

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 609 OF 2016

Raju Rangnath Kolte
Age 31 years, Occ: Driver,
R/o: Nidhora, Tq. Phulambri,
Dist. Aurangabad,
Presently r/at,
Dhamori, Tq. Gangapur,
Dist. Aurangabad.

... Appellant
(Org. Accused)

Versus

The State of Maharashtra
(At the instance of Waluj Police,
Dist. Aurangabad)

... Respondent

.....

Mr. Abhaysinh K. Bhosale, Advocate for the Appellant
Mr. A. M. Phule, APP for Respondent-State

.....

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

Reserved on : 22.06.2023

Pronounced on : 07.07.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. The instant appeal under Section 374 of the Code of Criminal Procedure [Cr.P.C.], is directed by the appellant/convict against the judgment and order dated 27.05.2016 passed by learned Additional Sessions Judge, Vaijapur in Sessions Case No. 81 of 2014 by which appellant came to be held guilty and so convicted and sentenced for commission the offence punishable under Section 302 of the Indian Penal Code [IPC].

FACTS IN BRIEF GIVING RISE TO THE SESSIONS TRIAL

2. Deceased Manisha was married to accused Raju around 9 years prior to the incident. Accused was a driver by occupation. According to prosecution, after a year or two, accused started ill-treating deceased Manisha and beat her after getting drunk. Because of such treatment meted out to her, her father PW1 Tarachand brought both of them to reside at Waluj and thereafter, at his own village i.e. Dhamori and they were put up in a rented premises owned by PW7-Kavita.

3. On 14.04.2014, Manisha suffered burns and was resultantly shifted to hospital. There she gave dying declaration Exhibit 43 recorded by PW10 PSI Vyankatesh Ranvirkar, on the strength of which crime came to be registered. While undergoing treatment, Manisha succumbed to the burn injuries and therefore, crime was converted from Section 307 to Section 302 of IPC. After completing all procedural formalities, accused came to be chargesheeted.

4. Case being exclusively triable by the court of sessions, it came to be assigned to the court of Additional Sessions Judge, who conducted trial and on appreciating the evidence, recorded guilt of

the appellant holding that prosecution has proved that death of Manisha was as a result of burns suffered by her on being incinerated by accused husband.

It is the above order of conviction which is now questioned before us.

SUBMISSIONS

On behalf of the appellant :

5. We have heard learned counsel for the appellant. He pressed into service following grounds for questioning the maintainability, sustainability and legality of the judgment.

- i) Two dying declarations are inconsistent, involuntary and hence not worthy of credence.
- ii) That, there is no cogent and reliable evidence in support of the accusations of ill-treatment or beating by accused after getting drunk.
- iii) There is no evidence to show that accused poured kerosene and set Manisha on fire.

iv) No motive whatsoever has been established by prosecution in spite of examining as many as 10 witnesses.

v) There are no independent witnesses in support of accusations levelled against accused.

On behalf of Respondent State :

6. In answer to above, learned APP pointed out that crime is admittedly registered on the basis of dying declaration given by none other than Manisha. That, in both dying declarations, she has consistently named accused to be responsible for the burns. Parents speak about ill-treatment and beating to her at the hands of accused. Independent witness like Special Executive Magistrate PW3 Ashok Nandagavali, who recorded dying declaration, has stepped in the witness box. As such, there is no infirmity in the dying declarations. Role of accused is squarely spelt out in both the dying declarations and therefore, it is submitted that, no fault can be found whatsoever in the findings and reasons assigned by learned trial Judge while convicting accused. Hence it is submitted that there being no merits in the appeal, it be dismissed.

7. We have minutely re-examined, re-analyzed and re-appreciated the oral as well as documentary evidence adduced by prosecution. Admittedly crime is registered on the strength of dying declarations. Resultantly it is imperative for us to first visit the so-called dying declarations which are relied by prosecution for holding accused guilty.

First dying declaration Exhibit 43:

8. PW10 PSI Vyankatesh Ranvirkar in his evidence at Exhibit 46 speaks about visiting Ghati Hospital, approaching doctor, handing over letter Exhibit 47 and on his request, doctor examining the patient and thereafter, he claims that he recorded Manisha's statement. He obtained her thumb impression and on the strength of the same, crime was registered. This witness has not given account of history of burns allegedly reported by deceased.

9. The dying declaration recorded by this witness is at Exhibit 43. The sum and substance of the dying declaration is that she was married to accused since 9 years back and had children. Husband, who was driver, was addicted to liquor and he used to abuse and beat her. Therefore, her parents brought both of them to the native.

Regarding the occurrence, she gave statement that on 14.04.2014, husband did not go for work, but was consuming liquor since morning and so she requested him not to drink. According to her, around 2.30 p.m. to 2.45 p.m., husband abused her in filthy language. She stated that, getting fed up of the same, she said to him that she would set herself ablaze and die. According to her, upon this, husband said to her that she can willing die and thereafter, when she poured kerosene on herself, she stated that he took out match box from his pocket and threw burning matchstick on her as a result of which her sari caught fire. On hearing her cries, when neighbours started coming, she stated that, husband tried to douse her fire. That time, part of her sari fell on him and he too sustained burns. Thereafter, her parents and neighbours shifted her for treatment to the hospital. Hence she blamed husband for the burns.

10. The above dying declaration recorded by PW10 PSI Vyankatesh Ranvirkar seems to be recorded at 10.30 p.m. in the evening. However, alleged occurrence seems to have taken place around 2.30 p.m. Unfortunately, prosecution has not gathered medical case papers of admission so as to ascertain at what time she was admitted in the hospital and at what time she actually gave statement. No doubt, there is certification of doctor but it is of 10.30 p.m. Surprisingly, the

doctor who examined and gave fitness certificate is not made to step in the witness box. That apart, it is noticed that in said dying declaration there is no identification beneath both the thumb impressions of deceased. At what time dying declaration commenced and what time it concluded is also not finding place in Exhibit 43.

Second dying declaration Exhibit 22:

11. On 15.04.2014, PW3-Ashokji Nandagavali, Special Executive Magistrate seems to have visited Ghati Hospital and after approaching doctor in the evening, handed over a letter and thereafter he claims that he recorded dying declaration. He stated that he asked the relatives to leave the ward. He put her questions to note her dying declaration in question answer form. He stated that she told that husband asked her to show pouring of kerosene on herself. He deposed that husband poured kerosene on her person and set her on fire. Neighbours extinguished the fire. He further stated that when he asked her whether she had any complaint, she allegedly told him that she had no complaint against anyone. He further stated he obtained her thumb impression on her statement and he also signed it. This witness identified the same to be at Exhibit 22.

12. In cross-examination, PW3-Ashokji Nandagavali, Special Executive Magistrate has answered that he had been to the hospital at 6.00 p.m. According to him, Dr. Jagtap was present. He stated that he had told the doctor to put endorsement on the statement, but the doctor did not endorse it. He further stated about recording statement of accused Raju also, and he identified the same to be at Exhibit 23 wherein accused stated that wife herself poured kerosene and set herself on fire by matchstick and when he tried to extinguish the fire, he sustained burns.

13. Second dying declaration at Exhibit 22 is recorded on 15.04.2014 at 7.05 p.m. to 7.20 p.m. To question no. 4 as to when the incident took place, answer is noted that "incident took place yesterday on 14.04.2014 at 2.30 p.m. in the house". To the next question as to how incident took place, answer is noted "when she brought wheat and kerosene from ration shop, husband dared her saying that if she is born of a single father, she should show by pouring kerosene on herself. Thereafter he said that he would pour kerosene. Upon which she said that she herself would pour kerosene. Thereafter husband poured kerosene and ignited her by match stick. Outsiders doused the fire. Husband also doused the fire. Resultantly

his hands got burned. To the last question as to against whom she has complaint, answer is noted as “she has no blame against any one”.

14. Before critical analysis of both dying declarations, we deem it fit to give a brief account of settled legal position while appreciating the evidentiary value of dying declarations.

15. Since the judgment of *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, on numerous occasions law on this aspect has been propounded and certain principles have been culled out from plethora of judgments by the Hon’ble Supreme Court. Very recently the Hon’ble Supreme Court in the case of *State of Uttar Pradesh v. Veerpal and Another*, (2022) 4 SCC 741, while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, has reiterated the principles to be borne in mind while analyzing and accepting dying declaration. The settled principles are as follows :

- “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.”

Other celebrated and water-shedding judgments on above aspects are (i) **Laxman v. State of Maharashtra**; (2002) 6 SCC 710 and (ii) **Jagbir Singh v. State (NCT of Delhi)**; (2019) 8 SCC 779.

Analysis of both dying declarations:

16. Above discussed both dying declarations go to show that occurrence has taken place in the house of accused and deceased in the afternoon hours of 14.04.2014. It is emerging that first dying declaration Exhibit 43 is recorded by the Investigating Officer at around 7.05 p.m. to 7.20 p.m. Story given by deceased is that, since morning husband was consuming liquor. She prevented him. Therefore this incidence apparently seems to have taken place in the morning hours. But in this dying declaration, she stated that in the afternoon at around 2.30 p.m., accused started abusing her in filthy language. On what count, has not been stated by her. She stated that getting fed up of abuse, she declared that she would set herself on fire, upon which he dared her to do so. Then she stated that she herself poured kerosene on her and thereafter husband took out match box from his pocket and threw match stick on her. Such material in the dying declaration indicates that she has first poured kerosene on herself in the backdrop of being abused. According to her, husband threw match stick resulting into she catching fire. Here, it is worth noting that according to her, neighbours and her parents shifted her to hospital. In conclusion of first dying declaration, she

blames husband. Postmortem report shows that she suffered 86% burns. Under such circumstances, the doctor who gave certification of fitness was expected to be examined, but he is not examined for the reasons best known to the prosecution. Even her thumb impression over the dying declaration is not identified.

17. Whereas in the second dying declaration Exhibit 22, which is in question answer form, she has given a different version about she returning from ration shop with kerosene and grains and thereafter husband daring her to pour kerosene on herself. Her answer shows that she accepted the challenge of pouring kerosene, but at the same breath she states that he poured kerosene and ignited her. Surprisingly, to a question as to whom she blames, she has answered that “she has no complaint against anyone”.

18. In the light of above critical analysis of both dying declarations, there are reasons to hold that genesis of the occurrence is not forthcoming as different versions are stated in two dying declarations. Apart from discrepancies and shortfalls of non-examination of medical expert and failure to append identifying signature, what was the reason for recording dying declaration on 15.04.2014 after being surrounded by relatives also has not been clarified by prosecution.

Though in first dying declaration Exhibit 43 she has named parents for shifting her to the hospital, father in his evidence at Exhibit 13 is very categorical about he to be in a temple and reaching late after seeing people running towards house of his daughter. Father while answering cross, is also unable to state how exactly the incident took place. Likewise, even mother seems to have rushed after hearing commotion. Mother is also found to be testifying that in hospital her daughter told that due to instigation of accused, she poured kerosene on herself and thereafter accused set her on fire. With such evidence of none other than parents, case of prosecution cannot be said to be proved beyond reasonable doubt. Applying the settled law on manner of appreciation of dying declarations, we are of the considered opinion that for above discussed reasons, both dying declarations fail to inspire confidence as they are not consistent on material part of occurrence.

19. Here, there is no dispute that accused too has suffered burns and the very Investigating Officer confirms about accused suffering burns and he too being admitted in hospital and his statement also to be recorded wherein he stated that wife poured kerosene on herself and set herself on fire. This aspect has not been seriously questioned in the trial court by prosecution.

20. Unfortunately, neighbours who came to rescue and extinguish the fire have not been examined by prosecution. The landlady in whose house accused and deceased resided, though examined, has not supported prosecution.

SUMMATION

21. To sum up, here, dying declarations are failing to inspire confidence not being consistent. Though parents alleged ill-treatment, its nature and manner, so also when such instances took place has not been stated by either of the parents. Accused also had suffered burns and he was also admitted in hospital. His such conduct cannot be overlooked. In the totality of circumstances which have emerged on record, in our opinion, story of prosecution is not free from doubt.

22. We have gone through the judgment under challenge. Learned trial Judge seems to have readily accepted the dying declarations by losing sight of the discrepancies and inconsistencies noted by us and reproduced by us in aforesaid paragraphs. There is no satisfactory and incriminating material to hold accused/appellant solely responsible for the alleged burns suffered by deceased. Resultantly, finding it a fit case to interfere, we proceed to allow the appeal and pass following order:

ORDER

- I. The criminal appeal stands allowed.
- II. The conviction awarded to the appellant Raju Rangnath Kolte by Additional Sessions Judge, Vaijapur on 27.05.2016 in Sessions Case No. 81 of 2014 for the offence punishable under Section 302 of IPC stands set aside. Appellant stands acquitted of the offence punishable under Section 302 of the IPC.
- III. The appellant be set at liberty, if not required in any other case.
- IV. Fine amount deposited, if any, be refunded to the appellant after statutory period.
- V. It is clarified that there is no change in the order passed by the learned Additional Sessions Judge, Vaijapur regarding disposal of muddemal.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]