

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 214 OF 2020

Sunil S/o Namdeorao Behare,
Age : 50 Years, Occu. Agril.,
R/o. Shekapur, Tq. Mahur,
Dist. Nanded

... Appellant

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli.
2. Sunil S/o. Digambar Gabhane,
Age : 53 Years, Occu. Driver,
3. Shantabai W/o. Digambar Gabhane,
Age : 71 Years, Occu. Household,
4. Vishwajeet S/o. Digambar Gabhane,
Age : 48 Years, Occu. Driver,
5. Sangeeta W/o Vishwajeet Gabhane,
Age : 41 Years, Occu. Household,

All R/o. Mali Lane, Kalamnuri,
Tq. Kalamnuri, District Hingoli

... Respondents.

(Resp. Nos.1 Orig. Informant,
Resp. Nos.2 to 5 Orig. Accused)

WITH
APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 245 OF 2018

The State of Maharashtra,
Through Police Station Officer,
Police Station, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli.

... Petitioner.

(Orig. Informant)

Versus

1. Sunil S/o. Digambar Gabhane,
Age : 47 Years, Occu. Driver,
2. Shantabai W/o. Digambar Gabhane,
Age : 65 Years, Occu. Household,
3. Vishwajeet S/o. Digambar Gabhane,
Age : 42 Years, Occu. Driver,
4. Sangita W/o Vishwajeet Gabhane,
Age : 35 Years, Occu. Household,

All R/o. Mali-Lane, Kalamnuri,
Tq. Kalamnuri, District Hingoli

... Respondents.
(Orig. Accused)

.....

Mr. A. N. Nagargoje, Advocate for Appellant.

Mr. A. M. Phule, APP for Respondent No.1-State.

Mr. V. A. Bagadiya, Advocate for Respondent Nos.2 to 5.

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

DATE : 13th FEBRUARY 2023.

JUDGEMENT (ABHAY S. WAGHWASE, J.) :

1. By invoking provisions under section 372 of the Code of Criminal Procedure, brother of deceased Saroja is questioning the legality and sustainability of the Judgment and order passed by the learned Assistant Sessions Judge, Hingoli, dated 29.01.2018 in Sessions Case No. 32 of 2013 and is thereby praying to quash and set aside the same and to convict the accused - respondent Nos.2 to 5 as per law.

BRIEF FACTS OF THE CASE

2. Deceased Saroja was married to accused No.1 Sunil. On petty counts, husband used to regularly beat Saroja. On 05.02.2013, quarrel took place between the kids. On complaining to that extent, it is alleged that, accused husband abused deceased instead of giving understanding the kids. As beating had become a routine affair, in anger deceased poured kerosene and immolated herself. She was taken to the hospital where her dying declarations were recorded. On the strength of which Kalamnuri Police Station registered crime bearing No.02 of 2013 for the offence punishable under Sections 498-A, 323 read with 34 of Indian Penal Code. Later on, deceased Saroja succumbed to the burns and therefore, charge under section 306 read with 34 of IPC came to be added and after completing investigation, husband and in-laws were charge-sheeted for offence under sections 498-A and 306 of IPC and made to face trial during which prosecution examined in all 09 witnesses and relied on documentary evidence. Defence did not lead any evidence. After appreciating the oral and documentary evidence learned trial Judge came to the conclusion that prosecution failed to bring home the charges and thereby acquitted them by the judgment and order dated 29.01.2018.

It is the above order of acquittal which is now assailed by brother by filing instant criminal appeal on various grounds which could be summarized are as under :-

Firstly, that since marriage deceased Saroja was harassed on account of demand of money for purchasing motorcycle, car and carrying out constructions. Accused husband also regularly beat Saroja and therefore getting fed up, she had committed suicide. Accused persons have thereby abetted her suicide and they are solely responsible.

Secondly, there was strong evidence on behalf of prosecution in support of the charges, but the same has not been properly appreciated and considered by the trial Judge.

Thirdly, apart from oral account there were two dying declarations which were relied by prosecution wherein role of accused husband was clearly spelt out and as such instead of holding accused persons guilty, learned trial Judge has misconceived the occurrence and has acquitted the accused.

Fourthly, prosecution had made out a case that in furtherance of common intention, accused persons have abetted suicide on account of failure to meet their demand of money. For said demand, there was continuous harassment, but the learned trial Judge has also acquitted the accused persons for commission of offence under sections 498-A of IPC.

Fifthly, hyper technical approach has been adopted by trial court while appreciating the evidence and by applying law.

Sixthly, evidence of PW-1 Rajendra and PW-4 Sunil had clearly established that there was continuous harassment to deceased on account of

demand of money and getting fed up of the same, she had committed suicide and as such accused persons were solely responsible for the same, but the learned trial judge failed to appreciate the same. That, prosecution had clearly established circumstances like, spot panchanama, seizure from the spot and as such there was ample evidence in support of prosecution case, but the same has not been properly appreciated by the learned trial Judge. That, the learned trial Judge erred in holding that there is possibility of tutoring the deceased Saroja before recording her dying declaration and thereby committed gross error.

Lastly, it is submitted that there was sufficient and strong evidence to hold accused guilty, but unfortunately learned trial court has misapplied the law and has reached to erroneous conclusion which needs to be rectified by allowing the appeal.

3. Here, the State is also taking exception to the judgment and order of acquittal and therefore learned APP submitted that apart from two dying declarations there is testimony of related witnesses on the point of treatment meted out to deceased. However, learned trial Judge has not correctly appreciated the available evidence brought by prosecution after thorough investigation. Several law points and important legal aspects have been ignored and therefore State intends to prefer appeal. They have strong case in appeal and therefore, leave is sought to prefer the appeal.

4. This being first appellate court and provisions under section 372 of Cr.P.C. being moved, we are required to re-appreciate the evidence adduced by prosecution in the trial court.

5. On doing so, it is emerging that to establish its case prosecution had examined brothers of deceased, namely, Rajendra (PW-1) and Sunil (PW-4). Apart from brothers, there are testimonies of witnesses who had occasion to record dying declaration and also the medical experts who had allegedly examined deceased before recording her dying declaration. Therefore let us visit the oral account accordingly.

6. **PW-1** Rajendra in his testimony at Exh.35 stated that after marriage of his sister Saroja in 1993, she was treated well for one year, but thereafter she was harassed on account of demand of money for purchasing motorcycle, for construction of house and his sister used to telephonically inform him regarding demand and in its backdrop being beaten and mentally and physically tortured. He stated that after four to five years, she was brought back to maternal house and that time she has stayed five to six months. Later on after mediation, his sister went back to cohabit, but again after few days ill treatment begun. She was again questioned by husband and in-laws as to why she came back without bringing anything. On 05.01.2013, after learning

about the incident, he claims that he visited the Aadhar hospital and according to him, she told him that she was beaten twice by accused and as she could not bear it, she set herself on fire.

7. **PW-4** Sunil, another brother also testified that after one year of marriage, there was cruelty on account of demand of money, but according to him, demand of Rs.10,000/- was made for purchase of motorcycle, he complied the demand. Then, again after one and half years of this payment, again ill treatment begun and this time, there was demand of Rs.50,000/- for construction of house and he made such demand by paying Rs.25,000/-. But for balance payment again there was insisted by accused persons. Then, he stated that in the year 2005, accused put up a demand of money for purchasing India Car and therefore, understanding was given to the accused and thereafter compromise was reached and accused agreed not to make demand of money and not ill treat and beat his sister. But, again accused persons started taunting her for coming back empty handed and then he learnt about the incident dated 05.01.2013 and so he went to the hospital and on his asking she informed that since morning she was being beaten by accused and that she was intending to go to Kalamnuri for festival, but permission was denied by husband and rather beaten on that count. Again, in the noon time she was beaten by husband with shoes for not giving him gram nuts and she was confined in a room. According to him, she also told that accused

threatened her and said that she can even die and it will serve the purpose. Because of these series of incidences, she poured kerosene and set herself on fire. He also holds accused persons responsible for suicide by his sister.

8. **PW-2** Shivaji is a panch to the spot panchanama, during which there was seizure of articles from the spot, like broken glass pieces, ash, one extinguished wood from hearth and kerosene can.

9. **PW-3** Balaji is also a panch and according to him, police came there and told that wife of Sunil Gabhane had suffered accidental burns and its panchnama is to be drawn and therefore he accompanied police and he identified the said panchanama.

10. **PW-5** Datta Navghare is the Special Judicial Magistrate who was in receipt of message from police constable Rathod and visited the Aadhar hospital at around 9.45 p.m., approached Dr. Sunil Kadam and on his request doctor examined the said lady and certified that she was in a position to give statement and he accordingly recorded the statement, wherein deceased told her name, age and on being questioned about how the incident took place, she allegedly answered that her husband always quarreled with her, beat her, nobody from the family spoke well with her and so getting fed up of the life she set herself on fire. This witness has identified dying declaration (Exh.62).

11. **PW-6** Sanjay Kadam is a doctor, wherein PW-5 went and recorded dying declaration. This doctor identified the endorsement and certificate issued by him and he spoke about dying declaration being recorded in his presence.

12. **PW-7** Vasant Rathod a Police Head Constable in his evidence (Exh.70) stated that he also visited Aadhar hospital on 05.01.2013, approached Medical Officer and asked whether he can record statement of Saroja, after which Medical Officer examined a lady and told him that he can record the statement. He also stated that he recorded dying declaration, wherein she stated that there used to be quarreled between sons and with husband and getting fed up of such quarrels, she poured kerosene and set herself ablaze. This witness identified dying declaration as well as communication made to doctor (Exh.72).

13. **PW-8** Hanumant Wakde, the Investigating Officer. **PW-9** is the panch who drew spot panchanama.

Defence has also examined two witnesses, i.e. **DW-1** Shubham and **DW-2** Deepak.

ANALYSIS

14. Here, there are testimonies of two brothers of deceased coupled with two dying declarations. We have already dealt with the sum and

substance of the examination-in-chief of both brothers, PW-1 Rajendra and PW-4 Sunil. Now, let us see as to what they answered in cross-examination.

PW-1 Rajendra in his cross-examination, in initial part he is asked about joint family, agricultural land owned by the family and number of rooms in the house at Shekapur village. He is questioned about the occupation and position acquired by his brother (PW-4) and thereafter para 10 onwards, he is questioned about the accused and deceased. Herein, he answered that when marriage of sister took place with accused at that time, accused was having commander jeep and he used to ply it on rent and that time brother-in-law of deceased was taking education. He admitted that after marriage accused husband and deceased Saroja started residing separately from their joint family. He answered that in the year 1996, accused got service in Zilla Parishad, Parbhani as a driver and he initially served at Parbhani from 1996 to 1999. He admitted that his sister used to visit maternal house for special occasions and that they, brothers also to visit her matrimonial house. He admitted that till death of deceased no complaint, ill-treatment or demand was ever lodged at any place. He answered that prior to death of Saroja, he might have visited her maternal house in the year 2011 and his last meeting with her sister was five months prior to death at Kalamnuri. He is unable to state exactly when his sister informed on phone about demand of money for motorcycle, but he stated that it took place in April 2005. He answered that

he learnt about the incident from his brother at around 6.00 to 7.00 p.m. and he reached Nanded at 10.00 p.m. He answered that he did not make inquiry as to how and who admitted his sister in the hospital. He denied knowing whether accused also suffered 16% burns, there was being treated in Rural Hospital Kalamnuri and later on shifted to Bhagwati Hospital Nanded. He admitted that he never lodged any complaint against accused. Omissions are brought in para 17 on the point of settlement and thereafter also accused beating his sister and about learning from his brother Sunil that deceased Saroja had set herself on fire. Rest is all denial.

15. **PW-4** Sunil while facing cross-examination stated that he was Sarpanch of Shekhapur gram panchayat for 10 years. He is also questioned about properties of his family, both agricultural and house properties. He denied knowing whether after the year 2000, accused and his sister were residing separately from other family members. However, when his attention was invited to portion mark 'A' in his statement dated 12.04.2013, he admits about stating it to the police. He too confirmed that accused No.1 was in service of Panchayat Samitee, Kalamnuri as a driver. He stated that after arriving to the hospital he was with his sister for about half an hour, but doctor did not allow him to meet her sister till morning. However, he admitted that in between relatives were allowed to see her only for two minutes also. According to him, his sister told him about the facts within half an hour of her

arrival in the hospital. He admitted that when his sister Saroja brought to Aadhar hospital in ambulance with her son Shubham, Suvarna Ghabhane and Sunita Satav were accompanying her. He answered that from 05.01.2013 to 12.01.2013 he did not meet accused and that he was not informed about burns suffered by accused to his hands and face. He does not know whether accused suffered 16% burns. After questioning him about his parents, he is again questioned about the instances of demand and in para 18 he answered that he had informed police that all accused persons demanded Rs.10,000/- for purchase of motorcycle. Then, he again corrected and stated that he had not informed that all accused demanded, but only accused Sunil had put up demand. He answered that, he also informed police that accused persons demanded Rs.50,000/- for construction of house and used to beat her and give mental torture to his sister. But, when statement was confronted to him, he is unable to state why such material is not appearing in his statement.

Similarly, statement regarding demand of remaining Rs.20,000/- is also not stated in his statement to the police. He also confirmed that at the time of marriage, accused was having commander jeep and a motorcycle. He admitted that accused started construction of his house in the year 2005 and he had purchased India Car in his own name by raising loan from Union Bank in 2010. He is unable to state when exactly demand of Rs.10,000/- and Rs.20,000/- was made and met.

16. Therefore, here taking into account the testimony of real brothers of deceased, it is emerging and clearly coming on record that both brothers are inconsistent on material count, like demand of money. PW-1 Rajendra does not quote the amount, whereas PW-4 Sunil gives detail of amounts and about its compliance. However, PW-1 Rajendra has never stated about demand being met by his brother PW-4 Sunil i.e. by paying Rs.10,000/- and paying Rs.25,000/- out of Rs.50,000/- for construction. They are also unable to state what was the manner of ill treatment and harassment. PW-4 Sunil candidly admitted that demand was attributed only to accused Sunil and not his family members. Both brothers admitted in cross-examination that deceased informed them that getting fed up of being beaten, she immolated herself. PW-4 Sunil claims that his sister informed him that she was beaten not only on account of quarrel between children, but she was also beaten for not providing gram nuts to the accused. Even alleged version of deceased before PW-4 Sunil that she was not permitted to go to the festival, is not coming from the mouth of PW-1 Rajendra. They both brothers also admit that accused was already in employment of Zilla Parishad. After marriage, there was separation in the family of accused Sunil and he and deceased resided separately. Therefore, how other accused members who are family members of accused No.1 are concerned is not getting clear. PW-1 Rajendra and PW-4 Sunil have admitted in cross-examination that accused owned commander jeep and subsequently

by raising loan he also purchased India car and also had a motorcycle. With such answers from none other than brothers of deceased, it is surprising as to how the case of prosecution about ill-treatment meted out in the backdrop of demand of motorcycle and vehicle can at all be accepted. Infact, one of the brother has also affirmed that accused has his owned constructed house. Therefore, all such answers and material on record renders the case of prosecution about demand and on its non fulfillment, ill-treatment being meted out, itself gets knocked at the bottom.

17. Record shows that first dying declaration is recorded by PW-7 Rathod, as in the left margin of the said dying declaration, date and time is noted as 05.01.2013 at 9.00 p.m. In the said statement to constable, deceased seems to have stated that at around 5.30 p.m., there were quarrel between her children and nobody was listening each other and therefore she reported to her husband, but he got annoyed, abused her and beat her. She further stated that always there used to be quarrel between children and still husband used to beat her. That day also, she was beaten and it having become a routine affair, she got fed up and poured kerosene and set herself on fire. PW-7 Vasant Rathod, in his testimony also narrated about deceased stating so.

18. The second dying declaration seems to be recorded by the Special Judicial Magistrate and his testimony is at Exhibit-59. This witness (PW-5)

stated about approaching doctor for examining the patient and after his certification he also states that she disclosed her name, age and answered to the question that, her husband always quarreled with her, beat her, he did not listen to her, and nobody from her family spoke to her in proper manner and therefore getting fed up of life, she set herself ablaze.

Therefore, from above both dying declarations, it is seen that deceased had immolated herself only on getting fed up with the alleged quarrels in the house between her kids and her husband. Her both dying declarations are explicitly silent about any harassment, demand or ill-treatment at the hands of accused husband.

19. Moreover, including brothers, Investigating Officer have candidly admitted that husband had suffered 16% burns. Therefore, his such conduct shows that he went to rescue and save her life and has suffered burns and was taking treatment for the same.

Therefore, in the light of availability of both dying declarations, deceased seems to have set herself ablaze for above petty count. Admittedly, there is no element of abetment or instigation at the hands of any of the accused.

20. **DW-1** Subham, son of accused and deceased has been examined

by accused at Exhibit-104, who is already 23 years of age and taking education, has stated in the witness box that, after returning from college, he and his father were sitting in drawing room and were watching T.V. As it was fasting day of his father, his mother was cooking food on hearth, when his mother was inside of kitchen, he and his father heard noise of falling something and shouts of her mother. They both rushed to the kitchen room. They saw that his mother is burning. His father tried to extinguish fire with the help of *chadar*. Hearing shouts neighbours gathered, water was poured and efforts were made by his father to extinguish the fire in which he suffered burns to his hands. His mother were shifted to hospital, where his mother stated that one kerosene lamp kept on rafter fell on her and she caught fire. Therefore, here very much son of accused of deceased has attributed the burns accidental one. For above reasons, case of prosecution about commission of offence under sections 498-A and 306 of IPC is rendered doubtful.

21. Consequently, the only inference that can be drawn is that accused cannot be held responsible for the alleged suicidal burns of deceased. We have already discussed that the allegation about harassment on account of demand is not proved by prosecution. Therefore, when deceased herself is to be blamed for burns and resulting into her own death, it would be absurd to hold husband and in-laws guilty. Prosecution having failed to bring home the charges against accused, they deserve to be acquitted.

22. We have gone through the entire judgment passed by the trial court. Learned trial court seems to have appreciated both oral and documentary evidence adduced by prosecution and defence. Legal position has been taken into consideration and discussed in the judgment. Findings are supported by reasons. Therefore, every care seems to have been taken by learned trial Judge in appreciating the case of prosecution and has rightly refused to accept the case of prosecution. No interference is called for or there is no need to disturb the findings reached at by the learned trial court. Hence, appeal fails.

23. Even after hearing learned APP for State, no case or ground is made out so as to grant leave to the State to prefer an appeal against judgment and order of acquittal. Hence, we proceed to pass following order:-

ORDER

- (i) Criminal Appeal No.214 of 2020 and Application for Leave to Appeal by State No.245 of 2018 stand rejected.
- (ii) The Judgment and order passed by the learned Assistant Sessions Judge, Hingoli, dated 29.01.2018 in Sessions Case No. 32 of 2013 is hereby confirmed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)