

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

CRIMINAL APPEAL NO.491 OF 2020

Dhananjay S/o Suresh Mulke,
Age-31 years, Occu:Agril.,
R/o-Bolka, Taluka-Kandhar,
District-Nanded.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
- 2) Gajendra S/o Vyankat Magar,
Age-35 years, Occu:Service,
R/o-Nalegaon, Taluka-Chakur,
District-Latur,
- 3) Vyankat Vishwanath Magar
(Since deceased),
- 4) Sulochana Vyankat Magar,
Age-70 years, Occu:Household,
R/o-Nalegaon, Taluka-Chakur,
District-Latur.

...RESPONDENTS

...
Mr.M.B. Kolpe Advocate for Appellant.
...

WITH

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.28 OF 2020**

The State of Maharashtra,
(Through Police Station, Chakur,
Taluka-Chakur, District-Latur.

...APPLICANT

VERSUS

- 1) Gajendra Vyankat Magar,
Age-30 years, Occu:Service,
R/o-Nalegaon, Taluka-Chakur,
District-Latur,
- 2) Vyankat Vishwanath Magar
(Died on 24.05.2019),
- 3) Sulochana Vyankat Magar,
Age-65 years, Occu:Household,
R/o-Nalegaon, Taluka-Chakur,
District-Latur.

**...RESPONDENTS
(Ori. Accused)**

...
Mr. A.M. Phule, A.P.P. for Applicant.

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

DATE : 16th FEBRUARY, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Criminal Appeal No.491 of 2020 has been filed by the original informant under Section 372 of the Code of Criminal Procedure and Application for Leave to Appeal by State No.28 of 2020 is filed by the prosecution challenging the acquittal of original accused by the learned Additional Sessions Judge, Latur on 14th November 2019 in Sessions Case No.66 of 2015 from the

offence punishable under Section 302, 498-A read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Kolpe for the appellant in Criminal Appeal and learned APP Mr. Phule for the applicant in Application for Leave to Appeal by State, at the admission stage.

3. With the able assistance of learned Advocate for the appellant as well as learned APP, we have gone through the material which was before the learned trial Judge.

4. The prosecution story, in short, is that deceased Deepali was married to accused No.1 about four years prior to the date of incident i.e. 24th March 2015. She has daughter aged about 2 years at that time. After the marriage, Deepali was residing with the husband and parents in law. According to the prosecution, Deepali was admitted to hospital after she had received burn injuries and her statement was recorded by the hospital duty constable, in which she had stated that she was treated properly by the accused persons for about 15 to 20 days only after the marriage and thereafter they had started harassing her by saying that they are not getting anything from her parental house. They used to abuse her and assault her and they were

insisting that unless she brings something from her parents, they will not allow her to live alive. On 24th March 2015, around 3.30 p.m. Deepali was at home and was sitting on cot. Her husband came and started making demand of the money and quarreling with her. He told that when she is not bringing any money, there is no point in keeping her alive and therefore, he went inside the house, brought plastic can containing kerosene, poured it on her person and set her ablaze. After a while her dying declaration was recorded by Naib Tahsildar – cum Executive Magistrate and then the offence came to be registered.

5. After the investigation was over, charge-sheet was filed and after the committal of the case, charge was framed against the accused persons, trial was conducted. The prosecution has examined in all 13 witnesses to bring home the guilt of the accused. After considering the evidence on record, the learned trial Judge has acquitted all the accused persons, hence these proceedings.

6. As the criminal law was set in motion on dying declarations, we would like to consider those two dying declarations first. The first dying declaration is stated to have started at 8.15 p.m. and was completed by 8.45 p.m. on 24th

March 2015, as per the endorsement of the doctor and it is produced at Exhibit-70. Exhibit-65 is the second dying declaration, which is stated to have started at 8.45 p.m. and was completed by 9.15 p.m. The first and foremost question, therefore, would be as to why there was requirement of two dying declarations in quick succession. We could not find any answer to the same in the evidence adduced by the prosecution. The second point that has to be considered is that the incident had taken place at 3.30 p.m. on 24th March 2015. As per the testimony of PW-9 Dr. Vinamara Singhal, Deepali was admitted to the hospital around 5.39 p.m. with 89% burn injuries. Definitely after admission of Deepali the hospital authorities would have intimated about her admission to the police desk, which is usually maintained in the hospital premises. PW-7, then head constable Gudle has stated that he received the MLC (Medico Legal Case) from Civil Hospital, Latur, which showed that Deepali was admitted having 60% burn injuries. He has not mentioned the time when the MLC was received by him. But then PW-7 has produced on record letter given by him to the medical officer asking him about the condition of Deepali i.e. Exhibit-64. Even on that document the doctor has not stated the time but then he gave opinion that Deepali was in a condition to

give the statement. If all this was happening in the same premises then it should not take around 3 hours to the head constable to reach to the patient. It also appears from the testimony of PW-9 Dr. Singhal that relatives of Deepali were present and then police constable Gudle asked them to leave the ward. Therefore, the possibility of tutoring by the relatives, prior to the arrival of the head constable, cannot be ruled out.

7. With the said technical aspects involved, it was the submission of the prosecution that Exhibit-65 as well as Exhibit-70 have been proved by examining PW-7 Gudle, PW-6 Saudagar Tandale, and PW-9 Dr. Vinamra Singhal. PW-6 Tandale is the Naib Tahsildar, who recorded dying declaration Exhibit-65. He says that he had received the letter around 8.15 p.m. on 24th March 2015 and then he visited the civil hospital, Latur. Even for the sake of arguments we take the testimony of all these witnesses as it is and say that the dying declarations Exhibit-65 and 70 are proved, the fact remains that the contents of the same are doubtful. In both the dying declarations it is absolutely not mentioned as to how much was the demand of the accused persons. In Exhibit-70 it is stated that the accused persons were saying on one or the other pretext that they have not received anything from parental home of Deepali and they were insisting

that she should bring some amount. This cryptic demand without any specification cannot attract offence under Section 498-A of the Indian Penal Code. Further, the acts of harassment have not been stated. This Court time and again held that mere use of words "mental and physical harassment" will not be sufficient to prove the ingredients of Section 498-A of the Indian Penal Code. Specific acts will have to be mentioned. Further, though it is stated that Deepali was abused and assaulted, it appears from the testimony of her relatives that she never made any complaint against the accused persons to the police.

8. When there are two dying declarations, it is then required to be seen, as to whether those are consistent. In the first dying declaration Exhibit-70 it is stated that on 24th March 2015 Deepali was sitting on cot and her husband came. He started saying that she has not brought anything as per their demand then what is the use of keeping her alive and then husband brought kerosene and poured on her person and set her on fire. She is absolutely not saying about the presence of her father-in-law and mother-in-law at that time near her, or she has not attributed any active role to the parents in law. However, in the second dying declaration Exhibit-65, which is recorded in quick succession, rather in continuation, Deepali has allegedly stated

that when she was sitting on the cot, her parents in law came and started quarreling as to why she has not brought anything from her parental house. It will not be out of place to mention here that in Exhibit-65 she has not stated anything about the previous demand i.e. demand made prior to 24th March 2015. She then states in Exhibit-65 that afterwards her husband came and started saying that she is not accepting any of their demand and therefore, he brought kerosene, poured on her person and set her on fire. It is absolutely not stated by her that immediately after the husband came, the parents in law had instigated him by saying something. Without there being any exchange of dialogues, how the husband could have come to know as to what was happened prior to his arrival, is a question. Under such circumstance, we do not find that Exhibit-65 and 70 are consistent with each other. Such inconsistent dying declarations cannot be relied upon and rightly those have not been relied upon.

9. Interesting point to be noted that PW-9 Dr. Singhal in her cross-examination has admitted that when the MLC was given, the history was given and according to papers the history that was given, was the patient came with relatives having burn injuries, but there is specific mention that the burn injuries are

due to bursting of stove at 3.15 p.m. The prosecution has not made any efforts to rule out the said possibility, taking into consideration the said entry in the hospital record. In other words, taking into consideration the history noted in the hospital record, prosecution ought to have ruled out the possibility of accidental fire. Further, the case papers showed that around 6.45 p.m. on 24th March 2015 the hospital authorities had obtained the signature of father of Deepali. Suresh Mulke appears to be the father of deceased Deepali, however, he has not been examined for the reasons best known to the prosecution. PW-4 Dhananjay Suresh Mulke is the brother of the deceased and for the first time in his testimony he has stated that the accused persons had demanded amount of Rs.3,50,000/-. As aforesaid, his testimony does not stand corroborated by the dying declarations Exhibit-65 and 70. When deceased herself is not quoting the specific demand, the oral, rather hearsay information i.e. by the deceased to PW-4 Dhananjay cannot be relied upon.

10. It is not in dispute that Deepali died of burn injuries, however, as both the dying declarations being unbelievable, not inspiring confidence and appears to have been outcome of tutoring, as well as not ruling out the possibility of the accidental death by the prosecution, the learned trial Judge was justified in

acquitting all the accused persons. There is no merit in the present Appeal and the Application and both the same deserve to be rejected at the admission stage.

11. Accordingly, Criminal Appeal No.491 of 2020 as well as Application for Leave to Appeal By State No.28 of 2020 stand rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB23