



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 91 OF 2002

1. Marthabai w/o Yashwant Bhingardive
Age : 55 years, Occu. Household,
2. Laxmibai w/o Nitin Bhingardive
Age : 23 years, Occu. Household,
3. Nitin s/o Yashwant Bhingardive
Age : 26 years, Occu. Agri.

4. Yashwant s/o Savaleram Bhingardive **(abated)**
Age : 59 years, Occu. Agri.
(Appeal abated against appellant no.4
as per order dated 28.07.2017)
All residents of Nagardevale,
Tq. Nagar, Dist. Ahmednagar.

... Appellants
[Orig. Accused Nos. 1 to 4]

Versus

The State of Maharashtra

... Respondent

.....
Mr. R. S. Shinde, Advocate h/f Mr. R. B. Raghuwanshi for the
appellant.

Mr. S. M. Ganachari, Advocate for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.03.2024

Pronounced on : 01.04.2024

JUDGMENT :

1. Appellants are questioning the judgment and order of
conviction dated 13.02.2002 passed by 4th Ad-hoc Additional Sessions

Judge, Ahmednagar in Sessions Case No. 145 of 2001, convicting appellants for offences under Sections 498-A and 306 of the Indian Penal Code [IPC].

PROSECUTION CASE IN NUTSHELL IS AS UNDER

2. Accused, who were in-laws of deceased Kusum, were chargesheeted by Bhingar Police Station on the premise that deceased, a widow, resided with her children in the immediate neighbourhood of accused persons i.e. her in-laws. Since demise of her husband Santosh, accused persons were subjecting deceased Kusum to ill-treatment as they were keen in seeing that she leaves the house, having lost her husband. According to prosecution, they used to regularly abuse her and subject her to both, physical and mental cruelty.

3. On 17.07.2001, it is the case of prosecution that, accused persons again came to deceased, picked up quarrel and after abusing her, she was beaten by means of fist and kick blows. Such treatment having become unbearable, deceased immolated herself resulting into 92% burns. She was admitted to hospital. Her dying declaration was recorded on the strength of which, crime bearing no. 64 of 2001 was registered for offences punishable under Sections 498-A, 323, 504,

506 r/w 34 of IPC. While undergoing treatment, she succumbed and therefore, charge was converted to 306 of IPC and after completion of investigation, they were duly chargesheeted and tried by learned 4th Ad-hoc Additional Sessions Judge, Ahmednagar, who, on appreciating oral and documentary evidence, held all accused persons guilty for offence under Sections 498-A and 306 r/w 34 of IPC and sentenced them to imprisonment and to pay fine.

Such judgment and order of conviction is now questioned by appellants by filing instant appeal.

4. At the outset it needs to be mentioned that, since during pendency of appeal, accused/appellant no.4 Yashwant s/o Savaleram Bhingardive died, appeal stands abated as against him and there is order to that effect dated 28.07.2017. Now, appeal of only appellant nos. 1 to 3 remains for consideration.

SUBMISSIONS

On behalf of appellants :

5. Learned counsel for the appellants, apart from placing on record written notes of arguments, submitted that there is apparently false implication. Deceased committed suicide in anger for the best

reasons known to her. That, there is no evidence about commission of offence under Section 498-A of IPC. Specific instances of ill-treatment, abuse are not given by any of the witnesses. That, allegations on the point of cruelty are general and omnibus in nature.

6. Secondly, according to him, crime was registered on the basis of two dying declarations, but the same are not consistent and are rather at variance. He would further point out that deceased had admittedly suffered 92% burns and therefore, it was duty of prosecution to establish that deceased was in a position to give two dying declarations. There is doubt about her fitness to give dying declaration. The doctor, who examined her and permitted PW3 PHC Suryawanshi to record dying declaration Exhibit 29, is also not examined by prosecution. That, on the contrary, there is evidence suggesting that condition of deceased was crucial. Therefore, the dying declarations also come under shadow of doubt.

7. He further submitted that there is no independent evidence. There is no evidence that accused abetted the suicide. Necessary ingredients for attracting Section 306 IPC are also patently missing. Therefore, under such circumstances, learned trial court ought not to have accepted the case of prosecution and ought not to have further

recorded guilt, but that not having happened, appeal has been filed and the same deserves to be allowed by setting aside the impugned judgment.

On behalf of State :

8. Learned APP supported the judgment by pointing out that prosecution has adduced testimonies of in all 5 witnesses. They are all consistent. That apart, there are two dying declarations naming accused to be responsible for abetment to commit suicide. There was consistent ill-treatment. On the day of occurrence also accused persons had visited deceased, abused and beaten her. It having become a regular affair, her life was made miserable and therefore, she took extreme step of committing suicide. Accused are solely responsible and are thereby rightly held guilty. According to learned APP, there is no merit in the appeal and hence he prays to dismiss the same.

EVIDENCE IN TRIAL COURT ON BEHALF OF PROSECUTION

PW1 Dr. Todmal was the medical officer posted at Civil Hospital, Ahmednagar. He deposed that he accompanied Special Executive Magistrate who had come for recording dying declaration. After examining and finding patient Kusum fit, both mentally and physically, to give statement, he made

observations to that extent after which, Special Executive Magistrate recorded dying declaration. He deposed that after recording statement, patient gave thumb impression and he also gave endorsement over **Exhibit 24**.

PW2 Arun acted as pancha to spot panchanama. He identified the same to be at Exhibit 26 and its contents to be true.

PW3 Police Head Constable Suryawanshi, who recorded dying declaration **Exhibit 29** while Kusum was admitted in Civil Hospital and on the basis of the same, crime was registered.

PW4 Shaikh Ahmed was the Executive magistrate, who recorded dying declaration **Exhibit 24**.

PW5 API Ashok Shete, Police Officer, who arrested accused and handed over further investigation to PSI Kale.

9. After Statement under Section 313 of Cr.P.C., accused have also adduced evidence of defence witness DW1 Sunil. The sum and substance of his evidence is that on 17.07.2001, he heard shouts from the house of deceased. A rickshaw was engaged and deceased was taken to hospital. According to him, while in rickshaw, deceased did not talk. According to him, at the time of admission, Doctor asked her about cause of burns, to which she told that she suffered burns due to blaze of stove. Further, according to him, in the Civil Hospital

relatives of Kusum, who had gathered, asked her to name the accused persons.

ANALYSIS

10. Thus, on taking survey of evidence, here, prosecution seems to have rested its case on the testimony of PW1 Dr. Todmal, who was available at the casualty in Civil Hospital, Ahmednagar and had examined deceased before recording of her dying declaration by PW4 ; PW4 Executive Magistrate Shaikh Ahmed who, on receipt of letter from Bhingar Police Station, visited hospital and recorded dying declaration Exhibit 24 ; PW2 Arun, who acted as pancha to spot panchanama Exhibit 26; PW3 Police Head Constable Suryawanshi, who also recorded second dying declaration Exhibit 29 and registered crime ; whereas, PW5 API Shete was the Investigating Officer.

11. Apparently, there is no other witness on behalf of prosecution i.e. from the deceased's side. The reason seems to be that she was already a widow. But her children residing with her are not made witnesses.

12. Therefore, entire case of prosecution rests upon two dying declarations Exhibit 24 and 29, the translated version of which is reproduced below for proper comprehension.

Dying Declaration Exhibit 24 :

Sessions Case no. 145/2001.

Exh. 24

Admitted in evidence on 18.01.2002

Signed/- 18-1-2002 Sessions Judge,
Ahmadnagar.Patient is conscious and well-oriented before
starting statement and can obey vocal commands.

Signed/-

Chief Medical Officer 18-7-2001 at 8.00 PM

DYING DECLARATION

CIVIL HOSPITAL, AHMADNAGAR

18-7-2001 at 8.05

I introduced myself as the Special Judicial Magistrate to the patient and began to record the statement as under:

I, Kusum w/o Santosh Bhingardive, aged 27 years, Occ. Household and Labourer, R/o Nagardevala, Taluka: Ahmadnagar, do hereby state in person that, I reside at the abovementioned address and my parental home is at Tambori in Rahuri taluka. I am married since 9 years and I have three daughters and a son. My husband died two years ago. I reside with my four children at my own house and my mother-in-law Marthabai and brother-in-law Nitin Bhingardive and co-sister Lakshmi are my neighbours. I raise my children by working as a maid. On Tuesday, 17-6-2001, I returned to home after work and was seated in the foreyard, my co-sister Lakshmi and mother-in-law started abusing and beating me as to why the garbage was thrown? They also said that, "you have only killed your husband." This made me angry and I came inside my house and in a fit of anger poured down the plastic canister full with 2 liters of kerosene on my person and ignited myself with a burning matchstick. I had worn a nylon saree and saree-petticoat that caught fire. I got burn injuries on my chest, face, both hands and thighs. I started shouting. The children in neighbourhood doused the fire by pouring the water on me. My mother-in-law has admitted me in the Civil Hospital by a rickshaw and I am under treatment at present.

My mother-in-law Marthabai, father-in-law Yashwant Sawalaram Bhingardive, brother-in-law Nitin Bhingardive and co-sister Lakshmibai were harassing me since beginning. I have burnt myself as I was fed-up with the harassment of the above persons. I have a complaint against them.

Thus I have made the statement. The statement has been read over to me and I accept the same.

Thumb impression
of Kusum w/o Santosh Bhingardive

18-7-2001

at 8-30 PM

[The] Patient is conscious and well oriented during
and after statement and can obey vocal orders.
Dr. Todmal, Chief Medical Officer,
18-7-2001 at 8.30 PM

Dying Declaration/FIR Exhibit 29 :

17-7-2001

COMPLAINT

I, Kusum w/o Santosh Bhingardive, aged 27 years, r/o Nagardevale, Taluka: Ahmednagar, do hereby state in person, being admitted in the burn ward of the Civil Hospital at Ahmednagar that, I am the resident of above place and I reside with my daughters , 1. Shubhangi, aged 8 years, 2. Shweta, aged 4 years, 3. Soni, aged one and half years and the son Ganesh aged 6 years. My husband Santosh died two years ago due to illness and I am residing with my children separately after the death of my husband. My brother-in-law 1. Nitin Yashwant Bhingardive, 2. Co-sister Lakshmibai w/o Nitin Bhingardive 3. Mother-in-law Marthabai and 4. Father-in-law Yashwant Savaleram Bhingardive, all residents of Nagardevale reside separately as my neighbour. These persons used to abuse, threaten and beat me always since the death of my husband, Santosh and say that, "our man has gone, what right do you have to stay here and should leave" and harass me. Due to the above reason, after the death of my husband [from almost two years] and during my stay at Nagardevale at my matrimonial home, the above persons have abused, threatened and ill-treated me, humiliated me and have harassed me mentally and physically.

Today, on 17-7-2021, I had been gone for my usual work of washing utensils and washing and returned to home at 4.00 o'clock, 1. Lakshmibai Nitin Bhingardive and 2 Marthabai Yashwant Bhingardive started a quarrel by saying that what right I have to reside there after the death of husband? And My brother-in-law 1. Nitin Yashwant Bhingardive, 2. Co-sister Lakshmibai w/o Nitin Bhingardive 3. Mother-in-law Marthabai and 4. Father-in-law Yashwant Savaleram Bhingardive, all residents of Nagardevale abused me, beat me giving kicks and punches and threatened me of life. As this has become regular and the ill-treatment by the above persons has become unbearable for me, I have set myself ablaze by pouring kerosene on my person at 6.00 PM. I have been admitted in the Civil Hospital, Ahmednagar by my mother-in-law Marthabai for treatment as I received burn injuries on stomach, back, chest and hands etc. I am under treatment at present and completely conscious. The complaint has been read over to me and found to be true and correct. I have put my thumb instead of my signature due to burning.

Before
Signed/-
PHC, Camp P.S.

17-7-2001
Thumb impression Kusum Santosh Bhingardive

Pt. is conscious and is in position
to give statement.
Signed/- 9 PM
17-7-2001
CMO

BHINGAR POLICE STATION
Crime Regn No. 64/2001
U/s 498 [A], 323, 504, 506, 34
registered on 17-7-2001 at 21-35 hrs
PSO Camp Police Station
Session Case dated 145/2001

LEGAL POSITION

13. Since the judgment of *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, on numerous occasions law on manner of appreciation of dying declaration 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 tevidencecehe 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 *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 and *Madan v. State of Maharashtra* ; (2019) 13 SCC 464.

14. Bearing in mind the above settled legal position, when the above reproduced dying declarations Exhibits 24 and 29 are put to minute scrutiny, it is noticed that in **Exhibit 24**, which is recorded by PW4 Executive Magistrate Shaikh Ahmed, deceased reported that she is a widow, she resides separately as well as her in-laws reside separately. On the relevant day i.e. 17.07.2001, when she returned from work, she informed that, her sister-in-law accused no.2 Laxmibai questioned her for throwing garbage and thereafter mother-in-law accused no.1 Marthabai joined her and they both abused and beat deceased and said that she killed her husband and therefore, in the urge of anger, she entered in her own house, poured kerosene and set herself on fire. Finally, she has held mother-in-law, father-in-law, brother-in-law and his wife also responsible for said suicidal burns.

15. Whereas, on carefully going through **Exhibit 29** authored by PW3 Police Head Constable Suryawanshi, which is stated as FIR and is found to be in detail, she has stated that she is a widow. Her in-laws were keen in seeing that, she having lost her husband, has no right to stay in the house and they wanted her to leave the premises. On this count, she claims that, they used to ill-treat her, but what was the ill-treatment and when said instances took place has not been informed by her in Exhibit 29. Likewise, regarding the incident, she

has stated that in-laws wanted her to leave her house and therefore, they abused her and they used to do it regularly and therefore, getting fed up, she poured kerosene and set herself on fire. In Exhibit 29, she states that her mother-in-law shifted her to the hospital.

16. Therefore, both Exhibits 24 and 29 are apparently at variance. In one, she reports abuse and beating at the hands of sister-in-law and mother-in-law on the count of throwing some garbage and subsequently, in Exhibit 29 she names entire family members including father-in-law, regarding whom she has not uttered single word in Exhibit 24, attributing cruelty, harassment for leaving the house, having lost her husband. Consequently, both dying declarations are not consistent.

17. It is seen that in above dying declarations, solitary incident dated 17.07.2001 seems to be the trigger point. There is not iota of evidence of incessant ill-treatment to her. She speaks only about accused persons wanting her to leave the premises, having lost her husband. She has alleged that according to in-laws, they lost their son because of her. Admittedly, she speaks of getting angry and setting herself on fire. Resultantly, here, there is no abetment, instigation or incitement. Presence of accused at the time of immolation has not

come on record. In one dying declaration, i.e. Exhibit 29, deceased has stated that alleged occurrence took place at 4.00 p.m. She has further stated that she immolated herself at 6.00 p.m. Therefore, after initial occurrence, there was cooling period of almost two hours. Immediately prior to 6.00 p.m., accused were not present there. There is nothing to show that from 4.00 p.m. up to 6.00 p.m. accused were maltreating Kusum and because of the same she committed suicide. Hence, here, there is weak evidence or no evidence on the point of 498-A IPC. Apparently, accused and deceased were residing separately. Further, on 17.07.2001 around 6.00 p.m., there is nothing to show that accused, with specific intention that deceased should end up her life, subjected her to abuses or ill-treatment. Consequently, even necessary ingredients for attracting Section 306 IPC are patently missing.

18. After going through the impugned judgment, in the considered opinion of this Court, there is apparently improper appreciation of evidence. The essentials for attracting the charges are not available, but still learned trial court has recorded guilt. Settled law while analyzing dying declarations is also not borne in mind and applied, resulting in erroneous conclusion. Hence, interference is called for. Resultantly, this Court is constrained to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants i.e. 1) Marthabai w/o Yashwant Bhingardive, 2) Laxmibai w/o Nitin Bhingardive and 3) Nitin s/o Yashwant Bhingardive, by learned 4th Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case No. 145 of 2001 under Sections 498-A and 306 r/w 34 of IPC on 13.02.2002 stands quashed and set aside.
- III. All the appellants stand acquitted of the offence punishable under Sections 498-A and 306 r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]