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908criapl16.05

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908 CRIMINAL APPEAL NO.16 OF 2005

1. Sarita W/o. Jitendra Sanyashi, **...APPELLANTS**
Age-30 years, Occu-Household, [Ori. Accused]
2. Jitendra Vasantrao Sanyashi,
Age-35 years, Occu-Business,

Both R/o. Plot No. 25, Phule Colony,
Dhule, Tq. & Dist. Dhule

VERSUS

State of Maharashtra **...RESPONDENT**

Mr. D. R. Kale, Advocate for the appellants
Mr. N. B. Patil, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 23rd AUGUST, 2024

ORAL JUDGMENT:

1. The present appeal arises out of the impugned judgment and order passed by the learned Ad-hoc Additional Sessions Judge, Dhule dated 31-12-2004 in Sessions Case No.26/2004. By way of impugned judgment and order though both the appellants came to be acquitted from the offences punishable under Sections 306 and 506 of the IPC, however,

they are convicted for the offences punishable under Sections 342 and 348 of the IPC. Sentence awarded is 1 year simple imprisonment and 3 years simple imprisonment respectively with fine of Rs.1000/- and Rs.3000/- each respectively.

2. The story, in short, of the prosecution is that deceased Rekhabai was working with the present accused as Maid. Even her mother was also working as Maid prior to deceased Rekhabai. The accused thus, had full faith in the deceased. It is alleged that deceased Rekha had stolen some gold ornaments from the house of the accused persons and because of that suspicion they made enquiry with the deceased. On 03-12-2003 at 09.00 am deceased went to the house of the accused for work. At 12.00 noon the accused persons made enquiry and stated interrogation. It is alleged that she was confined in the room till 01.00 O'clock and thereafter she was taken to the police station. Deceased thereafter committed suicide on 04-12-2003 at 06.30 am by pouring kerosene on and setting herself on fire. Because of shouts, her mother, father, brother and her

husband started extinguishing fire and immediately took her to the Civil Hospital. In the Civil Hospital she succumbed to the injuries.

3. While in the hospital, two dying declarations came to be recorded i.e. Exh.9 and Exh.30. First Dying declaration Exh. 9 was recorded by PW-2 Karbhari who was working as ASI at Azad Nagar Police Station. Another dying declaration Exh.30 was recorded by PW-8 Kailash who was working as Awal Karkun in Tahasil Office. In the second dying declaration the deceased stated that she was working as Maid in the house of the accused person. On 03-12-2003, she went to their home at 09.00 am. The accused persons alleged that she has stolen gold ear-rings of 30 gram. The accused persons confined her in a room and put a lock. In this dying declaration she stated that since the accused persons have lodged the FIR against deceased, she committed suicide by pouring kerosene on herself and setting on fire.

4. The prosecution has examined total eleven

witnesses. PW-1 is the PSI who registered the crime and proved the dying declaration. PW-2 the ASI at Azad Nagar Police Station who recorded the dying declaration. PW-3 is Nandu, spot pancha who is also a neighbor of the deceased. PW-4 is father of the deceased. PW-5 is the mother of deceased. PW-6 & 7 are the panch witnesses of the spot. PW-8 is Senior Clerk who recorded second dying declaration. PW-9 is the Doctor who examined the deceased who certified that deceased was in a fit condition to make statement. PW-10 is the husband of the deceased. PW-11 is the Investigating Officer.

5. On recoding the evidence the court found that deceased committed suicide because of the fact that husband Bhikan wanted to marry second time as Rekhabai was issue-less and acquitted the accused from the said sections. So far as sections 342 and 348 are concerned, the learned trial court held that the prosecution has proved that the accused had wrongfully confined the deceased for the purpose of getting confession.

6. Learned advocate Mr. Kale for the appellants forcefully argued that the court has held the offences are proved only on the basis of two dying declarations however, both the dying declarations are not proved by the prosecution beyond reasonable doubt. There is a doubt created about contents of the dying declarations. It has come on record that while recording dying declaration parents and brother of the deceased were present. Secondly that both the witnesses who have recorded the dying declaration have stated that while recording the dying declaration Doctor was not present for entire time. PW-8 even could not give particulars of recording of dying declaration. Even if the dying declarations are taken as it is, no case is made out to show that deceased was illegally confined. In first dying declaration Exh.9 deceased herself has stated that she was interrogated by the accused persons and after that deceased was handed over to the police. In the second dying declaration Exh.30 she stated that she was confined in a room by putting a lock to the said room. There was no question of confining the deceased. The deceased on routine use to come to the house of

the accused being Maid.

7. Learned advocate for the appellants further submits that in view of Section 43 of the Cr. P. C. accused were within their right to take deceased in the custody and to handover to the police which is rightly done by them. No offence can be said to have been committed under such circumstances.

8. Learned APP strenuously argued that few contradictions will not create suspicion about dying declaration, the prosecution has proved its case. There appear endorsement of Doctor on both the dying declarations, patient was in fit condition to make a statement. Mere presence of the parents would not make dying declarations doubtful. He further submits that in both the dying declarations it is clearly seen that since 09.00 am till 12.00 noon the deceased was in the house of the accused. From 12.00 noon to 01.00 pm she was kept in a room. So far as time of 12.00 noon to 01.00 pm on the date of incident is consistent. It has clearly come on record that there was a

suspicion about stealing of the gold ornaments by the deceased. Looking to the fact that & the conduct of the accused, the trial court has rightly acquitted the accused from the offence punishable under Sections 306 and 506. So far as sections 342 and 348 of the IPC is concerned, the learned trial court has rightly convicted the appellants and he prays for dismissal. In addition to two written dying declarations, oral dying declaration was also there to PW-4 father of the deceased.

9. With the assistance of the learned advocate for the appellants and learned APP this court has gone through the evidence of all the witnesses. PW-2-Karbhari in his cross-examination accepted that from the beginning of the statement the deceased was in a fit condition to give statement. In his evidence it is stated that parents of the deceased were present As pointed out there is contradictions between PW-2 and PW-8 so far as giving of saline to injured Rekha, PW-2 stated that when he was recording dying declarations, there was no saline being administered to the deceased whereas PW-8 stated that

when dying declarations was recording there was saline applied to the deceased. PW-3, neighbor, in his deposition, stated that he was knowing the deceased and he also knows the accused persons. He accepted in the cross-examination that there were disputes between Rekha and Bhikan as Rekha could not conceive and deliver a child and she was issue-less. Therefore, husband wanted to get married again. On that count there were quarrels between them. He had knowledge that deceased has stolen gold ring from the house of the accused. At the instance of the Rekha even that gold ring was recovered. He also stated that in the night of 03-12-2003, there was quarrel between deceased & her mother with the husband of the deceased on the point of second marriage. He also deposed that accused No.2 had given police complaint against Rekha in Azad Nagar Police Station. This fact is also clear from the second dying declaration of the deceased. It has come in the evidence that Mandabai told the deceased, if she files a complaint against the accused persons, then she would get money from the accused persons. This witness was also present in the hospital at the time of recording of dying

declaration.

10. PW-4 i.e. father of the deceased also stated about quarrel between the deceased and her husband on account of second marriage. He accepted that Bhikan-husband of the deceased had taken some hand loan from one Anand Badgujar and the said amount was paid by the accused persons as it was demanded by the deceased. He accepted that on the date of incident the police had taken Rekha from the house of the accused persons. He taken his daughter from the police station. Mandabai-mother of the deceased also deposed on the lines of the PW-4. PW-6 & 7 panch witnesses are declared as hostile and thus their evidence is of no use in the prosecution. PW-8-Kailas accepted in the dying declaration that he has not put an endorsement on the dying declarations. That the deceased was conscious all the time when dying declaration was recorded. Doctor was present since beginning till recording of the dying declaration. He also accepted that he has not put an endorsement that he got satisfied himself that patient was fit for

giving statement. He accepted that parents were also present while recording the dying declaration. PW-9 is the Doctor. His evidence is not of much help since now question is about offences under sections 342 and 348 of the IPC the fact of suicide is not disputed by any of the parties.

11. So far as PW-10-husband is concerned he accepted in his cross-examination that on the earlier occasion when there was a theft in the house of the accused of gold ring, the deceased had confessed and had handed over the gold ornaments to the accused No.2. At that time in fact accused No.2 wanted to lodge a complaint, however, on the request of this witness and deceased no such complaint was lodged. He further stated that though he told the deceased initially to give back the ear-ring, the deceased refused to do so. He also stated about the fact that he wanted to get marry with another woman as Rekha was not conceiving. PW-11 is API Investigating Officer who filed charge-sheet. He accepted the panchanama. The IO accepted that there were statements of some other persons in

the vicinity were also recorded, however since those were not supporting the prosecution case, those were not filed alongwith the charge-sheet.

12. Considering over all evidence, it is clear that both the dying declarations are not free from doubt, secondly there is no endorsement on the second dying declaration that patient was mentally and physically fit to give statement. Further it has amply come on record that deceased had stolen ear-rings of the accused No.2. It has also come on record that deceased had quarreled with her husband as she was issue-less and for that her husband wanted to perform second marriage. This court also finds that in the argument of the learned advocate for the appellants that she was only interrogated and enquired about stealing of the gold ornaments and thereafter they handed over the deceased to the police. It cannot be said to be confinement under Section 342.

13. The prosecution has failed to prove guilt of the

accused beyond reasonable doubt. Looking to all, this court finds that though the learned trial court has rightly acquitted the accused persons from Sections 306 and 506, however, has convicted for the offences punishable under Sections 342 and 348 of the IPC in absence of sufficient material. Evidence was not free from doubts. Under such circumstances, recording conviction was not safe. This court thus concludes that conviction is without sufficient material.

14. In view of the said discussion, this court holds that the appeal deserves to be allowed and same is hereby allowed. Bail bonds of the accused persons stands discharged. Fine amount, if paid be refunded to the appellants.

15. With this, appeal stands disposed off.

[KISHORE C. SANT, J.]