

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 283 OF 2016

Maroti S/o Gangaram Wakde
Age : 40 years, Occu: Agril.,
R/o : Balegaon, Tal. Degloor,
Dist. Nanded.

... Appellant

Versus

The State of Maharashtra,
Through Police Station, Degloor,
Tal. Degloor, Dist. Nanded.

... Respondent

.....
Mr. Dhanraj S. Ingole, Advocate for the Appellant (appointed)
Mr. A. M. Phule, App for Respondent-State.
.....

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

DATED : 17 JULY 2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Appellant herein questions the judgment and order of conviction passed by learned Additional Sessions Judge, Biloli, District Nanded in Sessions Case No. 56 of 2014 dated 26.02.2016 by which, sentence of imprisonment for life has been awarded to the appellant by learned trial Judge for commission of offence punishable under Section 302 of the Indian Penal Code [IPC].

BRIEF FACTS GIVING RISE TO SESSIONS TRIAL

2. Deceased Mahadabai was married to appellant and out of their wedlock they had two sons and one daughter. Since four years prior to the incident, appellant got addicted to liquor and under influence of the same, he used to suspect her character, abuse her and beat her. On 11.08.2014, in the above backdrop, again accused returned home getting drunk, abused her in filthy language and poured kerosene on her and ignited her. She was shifted to hospital where she gave dying declaration and on the strength of the same, crime was registered at Degloor Police Station for offence under Sections 307, 294 of IPC. During treatment, she succumbed and therefore charge was converted to Section 302 of IPC.

3. After investigation and committal, trial was conducted by learned Additional Sessions Judge, Biloli, who after appreciating the evidence adduced by prosecution, accepted the case of prosecution as proved and thereby, holding appellant guilty, awarded him sentence to suffer imprisonment for life and the same is now assailed before this Court by invoking Section 374 of the Code of Criminal Procedure [Cr.P.C.].

SUBMISSIONS IN BRIEF

4. According to learned counsel for the appellant, case is based entirely on dying declarations and that dying declarations are not consistent and therefore not worthy of credence. It is pointed out that dying declarations are also not shown to be voluntary one. However, learned trial Judge has not considered and appreciated the said evidence and has straightway accepted the dying declarations as proved. It is submitted that in view of percentage of burns, it does not seem possible that deceased was in a position to give statement. Learned counsel has strenuously submitted that taking into consideration the portion of body which is said to be burnt, there is more possibility of deceased suffering accidental burns. For all above reasons, it is submitted that the judgment under challenge being illegal and perverse, cannot be allowed to be sustained.

5. In answer to above, learned APP would submit that accused is responsible for the burns. The dying declarations are consistent and inspiring confidence as regards the actual occurrence is concerned, and no fault can be found in its appreciation. Appellant is solely responsible for the burns and therefore, guilt has been correctly fastened and he so prays that there is no need to interfere in the impugned judgment.

6. Being the first appellate court, this Court is expected to re-appreciate, re-analyze and re-examine the entire oral and documentary evidence adduced by prosecution to ascertain whether the impugned judgment is perverse, illegal or otherwise.

EVIDENCE BEFORE THE TRIAL COURT

7. Before adverting to the exercise of analyzing the evidence, for the sake of clarity and brevity, it would be appropriate to give brief account of the evidence adduced by the prosecution and its sum and substance.

PW1, Police Naik Dyanoba Kendre, on receipt of information on 11.08.2014, approached Civil Hospital and after approaching doctor and on examination of lady patient by doctor, he recorded her dying declaration which he identified to be at Exhibit 12. According to this witness, regarding occurrence, the deceased told him that accused used to consume liquor and under its influence, used to suspect her character and always abused and beat her. On 11.08.2014 at 10.00 a.m., in the above background, he poured kerosene on her and set her on fire. She further stated that accused subsequently tried to extinguish fire by throwing water but prevented neighbours from

helping her. Her sister-in-law took her to the hospital. This witness identified the first dying declaration at Exhibit 12 to be authored by him on the say of deceased.

PW2 Sudhakar Deshmukh is the pancha to spot panchanama Exhibit 14, but he has not supported the prosecution.

PW3 Kallubai Bhalke is the mother of deceased and in her evidence at Exhibit 16, she stated that her daughter was married to appellant 10 to 12 years prior to the incident. That, initially for six years they lived happy married life but thereafter her husband started to harass and beat her under the influence of liquor. That, from her nephew she learnt about burns suffered by her daughter and therefore she and her relatives went there. That, her daughter told her that accused locked the door and set her on fire under the influence of liquor.

PW4 Ujwala Pangarkar, Naib Tahsildar, who in her evidence at Exhibit 17 deposed that on receipt of communication from Vajirabad Police Station on 11.08.2014, she visited the Civil Hospital. Thereafter, upon examination by doctor, she recorded statement of deceased wherein she informed that her husband suspected her

character. On the date of incident, he came home consuming liquor and poured kerosene on her person. This witness stated that she recorded her statement in question-answer form. She identified the said statement at Exhibit 18.

PW5 Premalabai Wakde is the sister-in-law of accused and deceased. According to her, deceased was busy cooking and she heard shouts from the house of deceased. This witness immediately went to the room of deceased and on seeing flames, she went outside and gave alarm to the public. According to this witness, she asked her sister-in-law (deceased) as to how she suffered burns, upon which she informed that she was cooking on stove and she received the flames of fire. According to this witness, appellant was not present in the house and he came later on.

PW6 Anand Narwade is the neighbour of accused who did not support the prosecution as he stated that he heard from the deceased that while cooking on the stove, it got burst and she received burn injuries.

PW7 Radhabai Wakade, aunt of accused also stated that deceased suffered burns and she learnt from her that while cooking

food, she received flames of fire. Police did not record statement of this witness.

PW8 PSI Madhukar Waghmare is the Investigating Officer.

PW9 Dr. Shaikh Ahmad examined the appellant who had suffered burns to his both hands and fingers.

PW10 Dr. Santosh Bhosale conducted postmortem. He deposed that deceased had suffered 78% burns and in his opinion, the cause of death was septicemia due to burns.

PW11 Dr. Ulhas Chavan is the doctor who, on 11.08.2014 at around 6.00 p.m., examined patient and gave certification regarding fitness to give statement on first dying declaration Exhibit 12.

Defence also examined two witness i.e. **DW1** Dr. Saraswati Bendgude who stated that she was on duty as medical officer on 11.08.2014. She asked Mahadabai Wakde as to what happened, upon which, according to this defence witness, Mahadabai told her that she received accidental injury at the time of burning the oven.

Another defence witness **DW2** Pandhari Wakde stated that at the time of incident, he was in his shop. His wife came to the shop and told him that Mahadabai had received burns. He immediately rushed to the house of accused. There he found his mother and one Radhabai and Premabai were busy extinguishing the fire on the person of deceased. Thereafter accused also came there and tried to extinguish the fire. He stated that he himself, his mother, his sister and one Anil Narwade were along with the deceased while she was being shifted to hospital. According to him, during transit, his mother asked deceased as to how the incident occurred, upon which she stated that she received burns due to burst of stove.

ANALYSIS

8. Here is a case which is based on dying declaration. There are not one but two dying declarations. Charge against the accused is that he used to consume liquor and under the influence of same, he used to suspect character of deceased. On 11.08.2014, he came home drunk, abused her, suspected her character and after pouring kerosene, he ignited her.

First dying declaration :

9. The first dying declaration recorded by **PW1 Police Naik Dyanoba Kendre** is at **Exhibit 12**. This witness in his substantive evidence stated that on query as to how she suffered burns, she allegedly told him that her husband used to consume liquor and suspected her character. On 11.08.2014 at around 10.00 a.m., accused again questioned her as to with how many persons she had illicit relations and when she denied, he allegedly poured kerosene and ignited her with match stick, pushed the door and went outside.

10. Exhibit 12 is the first dying declaration which is recorded at the hospital at around 6.00 p.m. on 11.08.2014. Therein she stated in detail about accused since four years started getting drunk and suspecting her character and thereafter abusing and beating her. Regarding occurrence dated 11.08.2014 also, she stated that accused returned home drunk, questioned her as to with how many persons she is maintaining illicit relations and after abusing her, saying that he would set her on fire, he poured kerosene and set her on fire. This dying declaration bears certification and signature of doctor about fitness to give statement around at 6.00 p.m. At the conclusion of statement also, there is certification about fitness. This dying declaration bears left thumb impression of the deceased.

Second dying declaration:

11. If we visit the second dying declaration at Exhibit 18, it is recorded on the same day at 8.20 p.m. in question-answer form by PW4 Ujwala Pangarkar, Naib Tahsildar. According to PW4 Naib Tahsildar, on being asked how she suffered burns, she allegedly answered that husband suspected her. On the day of incident, he came home consuming liquor and poured kerosene on her person. Her husband extinguished the fire and her sister-in-law took her to the hospital. That, she had made complaint against her husband.

12. On examining the dying declaration Exhibit 18, it is revealed that while answering question no.4, she has specifically stated that husband used to suspect her, he came home drunk and around 10.00 a.m., he poured kerosene and ignited her. Even this dying declaration bears certification of doctor about fitness at around 8.20 p.m. On this dying declaration also, there is left thumb impression of deceased. Therefore, on analyzing above two dying declarations, it is evident that the authorities who have recorded the dying declarations are both consistent about deceased informing about husband coming home under influence of liquor, suspecting her character, beating and abusing her. They both found her speaking about accused coming home at 10.00 a.m. on 11.08.2014, again questioning her about with

how many persons she was having illicit relations and thereafter, pouring kerosene and setting her on fire. Therefore, apparently both dying declarations Exhibit 12 and Exhibit 18 are consistent about occurrence. The burning incident is in the backdrop of suspicion of character.

SUMMATION

13. True it is, as pointed out by learned Advocate for the appellant, that **PW5** Premalabai [sister-in-law of accused] and **PW6** Anand [neighbour] and **PW7** Radhabai [aunt of accused] have not supported prosecution as they have resiled from their earlier version given to police under Section 161 of Cr.P.C.. **PW5** Premalabai, who is sister-in-law, seems to have stated about hearing from deceased about she suffering burns while cooking, i.e. on account of burst of stove. Similarly, even neighbour **PW6** Anand and aunt **PW7** Radhabai also stated about hearing from deceased about she suffering burns while cooking. However, if we minutely go through the spot panchanama, there is no circumstance suggesting burst of stove. Therefore, apparently, these witnesses, who have reached later on, seem to have tried to save the appellant.

14. While appreciating dying declaration and when there is sole evidence in the form of dying declaration, only it is to be ascertained

whether the dying declaration inspires confidence and is voluntary. Here, both the conditions are apparently met. Deceased is found to be consistent about accused regularly suspecting character and under influence of liquor abusing her and beating her. No infirmity or discrepancy is so patent in the dying declarations so as to doubt its credibility. Therefore, in our opinion, there is no merit in the appeal.

15. We have gone through the judgment under challenge. We are convinced that the law of appreciation of dying declaration has been correctly considered and applied by learned trial Judge. The conviction recorded is in view of legal requirements being met. Consequently, no fault can be found in the findings recorded and reasons assigned by learned trial Judge. Consequently, we refrain from interfering in the judgment and hence, we proceed to pass the following order:

ORDER

- I. The criminal appeal is hereby dismissed.
- II. We quantify the fees of the appointed Advocate at Rs.10,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]