

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.738 OF 2022

Sunita w/o Kailas Pawar

.. Appellant

Versus

1. The State of Maharashtra
2. Rajebhau s/o Krishna Kisan Rathod
3. Malubai w/o Krishna @ Kisan Rathod
4. Jyoti w/o Vijay Rathod
5. Sanjay s/o Krishna @ Kisan Rathod
6. Vijay s/o Krishna @ Kisan Rathod
7. Radhabai w/o Sanjay Rathod

.. Respondents

...
Mr. A. G. Vasmatkar, Advocate for appellant.
Mr. R. D. Sanap, APP for respondent No.1 - State.

...
**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : March 13, 2023.

ORDER :-

1. Present appeal has been filed by the original informant under Section 372 proviso of the Code of Criminal Procedure to challenge the acquittal of respondent Nos.2 to 7 by learned Sessions Judge, Parbhani in Sessions Case No.128 of 2018 on 22.04.2022 from the offences punishable under Sections 498-A, 109, 302 read with Section 34 of Indian Penal Code.

2. The prosecution story is that one Pooja Rathod was married to original accused No.1 about five months prior to 27.09.2018. After marriage, she was residing with her husband and his relatives at

Sawargaon Tanda. Pooja had received burn injuries on 24.09.2018 and was admitted to Civil Hospital, Parbhani. Tahsildar, Parbhani recorded her dying declaration between 7.18 p.m. on 26.09.2018 and then again on 27.09.2018, her dying declaration was recorded around 11.00 p.m. by P.S.I. Gholve of Charthana Police Station, Dist. Parbhani. This dying declaration recorded by P.S.I. Gholve was treated as FIR and offence vide Crime No.113 of 2018 came to be registered for the offence punishable under Sections 307, 506 read with Section 34 of Indian Penal Code. Thereafter, the spot panchanama was executed and later on while undergoing treatment, Pooja succumbed to the injuries on 30.09.2018. Thereafter, the inquest panchanama was drawn. Dead body was sent for postmortem and as per the postmortem report, the cause of death is “septicemic shock due to 65% superficial to deep burn injuries.” Thereafter, Section 302 of Indian Penal Code came to be added. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. Accused came to be arrested and after the investigation was over, charge-sheet was filed.

3. After the committal of the case, charge was framed and trial was conducted. The prosecution has examined in all nine witnesses to bring home the guilt of the accused and taking into consideration the evidence on record and hearing both sides, the learned Sessions

Judge, Parbhani acquitted all the accused persons on 22.04.2022. Hence, this appeal.

4. Heard learned Advocate Mr. A. G. Vasmatkar for the appellant and learned APP Mr. R. D. Sanap for respondent No.1 - State, for the purpose of admission.

5. It has been vehemently submitted on behalf of the appellant that the learned Sessions Judge has not appreciated the evidence properly. No proper weightage has been given to the dying declarations though both the dying declarations have been proved by examining P.W.8, P.S.I. Gholve, who had taken down the FIR and P.W.1 Naib Tahsildar, Prakash Gaikwad, who had taken dying declaration Exhibit-64. The medical officer on duty i.e. P.W.3 Dr. Anif Khan was examined to prove the dying declaration Exhibit-64 and P.W.9 Dr. Sudhakar Pole was examined to prove the dying declaration-cum-FIR Exhibit-100. Both the medical officers have specifically stated that at the time of giving both the dying declarations, deceased Pooja was in a fit mental state to give statement. The writers of both the dying declarations i.e. P.W.1 Prakash Gaikwad and P.W.8, P.S.I. Gholve, had also tested that deceased was in a fit mental state to give statement before they started recording the dying declaration. Under such circumstance, due weightage ought to have been given to the testimony of these

witnesses. Spot panchanama has been proved through P.W.2 Khade. P.W.4 Sunita Pawar is the informant - present appellant and she has stated that what Pooja used to inform her. The learned Sessions Judge failed to consider that only five months had elapsed after the marriage when the incident took place. Though P.W.7 Bhimrao, who was the panch to the seizure of clothes of accused Malubai, Jyoti and Rajebhau, had not supported the prosecution, yet the CA report shows that there were kerosene residues on those clothes. When all these factors have not been considered, case is made out for admitting the appeal and re-appreciation of the evidence is required.

6. At the outset, we would like to consider that P.W.1 - Prakash Gaikwad is the Naib Tahsildar, who had recorded dying declaration Exhibit-64 on 26.09.2018 around 7.18 p.m. onwards and then has stated that after recording the statement, he took entry in the register of the hospital and then sealed it and delivered the same i.e. the dying declaration as well as that copy of the register to the Police Chowki in the hospital. So it had taken place immediately on that day itself, yet no offence was registered on the basis of that dying declaration, but the offence came to be registered on the basis of dying declaration taken on the subsequent date i.e. 27.09.2018 around 11.00 p.m. This anomaly has not been explained by P.W.8 A.S.I. Gholve. P.W.8, in his deposition, has conveniently not given the

timings as to when he went to the hospital. If we consider the FIR Exhibit-100, then the endorsement in the beginning stated to be given by the medical officer is around 10.00 p.m. Even testimony of P.W.9 Dr. Sudhakar is silent about the timing. The endorsement at the end shows that it was completed by 11.00 p.m. on 27.09.2018, still the offence came to be registered around 11.24 hours of 28.09.2018. Why such belated registration of the offence has not been again explained by P.S.I. Gholve. Even if for the sake of arguments we take that dying declaration Exhibit-64 and Exhibit-100 are proved, yet it can be seen from both the dying declarations that in Exhibit-64, deceased has stated that there was quarrel between her and her husband about 10 to 12 days prior to 26.09.2018 and then she went to her paternal house. She also states that thereafter accused No.1 had given her threat that he would show her after her return, still the Sarpanch of Sawargaon assured that nobody will do anything to her and then when her husband and another relative went to fetch her, she came to Sawargaon along with them. Nobody said anything to her on that day, but on the next day, after immersion of Ganpati Idol, husband gagged her mouth, mother-in-law poured kerosene and sister-in-law had ignited the matchstick and set her to fire and then she states that after half an hour, the neighbours extinguished the fire. Mother-in-law and father-in-law took her in Jeep to Jintoor Hospital and then

shifted to Parbhani. She has then stated that she has complaint to make against husband Rajebhau, mother-in-law Malubai, brother-in-law Sanju, sister-in-law Radhabai, another brother-in-law Vijay and another sister-in-law Jyoti. It is also stated in the said dying declaration Exhibit-64 that she was told by parents-in-laws and brothers-in-laws that she should tell in hospital that she received burn injuries due to fall of chimney and if she tells truth, then her parents as well as brother would be assaulted. This dying declaration, therefore, contemplates that there was earlier dying declaration. It is not clear to whom that dying declaration was given or whether it was to the hospital authorities, but no record to that effect has been produced. This is suppression on the part of the prosecution in respect of the said dying declaration. As against this, in her dying declaration Exhibit-100, it has been stated by her that the husband used to pick quarrels with her by raising suspicion over her chastity. Her mother-in-law used to quarrel due to the frequent visit of Pooja to her parental home and on the same count, there was quarrel about 10 days prior to the incident and she was brought back on 23.09.2018 by her husband and brother-in-law by persuading her. This is also rather contrary to what she has told in dying declaration Exhibit-64. As regards the incident on 24.09.2018 is concerned, she has stated that after dinner, she was sleeping in her room. Around

2.00 a.m., her husband came inside the room and they had quarrel. After hearing the quarrel, the other accused persons i.e. Malubai, Sajay, Radhabai, Vijay and Jyoti went in their room. Thereafter, accused No.1 gagged her mouth, mother-in-law poured kerosene on her person and sister-in-law Jyoti set her to fire. At that time, her brother-in-laws as well as another sister-in-law Radhabai said that she should be put to fire and when she was shouting all the accused persons fled away from the spot. She came outside the house by shouting, at that time, Vinayak Rathod who is the uncle of accused No.1 and his wife Janabai extinguished the fire. She then states that her parents-in-laws brought her to Jintoor Hospital in Jeep for treatment. Therefore, there are inconsistencies in both the dying declarations. In Exhibit-64, she has not named the sister-in-law, who set her to fire. As aforesaid, both these dying declarations are further contradictory to the earlier dying declaration which has reference in Exhibit-64 and, therefore, the learned Trial Judge has rightly refused to believe those dying declarations. The thumb mark on both the dying declarations has not been attested. There is no mention as to what could have been the motive for both the brother-in-laws and both the sister-in-laws to murder Pooja, because as per the dying declarations itself accused No.1 used to raise quarrels with deceased and also the mother-in-law. Prosecution has not examined Vinayak

Rathod, Janabai Rathod to support the contention.

7. As regards Section 498-A of Indian Penal Code is concerned, except the testimony of P.W.4 Sunita present appellant - informant, nobody else has been examined. It is stated that accused No.1 used to raise suspicion over the character of deceased and it is then stated that she was subjected to cruelty on that count. The acts of ill-treatment have not been stated. Since when those allegations were made is also not clarified. In her cross-examination P.W.4 Sunita has stated that during the period of five months, neither her husband nor anybody had lodged report against accused for ill-treatment. It appears that even Pooja has not lodged any such report. It can be seen from the record that the incident had taken place at 2.00 a.m. on 24.09.2018 and till 7.00 p.m. of 26.09.2018, there was absolutely no attempt to get the dying declaration of Pooja recorded. P.W.4 Sunita has stated that she as well as her husband were in the hospital, but they never went to Police Chowki to lodge the report. She has tried to say that Pooja had given oral dying declaration to her on the same day, then what prevented her from lodging the report to the police at the Police Chowki in the hospital, is a question.

8. If we consider the spot panchanama, then it can be seen that house of Vinayak Rathod is adjacent so also there is house of Vijay Kisan Rathod and Sanjay Kisan Rathod. None of these persons have

been examined. Possibility of accidental death in burn injuries has not been ruled out. If accused No.2 had a desire that deceased should die, then accused No.2 would not had made arrangements to take deceased to hospital. It has not been brought on record as to what was the medication that was given to the deceased before her dying declaration was recorded. In other words, the possibility of administration of sedative to get relief from the burn injuries to the deceased has not been ruled out. The bed head ticket has not been produced and proved. Therefore, though Pooja expired due to 65% burn injuries together with septicemia, yet prosecution miserably failed in proving that the accused persons were the author of the crime.

9. No case is made out for admitting the appeal as all the points have been properly and legally covered by the learned Sessions Judge. The appeal stands dismissed.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm