the story of prosecution about present appellants setting deceased on fire. She has emphasized a lot by submitting that husband has been given clean chit and even learned trial Judge has acquitted all the accused persons from the charge under Section 498-A of IPC and therefore, it is her submission that, conviction of accused nos. 1 and 3 i.e. present appellants, is illegal.

18. It is true that in spite of charge being framed under Section 498-A of IPC, all accused are acquitted from the said charge.

ANALYSIS

19. On carefully examining and appreciating the dying declarations, which are reproduced in the aforesaid paragraphs, it is seen that in the first dying declaration Exhibit 91 recorded at 5.00 p.m., deceased has alleged that mother-in-law picked up quarrel for not bringing Rs.10,000/- for Bolwan and thereafter, even brother-in-law joined her for questioning deceased. Thereafter, when husband went out of the house, she has alleged that, brother-in-law and mother-in-law closed the door and beat her and mother-in-law poured

kerosene on her head, body and asked brother-in-law to bring match box and on it being brought, mother-in-law ignited her. It is pertinent to note that, it has not been stated in the dying declaration that after pouring kerosene, mother-in-law had made her immobile by catching hold of her. As to why she stood still till match box was brought is a mystery. She could have easily rushed out of the house by opening the door as her father-in-law was sitting just outside the door. It is also pertinent to note that in the initial part of the dying declaration, she has attributed role only to the mother-in-law and brother-in-law and has claimed that husband and father-in-law shifted her to hospital. However, in the concluding part of the dying declaration, she has attributed the burns even to husband and father-in-law. Such version creates doubt about trustworthiness of the dying declaration.

20. In spite of recording of dying declaration at 5.00 p.m., within a short span i.e. within less than an hour, second dying declaration Exhibit 53 seems to have been recorded by PW5 Special Judicial Magistrate Shaikh Hameed. To a question regarding occurrence, which we have reproduced earlier, it seems that she has held mother-in-law and brother-in-law responsible for pouring kerosene and setting her on fire respectively. Here, she does not state about husband deliberately going for purchasing tobacco. To a question as

to why she was set on fire, she has answered that she was ignited for not bringing Rs.10,000/- from her parents. However, while answering such question, she has stated that on account of failure to meet the demand, mother-in-law and brother-in-law set her on fire. For setting her on fire, husband and father-in-law helped and as such, all four are responsible. While answering above question, she has also answered that she was treated well for a year after marriage, but from second year ill-treatment began. Husband used to consume liquor and beat her, abuse her and ill-treat her.

21. Apart from above two dying declarations, there seems to be a supplementary statement recorded on the next day. As to why this supplementary is recorded has not been explained by the prosecution. As stated above, in such supplementary statement she has given detailed narration since marriage and has attributed burns to her mother-in-law and brother-in-law. In supplementary statement she has stated that kerosene was poured by even brother-in-law, which she has not stated in the earlier dying declaration and the role attributed to the brother-in-law was only following the directions of mother-in-law to bring match box.

SUMMATION

22. On critical analysis of above material, we are convinced that dying declarations are not voluntary. They cannot be said to be consistent and inspiring confidence. Supplementary statement recorded on the next day also gives a serious dent to the credibility of the version of deceased. As stated above, apart from doubtful dying declarations, very father of deceased is found to have testified about his daughter suffering accidental burns. Therefore, under such circumstances, evidence on behalf of the prosecution in the trial court was very weak in nature.

23. We have gone through the judgment under challenge. In our opinion, learned trial Judge has not minutely scrutinized and appreciated both the dying declarations on record. The discrepancies and shortfalls noticed by us which we have discussed in the aforesaid paragraphs are apparently lost sight of by the learned trial Judge. On the same set of evidence, all accused are already acquitted by the learned trial Judge from the charge under Section 498-A of IPC. Therefore, when the dying declarations were not inspiring confidence, guilt ought not to have been recorded as is done by the learned trial Judge. Finding it a fit case for interference, we are inclined to allow the appeal. Hence, the following order:

ORDER

- I) The appeal stands allowed.
- II) The conviction awarded to the appellants by learned Sessions Judge, Nanded in Sessions Case No.94 of 2015 after holding the appellants i.e. original accused Nos.1 and 3 guilty of committing offence punishable under Section 302 read with Section 34 of Indian Penal Code on 06.12.2016, stands quashed and set aside.
- III) The appellants viz., (i) Parubai @ Prvatibai Dnyandeo Pawle and (ii) Narendra @ Laxman s/o Dnyandeo Pawle stand acquitted of the offence punishable under Section 302 read with Section 34 of Indian Penal Code.
- IV) They be set at liberty if not required in any other case.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period is over.
- VI) We clarify that there is no change in the order of disposal of muddemal.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]