



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.707 OF 2022

Pratap Ambarsing Babnawat,
Age 27 yrs., Occ. Education,
R/o Sanjarpurwadi, Tq. Vaijapur,
Dist. Aurangabad.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra
Through Secretary of Home Department,
Maharashtra State, Mantralaya, Mumbai.
- 2 Dhanraj Kachrusing Jarwal,
Age 24 yrs., Occ. Agri.,
R/o Sanjarpurwadi, Tq. Vaijapur,
Dist. Aurangabad.
- 3 Sau. Dhawalabai w/o Kachrusing Jarwal,
Age 50 yrs., Occ. Agri.,
R/o Sanjarpurwadi, Tq. Vaijapur,
Dist. Aurangabad.
- 4 Kachrusing Chudaman Jarwal,
Age 56 yrs., Occ. Agri.,
R/o Sanjarpurwadi, Tq. Vaijapur,
Dist. Aurangabad.
- 5 Sau. Nagabai w/o Premsing Ghunawat,
Age 25 yrs., Occ. Agri.,
R/o Raghunathpurwadi,
Tq. Vaijapur, Dist. Aurangabad.
- 6 Purabai w/o Indersing Ghusinge,
Age 35 yrs., Occ. Agri.,
R/o Sanjarpurwadi, Tq. Vaijapur,
Dist. Aurangabad.

- 7 Pratap Kachru Jarwal,
Age – Major, Occ. Student,
R/o Sanjarpurwadi, Tq. Vaijapur,
Dist. Aurangabad.
- 8 Durga w/o Kachru Jarwal,
Age – Major, Occ. Student,
R/o Sanjarpurwadi, Tq. Vaijapur,
Dist. Aurangabad.

... **Respondents**

...

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for appellant

Mr. S.D. Ghayal, APP for respondent No.1

...

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

RESERVED ON : 08st DECEMBER, 2023

PRONOUNCED ON : 18th DECEMBER, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present appeal has been filed by the original informant to challenge the acquittal of respondent Nos.2 to 8 by learned Additional Sessions Judge, Vaijapur, Dist. Aurangabad in Sessions Case No.19/2016 on 22.08.2022 from the offence punishable under Section 302 and 498-A read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. Shaikh Mujtaba Gulam Mustafa for the appellant/informant and learned APP Mr. S.D. Ghayal for respondent No.1 at the stage of admission and perused the material which was before the trial Court.

3 It has been strongly submitted on behalf of the appellant that the learned trial Court has not appreciated the evidence properly. Prosecution had examined in all 11 witnesses to bring home the guilt of the accused and various documents in the form of panchnama, dying declarations, C.A. report, Postmortem Report etc. were produced and proved. The defence has also examined three witnesses, however, it has been wrongly held that there is no cogent and conclusive evidence to prove that deceased Vandana was subjected to cruelty by the accused. Further, it is wrongly held that though Vandana expired due to septicemia due to thermal burns, prosecution has not proved that it was homicidal. It is to be noted that the First Information Report is promptly lodged. No doubt, there was no previous complaint about ill-treatment on the ground of cruelty, but as it happens in every Indian family that for such harassment or ill-treatment on the count of dowry nobody rushes to the police to lodge report against husband and his relatives. There will be every hope that the girl would be treated properly by the husband and his relatives. There was absolutely no inconsistency in both the

dying declarations. The first dying declaration was recorded on 26.10.2015 around 9.50 p.m. and the second dying declaration was recorded on 27.10.2015 around 9.45 a.m. In both the dying declarations it is specifically stated that the husband – accused No.1 Dhanraj had assaulted deceased Vandana with pipe used for sprinkling pesticides and then poured diesel which was in the plastic can on her person and ablazed her. In both the dying declarations she has categorically stated that she was sleeping around 2.00 to 2.30 p.m. on 26.10.2015 due to illness, but husband started asking as to why she has not gone for plucking cotton. The accused persons were asking her to do the work in spite of illness, which is also cruelty on their part. The third dying declaration was recorded by Executive Magistrate between 11.05 to 11.20 a.m. on 27.10.2015. By relying upon the decision in **Nagabhushan vs. State of Karnataka** [(2021) 5 SCC 222] it was submitted that in case of multiple dying declarations it would be the duty of the Court to consider each dying declaration independently on its own merit in respect of its evidentiary value and one cannot be rejected because of the contents in other. The ratio of the citations placed before him by the accused persons has been wrongly considered. The harassment to Vandana was on the point that she has not delivered a male child. When the trial Court wrongly appreciates the evidence and then it results in injustice to the victim when the accused is/ are acquitted, then the appeal under Section 372 of the Code of Criminal

Procedure is definitely maintainable. In the same decision in **Nagabhushan** (supra) in an appeal against acquittal the principles have been summarized in respect of Section 378 of the Code of Criminal Procedure and those principles would then be applicable to the present appeal under Section 372 of the Code of Criminal Procedure. When the informant shows that there is some evidence on record which is acceptable and which could be relied upon and it is shown that the findings of the trial Court are perverse and, therefore, as the matter requires re-appreciation and further scrutiny, the appeal deserves to be admitted.

4 At the outset, in respect of law about appreciation of multiple dying declarations is concerned, it can be summarized from the decisions in **Khushal Rao vs. State of Bombay** [AIR 1958 SC 22], **Paniben vs. State of Gujarat** [(1992) 2 SCC 774], **Laxman vs. State of Maharashtra** [(2002) 6 SCC 710], **Ganpat Bakaramji Lad vs. State of Maharashtra** [2011 ALL MR Cri. 2249], **Surendrakumar vs. State of Punjab** [(2012) 12 SCC 120], **Jagbir Singh vs. State (NCT of Delhi)** [(2019) 8 SCC 779], **Madan v. State of Maharashtra**; [(2019) 13 SCC 464] and **Uttar Pradesh vs. Veerapal and another**; [(2022) 4 SCC 741]. Here, the prosecution has come with a case that the law has been set in motion by filing First Information Report by the brother of deceased Vandana on 27.10.2015. Informant Pratap Ambarsing

Babnawat is a 19 years old boy taking education and residing at Sanjarpurwadi, Tq. Vaijapur. It is to be noted that respondent Nos.2 to 8, who are the original accused, are also resident of the same village. Vandana got married with accused No.1 about five years prior to the incident and she has two daughters. In the First Information Report it is said that the deceased was subjected to cruelty by the accused on the ground that she had not begotten male child and husband and father-in-law were saying that she will not give son and on that count she used to be assaulted. She used to tell about the said harassment to her parents and sister-in-law i.e. wife of brother. According to him, Vandana's mother and elder brother had gone to the matrimonial home of Vandana for persuading and advising the accused persons on 25.10.2015. Informant says that around 2.30 p.m. on 26.10.2015 his brother-in-law (another brother-in-law) by name Pratap Narsing Jarwal had received phone call from one Vitthal Kakarwal stating that the house of Vandana's husband is burnt and, therefore, Pratap Jarwal went to the house of accused. He asked accused No.1 as it was found that Vandana was lying on a cot (बाज) in burnt condition that he had set Vandana to fire. Pratap Jarwal had then taken Vandana to hospital. The other relatives of Vandana accompanied her. It is also stated that there was oral dying declaration to Vandana's mother, father and elder brother by Vandana.

5 The offence under Section 307 read with 34 of the Indian Penal Code came to be registered at 23.30 hours on 27.10.2015 on the basis of said First Information Report. Interesting point to be noted is that first dying declaration, as per the prosecution story, was recorded around 9.50 p.m. on 26.10.2015, however, if we consider the impugned judgment, we are unable to find out the dying declaration dated 26.10.2015. The copy of which has been produced by the informant, but it appears that it does not bear the signature of the scribe. But it appears that from the endorsement of the Doctor that it was scribed by PSI Mr. Sanjay Khillare of Vaijapur Police Station. Testimony of PW 7 PSI Mr. Sanjay Khillare would show that he has deposed only in respect of dying declaration recorded by him on 27.10.2015. Thus, there is suppression of evidence by him. Even as regards the dying declaration recorded by him on 27.10.2015, which has been taken in question and answer form, she has stated that the husband alone was near her and asked as to why she has not gone for picking cotton. After assaulting her by means of spray, he poured diesel kept in the house for tractor and set her to fire. We would also like to say that the thumb impression on this dying declaration Exh.62 has not been attested by this witness. When Exh.62 came to be recorded around 9.45 a.m. on 27.10.2015, then why the First Information Report was not registered on the basis of the said dying declaration, is a question, which has been left unanswered by the

prosecution. Prosecution is also relying on the dying declaration recorded by Executive Magistrate between 11.05 to 11.20 a.m. on 27.10.2015, which has been marked as Exh.70. In this dying declaration it is said that husband as well as father-in-law asked her to do agricultural work, which she refused and then the father-in-law poured five litre kerosene or diesel on her person and then her husband set her to fire. As regards dying declaration Exh.70 is concerned, it is silent about the role or allegations of subjecting Vandana to cruelty in respect of other accused persons. It also does not say anything what happened or how was their behaviour prior to 26.10.2015. Another point to be noted is that on the dying declaration Exh.62 recorded by PSI Mr. Khillare impression of left thumb has been taken, whereas dying declaration Exh.70 bears the thumb mark of the right hand. The inquest panchnama shows that both the hands had received burn injuries. As per the Postmortem Report, there was 8% burns to right upper limb, however, palm was spared and same is as regards left upper limb. Still why the impression of separate thumbs were taken has also been explained. Definitely, there is inconsistency when Exh.62 excludes the role to father-in-law, later on it has been assigned to father-in-law also in Exh.70. The most important point is, from the village itself Vandana was accompanied by her parents and elder brother. Possibility of tutoring in such cases cannot be ruled out. In the First Information Report Exh.76 it is stated that extra judicial confession by accused No.1 was given to

one Pratap Narsing Jarwal. However, prosecution preferred not to examine him.

6 Prosecution has not examined any person, who could say that he had reached to the spot immediately after noticing the fire and extinguished the same. In dying declaration Exh.62 it has been stated that after setting her to fire, accused No.1 had closed the door of the house and he did not open it and, therefore, she broke the wall of the house and ran towards mother-in-law. Thereupon her mother-in-law put a blanket (रग) on her person and also the water and then she became unconscious. She regained the consciousness in the hospital. In dying declaration Exh.70 column No.6 has been written as follows :

“ 6) ही घटना घडली तेंव्हा घटनेच्या ठिकाणी कोण उपस्थित होते व त्यांनी काय केले ?

माझा पती व माझा सासरा दोन्ही. माझ्या खोलीत जी कच्ची होती मी दगड पाडून बाहेर आले व त्यांनी मला दवाखान्यात आणले. ”

Translation of the same is as under :

“6) When the incident occurred who were present at the spot and what they did ?

My husband and my father-in-law both. I came out of the room, which was raw construction, by removing stone and they brought me to hospital.”

It is in fact, not understandable properly, but still if we want to give a meaning to the same, then she wanted to say that she came out of the room by removing (though she is saying at one place that it is a raw construction), but then she was specific in saying that the husband and father-in-law had brought her to hospital. If we compare it with the spot panchnama, the situation is not similar. There is absolutely no mention about damage to wall. In fact, it is made that it is a chhappar and there were pieces of burnt bamboo, grass and sticks. There was a big pot for water near the southern wall, in which there was some amount of water. Piece of Bamboo has been seized, which is stated to be part of roof. Therefore, the situation at the spot is not supporting the dying declaration.

7 There is absolutely no mention about harassment on the count of not begetting a son in both the dying declarations. Rather both the dying declarations are on the count that she has not gone for picking cotton.

8 Interesting point to be noted is that at the time of spot panchnama a plastic bottle having petrol as well as diesel smell of 1½ litre was seized. Still another bottle has been shown to be seized under Section 27 of the Indian Evidence Act. It is not the case of the prosecution that pouring of kerosene was from two different bottles. Rather in her dying declaration Exh.62 she has stated that diesel from plastic can required for the

tractor purposes was poured, which should be big and not the plastic bottle. Whereas in her dying declaration Exh.70 she says that the father-in-law brought five litre kerosene or diesel. Therefore, the seizure also does not support the dying declarations.

9 Accused have examined DW 2 Sandip Tribhuwan. He has categorically stated that around 3.00 p.m. on 26.10.2015 he noticed flame from the hut of the accused and, therefore, he ran towards it. He could not find any person present there, but deceased was running in burning condition. Therefore, this witness called accused No.1 and his mother, who had then extinguished the fire. The learned trial Judge has not noted that the cross-examination of this witness by learned APP has not discarded his examination-in-chief.

10 PW 5 is the Medical Officer Dr. Sachin Darandale, who had conducted the autopsy. He has given that deceased had sustained 96% burns. Though the cause of death appears to be the burn injuries, but his testimony in isolation will not prove that death of Vandana was homicidal in nature. In burn cases three possibilities would be there; 1) accidental, 2) suicidal and 3) homicidal. Duty of the prosecution to rule out the possibility of death by accident or suicide when it comes with a case that there is murder. The evidence that has been adduced by the prosecution was not of that quality

which will prove the guilt of the accused persons beyond reasonable doubt. There is absolutely no perversity. This Court will have to consider the ratio laid down in **Nagabhushan** (supra), but here, even independent assessment of Exhs.62 and 70 i.e. both the dying declarations is not inspiring confidence and not proving the case beyond reasonable doubt. Therefore, by entire re-assessment we do not find that the accused persons should be asked to face the appeal when we can consider the case as it is. There is no merit and, therefore, at the stage of admission itself the appeal deserves to be dismissed. Accordingly, the appeal is dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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