



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 65 OF 2005

1. Mohamad Hasan Nisar Ahmad Ansari,
Age : 25 years, Occu. : Labour,
2. Nisar Ahmed Budhu Sardar Ansari, }
Age : 62 years, Occu. : Labour, } ..*Abated*
3. Abedabi Nisar Ahmed Ansari, }
Age : 56 years, Occu. : Household work, } ..*Abated*

All R/o. Madhavpura, Lane No.14,
Dhule, Dist. Dhule.

...Appellants
(Orig. Accused)

Versus

The State of Maharashtra

...Respondent

...
Mrs. Ansari Asfia Nuzhat, Advocate for Appellant.
Mr. D. R. Korade, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17 OCTOBER 2024

PRONOUNCED ON : 25 OCTOBER 2024

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order dated 06.12.2004 passed by 1st Ad-hoc Additional Sessions Judge, Dhule in Sessions Case No. 91 of 2003 holding appellant guilty for offence punishable under sections 498-A and 306 of Indian Penal Code (IPC).

PROSECUTION CASE IN TRIAL COURT IS THAT

2. Azad Nagar Police Station, Dhule recorded crime on dying declaration Exh.40 given by deceased Fatemabi while she was admitted in civil hospital, Dhule, wherein she reported that, she is married two years back and is three months pregnant. On 08.05.2002, husband mother-in-law and father-in-law abused her in filthy language and beat her by fist blows in the morning. Previously also, there was abuse and beating to her. That, husband and in-laws did not like her. She had sought divorce and the same was not given. Therefore, she poured kerosene on herself and immolated herself.

3. Her such statement was recorded by PW7 Chavan, who was working as PSI and he registered crime bearing no.61 of 2002 for offence punishable under sections 498-A, 323, 506 and 504 read with section 34 of IPC.

While undergoing treatment, she succumbed due to 85% burns and therefore, crime was altered to sections 498-A, 306, 506 and 504 of IPC and it was investigated by PW11 PSI Ramesh.

4. After gathering evidence, husband and in-laws came to be charge-sheeted and tried by learned 1st Ad-hoc Additional Sessions Judge, Dhule vide Sessions Case No.91 of 2003. On appreciation of

the evidence adduced by prosecution, learned trial Judge acquitted accused no.4 sister-in-law and convicted husband and parents-in-law for offence punishable under section 498-A and 306 of IPC.

Hence, all three preferred appeal bearing No. 65 of 2005 questioning the impugned judgment.

EVIDENCE BEFORE TRIAL COURT

5. The prosecution has examined following 11 witnesses in support of its case. Their roles are as under :

PW1 Dr. Ajit Pathak, autopsy surgeon, who conducted P.M. and issued opinion of cause of death as “shock due to thermal burns.”

PW2 Bansilal, Special Executive Magistrate, who on receipt of communication from Azad Nagar Police Station, Dhule paid visit to civil hospital, Dhule and recorded dying declaration Exh.28.

PW3 Dr. Bharat, Medical officer, who examined and treated patient Fatema and gave endorsement of fitness after PW2 Bansilal approached him to record statement.

PW4 Mujahid, pancha to spot panchanama Exh.34 i.e. panchanama of house of deceased.

PW5 Abdul pancha to seizure of clothes of victim Exh.36.

PW6 ASI Bhanudas, who prepared inquest panchanama at Exh.38.

PW7 ASI Chavan, who recorded dying declaration Exh.40 and made basis of registration of crime.

PW8 Abdul, father of deceased, did not support prosecution.

PW9 Md. Ramjan, uncle of deceased, did not support prosecution.

PW10 Jaibunnisa is mother of deceased.

PW11 PSI Ramesh is the Investigating Officer.

SUBMISSIONS

On behalf of Appellant :

6. Learned counsel for appellant questioned the findings and judgment by submitting that, prosecution has failed to prove the charges beyond reasonable doubt. She pointed out that, there is no convincing legally acceptable evidence in support of the charge i.e. either section 498-A or 306 of IPC. It is pointed out that, in this case, there is no cruelty and there is no unlawful demand. Learned counsel pointed out that, father and uncle of deceased have not supported prosecution. That, mother has given exaggerated version and there is no foundation to her accusations in any other form and there is no corroboration to her testimony.

7. Learned counsel pointed out that, cohabitation of deceased with appellant husband was for almost two years, but at no point of time, there was any complaint of any maltreatment. She pointed out that, for the first time, crime is registered on the basis of dying declaration, wherein accusations are levelled, which are also vague in nature. Learned counsel pointed out that, there are two dying declarations and entire prosecution version depends on two dying declarations, but the same are not consistent and rather are at variance and therefore unworthy of credence. Learned counsel took this court through both the dying declarations and would submit that, they are apparently inconsistent.

8. Learned counsel further submitted that, from the text of the dying declaration, it is clear that, deceased herself was keen in seeking divorce, but husband did not agree and consent to her request and therefore she was upset. Learned counsel also pointed out that, mother has also admitted in cross that her daughter was short tempered. Consequently, according to learned counsel, deceased has immolated herself as her desire for getting divorce was not entertained by husband and precisely being anger, short tempered, she poured kerosene on herself also. That, nobody is responsible for the same. Learned counsel pointed out that, presence of appellant

husband is not shown at the time of incident. That, two infer his involvement and there is no live link in proximity to episode of burn to connect appellant. She pointed out that during pendency of appeal, parents-in-law have already expired. That, husband alone therefore has remained to question the judgment of conviction. Learned counsel criticized the findings of learned trial Judge as according to her, findings and conclusion is contrary to both evidence as well as law, and hence she prays to allow the appeal by setting aside the impugned judgment.

On behalf of Respondent – State :

9. In answer to above, learned APP supported the judgment by pointing out that, admittedly case of prosecution is rested on dying declarations as well as evidence of mother. According to him, both dying declarations are consistent and they are not at variance as is tried to be submitted. Learned counsel also took this court through the contents of dying declarations as well as evidence of mother and submitted that, there is clear and clinching evidence that only because ill treatment and harassment by husband and in-laws deceased committed suicide by immolating. On the day of incident also, there was said to be beating and it is so reflected in the dying declaration. Consequently, according to learned counsel, appellant solely

responsible for the suicidal burns, they are rightly held guilty and he prays to maintain the conviction by dismissing the appeal.

ANALYSIS

10. There are two sets of evidence i.e. first oral evidence of parents and uncle i.e. PW8 Abdul, PW9 Ramjan and PW10 Jaibunnisa and second set comprises of two dying declarations Exhs.28 and 40.

FIRST SET – ORAL EVIDENCE

First let us analyze the evidence of parents and uncle, who are examined at Exhs. 41, 42 and 44, respectively.

11. **PW8** Abdul father merely deposed that, after marriage, his daughter went to cohabit with accused and after three months when she came, she disclosed that everything was smooth. He denied reporting of any beating. Therefore, as father resiled and did not support the prosecution, he was cross examined by APP.

12. **PW9** Ramjan uncle also stated that, after marriage, he mediated and intervened to settle the dispute and send deceased to accused and thereafter they never met. Therefore, findings him also not supporting, prosecution has cross examined this witness.

13. **PW10** Jainbunnisa mother stated that, after four days cohabitation after marriage, her daughter came back to their house and resided for one month, and thereafter, again went back to cohabit with husband and she stayed there for three months, after which her husband came and dropped her daughter and asked her to keep her daughter. That time, mother claims that she noticed assault marks on her back and her daughter told that accused demanded amount and on failure she would be assaulted. There was blood oozing from her nose and mouth. She also reported that, she was abused and beaten for waking up late and accused no.3 instigated accused no.1 to assault her. At such time, her daughter resided for two and half month and went back to cohabit. According to her, again accused no.1 assaulted her daughter and reached at their house. But, he again came back to fetch her. For some days, she resided with accused and one day when she came to her house, she sensed clothes of her daughter smelling of kerosene. At that time, her daughter told that she was assaulted on account of digging from stair case and her clothes got torn and her daughter informed about demand of Rs.10,000/-. She also told that, while she was cooking accused no.4 poured kerosene on her for not bringing money. But, her daughter came to her house. On one of the Friday, her daughter had come to her house and reported assault for being kept starved. On account of

demand of Rs.30,000/-, on 08.05.2003, news of burns and her admission in civil hospital, was received.

Above witness is subjected to extensive cross, wherein she admitted that after marriage, her daughter came four times to her house. She admitted that, every time her daughter told about ill treatment at that time she did not lodge complaint. She answered that after assault and injury, she took her Dr. Chaudhary. But, she admitted that she did not report about this fact of medical treatment given, in her statement to police. Rest is all denial.

14. Thus, father and uncle did not support, but though mother deposed about her daughter informing about beating, pouring kerosene, but her testimony is bereft of details. Regarding demand, she is not quoting amount nor she stating for what purpose demand was raised and by which of the accused.

SECOND SET – DYING DECLARATIONS

15 Now, let us appreciate the dying declarations at Exhs.28 and 40.

The dying declaration (Exh.28) recorded by PW2 Bansilal, Special Executive Magistrate, in translated version, is reproduced as under:-

“Exhibit No. 28

Special Executive Magistrate, Dhule.

Dhule, Date : 08/05/2002

Sr. No.		
1	The time of recording the statement	16.40
2	The name of the patient	Fatima Ahmad Ansari
3	Age	22 years
4	Occupation	House hold work
5	Full Address	Madhavpura, Lane No. 14, Dhule
6	The address, date and Time of occurrence of the incident	At the residential House 15.30 on 08/05/2002
7	The reason of the occurrence of the incident	Statement: I am solemnly on affirmation given statement in written that I was bored of my life and burnt myself by pouring kerosene on my person. My mother -in -law Abida Bi, father -in -law Ahmed Ansari and husband Mohammad, was harassing me lot, hence I was tired of my life and burnt myself by pouring kerosene on my person. I was extinguished by the people in the lane, and admitted to the hospital. DD taken at 3.40pm in presence of Magistrate (Mr. B.B Gurav when the patient is conscious and well oriented to give the statement. Sd/- xxx SBHG Hospital, Dhule.
8.	Is there was a trouble from family members?	I was bored of my life and hence I have burnt myself.
9	Who was present at the time of the occurrence of the incident?	At the time of occurrence of the incident mother-in-law and sister-in-law Hasma was present at house.

10	Do you suspect of anyone of family/house or from outside?	Father-in-law, mother-in-law, sister-in-law,
11	The time on which the copy is submitted at the Hospital.	16.00hrs.
12	The time on which the statement is ended.	17.20hrs.

Before Me,

Signature

sd/-

Executive Magistrate, Dhule.”

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

Dying declaration is at Exh.28 recorded by PW2 Bansilal, Special Executive Magistrate in question answer form. While answering question no.7, she has stated that, getting fed up of life, she poured kerosene and ignited herself. Because of ill treatment of mother-in-law and father-in-law and husband, she immolated herself. It seems that, the incident of burns has taken place on 15:30 hours of 08.05.2002. Again, while answering question no.8 she has stated that getting fed of life, she immolated herself.

16. Dying declaration (Exh.40) recorded by PSI Chavan, in translated version, is reproduced as under:-

<i>Exhibit No. 40</i> <i>Civil Hospital, Dhule</i> <i>Date : 08.05.2002</i>
<i>STATEMENT</i>

**Statement by : Fatema Bi w/o Mahammad Hasan Ansari, age- 22 yrs,
Occupation : Household work, R/o : Madhavpura, Lane
No. 14, Dhule.**

I do hereby solemnly affirm and giving in written that, I am residing at the above mentioned place with my husband, mother-in-law Abida Bi, father-in-law Nisar Ahmad, brother-in-law and two sister-in-laws. I got married about two years ago and I am now 6 months pregnant.

Today, on 08/05/2002 at 3.30 in the afternoon I was in the house. At house we, mother-in-law, sister-in-law Najama was present. At that time, today in the morning my husband, mother-in-law, father-in-law had beaten up me and abused me. And even before this, they were abused and beating me. They didn't like me. When I asked them for a divorce, they did not give me a divorce. Since I have always been in trouble from them, I get tired of their harassment and hence today, in the afternoon around 3.00 to 3.30 O'clock I poured kerosene on my person and ignited the match stick from the match box and burnt myself. In that, I have burnt injuries on the chest, on the stomach, on my mouth, both hands and legs, on the back. The people of my lane (Gali) extinguished me and took me to the hospital by rickshaw and Anis Ahmad Abdul Wahed and father-in-law Nisar Ahmad Buhu Ansari admitted me to the hospital.

When I was burnt in the house, my husband was out of for the work. My mother-in law, sisters-in-law Najma and Aasma were present.

The said statement of mine is read over to me and it is correct as per my narration.

Before me

sd/-

Exh. 40 Admitted in evidence of PW. No. 7 on 20.08.04
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(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

Dying declaration which is recorded by PW7 PSI Chavan is at Exh.40, wherein she stated that, on 08.05.2002 husband, parents-in-law abused her and she was beaten by fist blows. Previously also, they had abused and beaten her and she had demanded divorce, but they did not give her divorce and as there was

trouble for them. Getting fed up, she poured kerosene and ignited herself.

17. Admittedly, case is based on dying declarations, and therefore, I wish to give a brief account of the settled legal position regarding evidentiary value of dying declaration and manner of its appreciation as well as settled principles, which are culled out by the Hon'ble Apex Court from the various landmark cases like *Khushal Rao v. State of Bombay*; AIR 1958 SC 22, *Paniben v. State of Gujarat*; (1992) 2 SCC 774, *Laxman v. State of Maharashtra*; (2002) 6 SCC 710, *Ganpat Bakaramji Lad v. State of Maharashtra*; 2011 ALL MR Cri. 2249. *Surendrakumar v. State of Punjab*; (2012) 12 SCC 120, *Jagbir Singh v. State (NCT of Delhi)*; (2019) 8 SCC 779, *Madan v. State of Maharashtra*; (2019) 13 SCC 464.

In the case of State of *Uttar Pradesh v. Veerapal and another*; (2022) 4 SCC 741 while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, the Hon'ble Apex Court has culled out the principles to be borne in mind while analyzing and accepting dying declarations. The settled principles are as under:

- “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.”*

Similarly, in the case of ***Uttam v. State of Maharashtra***;

(2022) 8 SCC 576, again certain principles are enunciated which are to be borne in mind in a case wherein the evidence is in the form of dying declaration. These principles are as under :

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The Supreme Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state

to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.”

Again very recently certain principles of law with regard to case involving multiple dying declarations are spelt out in the case of ***Abhishek Sharma v. State (Govt. of NCT of Delhi)*** [Criminal Appeal No.1473 of 2011, decided on 18-10-2023]. These principles read thus :

- “9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;*
- 9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be ‘material’ for its credibility to be shaken;*
- 9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purpose of corroboration of the contents of dying declarations.*
- 9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.*
- 9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.*
- 9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.*

9.7 *In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”*

Thus, the settled precedent is that, dying declarations must be firstly voluntary, truthful and secondly it should not be tutored and further the same should inspire the confidence of the Court. These are the basic principles which are to be borne in mind while appreciating dying declarations.

18. The principle grounds pressed into service are that, *firstly*, father as well as uncle of deceased have not supported prosecution. *Secondly*, testimony of mother is completely improvised one. *Thirdly*, dying declarations are not consistent and moreover rule out presence of accused at the time of episode of burns.

19. Learned counsel tried to impress upon this court that, deceased herself was not satisfied with the marriage and was keen in seeking divorce. Her such demand and request was not considered and granted and hence out of annoyance, she has implicated husband and in-laws.

20. On above lines, evidence of prosecution is examined. Admittedly, amongst family members, father, uncle and mother are examined. As pointed out, testimony of father is not supported and evidence of uncle is of no avail to the prosecution. Mother PW10 Jaibunnisa, who is examined at Exh.44, though deposed about visits of her daughter, she in cross has admitted that, during almost two years of her cohabitation, there were four visits of her daughter to her house and even deceased used to stay for months together. Though, she deposed about hearing from her daughter regarding demand, what was the quantum, for what purpose and when such demand was raised, has not been elaborated by her. Though she deposed that her daughter was beaten till she bled and was required to be taken to doctor, there is no evidence in that regard and she admitted that, she never lodged complaint regarding ill treatment. Her such silence is unnatural. Even, when the episode of pouring kerosene previously took place, is not specified. The person, namely, Ramju Sardar, whose indulgence she claims to have sought for giving understanding, is also not examined. Resultantly, there is no corroboration to mother's version. In fact, her husband himself did not support her.

Therefore, cross of mother PW10 clearly shows that, allegations are vague. When such instances took place, has not been

stated. She admitted that, for maximum period her daughter stayed with her. There are allegations levelled regarding demand without elaborating amount or reason.

21. As regards to dying declarations are concerned, the same are at Exhs.28 and 40, it is noticed that in Exh.28, she gave statement that she was bored of her life and therefore burnt herself. Then she stated that in-laws and husband were harassing her and therefore getting tired, she immolated. Whereas, in Exh.40 there are allegations of husband, father-in-law, mother-in-law beating her and abusing her. She claims to have sought divorce. They did not give her divorce. That, she was always in trouble from them and getting tired of harassment, she poured kerosene and ignited herself. Such elaborate version is not finding place in the first dying declaration. Consequently, dying declarations cannot be said to be consistent.

22. The stark feature i.e. emanating from the dying declaration is that at the time of immolation, husband was at his work place. Resultantly, husband, the sole surviving appellant was not around, when she poured kerosene. Her statement does show that she was desirous of seeking divorce, but it was not given. Though, she stated that there was harassment, its details are not forthcoming.

Therefore, when husband is not present, there is no question of inducement, abetment or incitement so as to attract charge of section 306 IPC.

For above reasons, charges are not proved beyond reasonable doubt.

23. Perused the judgment. Apparently, absence of husband, reflected in the dying declaration itself, has not been appreciated by learned trial Judge. Evidence was lacking to attract charges under section 498-A of IPC also. Hence, appreciation being erroneous, interference is called for. Accordingly, I proceed to pass the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Mohamad Hasan Nisar Ahmad Ansari in Sessions Case No. 91 of 2003 by the 1st Ad-hoc Additional Sessions Judge, Dhule on 06.12.2004 for the offence punishable under Sections 498-A and 306 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of the Indian Penal Code.

- IV) The bail bonds of the appellant stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)