



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 133 OF 2004

Dinesh S/o. Pannalal Yadav,
Age : 26 years, Occu. Motor Garage Owner,
R/o. Samatanagar, Jalgaon, Dist. Jalgaon ... Appellant

Versus

The State of Maharashtra ... Respondent

...
Mr. Amol Vasmathkar h/f. Mr. Sachin Pradhan, Advocate for Appellant
Mr. K. K. Naik, APP for Respondent – State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 JULY 2024

PRONOUNCED ON : 20 JULY 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction recorded by the learned IIIrd Additional Sessions Judge, Jalgaon dated 12.02.2004 in Sessions Case No.55 of 2003, by which appellant is held guilty and convicted for offence punishable under sections 498A and 306 of Indian Penal Code (IPC).

FACTS GIVING RISE TO SESSION'S TRIAL

2. Informant PW1 Bholanath reported to Jilha Peth Police Station that, his daughter Bali was married with appellant husband five

years prior to her death. Out of the wedlock, they had two issues. After two years, there was ill treatment to his daughter. Appellant husband after getting drunk used to beat her and she used to report about it. On 25.12.2002, news of Bali suffering burns was received. When informant visited to hospital, she told that, accused set her on fire and therefore, he lodged report at Exh.12.

On the basis of which, crime was registered and ultimately investigated by PW6 PSI Sonawane, Investigating Officer, who after gathering sufficient evidence, charge-sheeted accused for offence punishable under sections 498A and 306 of IPC.

Case being triable by Court of Sessions, was tried by IIIrd Additional Sessions Judge, Jalgaon vide Sessions Case No. 55 of 2003. On appreciation, learned trial court by its judgment and order dated 12.02.2004, convicted husband for offence punishable under sections 306 and 498A of IPC and sentenced him to suffer rigorous imprisonment for five years and one year, respectively and to pay fine.

It is the above judgment and order, which is now taken exception to, by filing instant appeal.

SUBMISSIONS

3. Brief arguments for learned counsel for appellant is that, there are mere allegations of beating by husband after getting drunk.

That, there are no elaboration when and where beating took place. That, there was no previous complaint at any point of time. That, marriage is already five to six years old. That, deceased had suffered accidental burns. Merely because of losing daughter, out of annoyance, father lodged false report. That, independent witnesses have not supported the prosecution. That, there is no convincing evidence in support of sections 498A and 306 of IPC. However, learned trial court accepted the prosecution case without assigning proper reasons for accepting prosecution version. According to learned counsel, there is incorrect approach and improper appreciation of evidence. Therefore, for all above reasons, he prays to set aside the impugned judgment by allowing the appeal.

4. Canvassing in favour of impugned judgment, learned APP submitted that, there is clear and cogent evidence about husband subjecting deceased to cruelty. That, appellant accused ill-treated deceased Bali and beat her after getting drunk. She promptly reported such treatment to father. After burns, she gave oral dying declarations. That, there is prompt complaint by father. That, apart from father, there is evidence of PW4 Nalini Joshi, who recorded dying declaration. That, spot is proved by police officer, who conducted investigation and has gathered sufficient evidence. That, Finding the dying declaration to be inspiring confidence, learned trial court correctly accepted the same and

held appellant guilty. That, there is no infirmity and hence he prays to dismiss the appeal.

EVIDENCE ON RECORD IN TRIAL COURT

5. PW1 Bholanath informant, stated that, son-in-law i.e. husband of deceased ran auto garage. After two years, ill treatment began. Husband used to beat his daughter under influence of liquor. His daughter made complaint to that extent almost five to six times. After getting news of burns and when she visited civil hospital, he learnt that, accused set her on fire. He lodged report at Exh.12.

PW2 Dashrath, pancha to spot panchanama did not support the prosecution.

PW3 Savita, tenant of sister of accused and immediate neighbour, also did not support the prosecution.

PW4 Nalini Joshi, staff of Tahsil office stated that, on a request of Jilha Peth Police Station, on 25.12.2002, she visited hospital, approached doctor for certification and thereafter recorded the statement in question answer form. She placed the same (Exh.17) on record.

PW5 Dr. Shirish Patil, Medical Officer, who issued certification of fitness on 25.12.2002 after Executive Magistrate approached.

PW6 PSI Sonawane is the Investigating Officer, who carried out investigation and charge-sheeted accused.

ANALYSIS

6. Admittedly, husband is charge-sheeted for commission of offence under sections 498A and 306 of IPC. Informant's evidence suggest that, marriage is almost five years old and accused and deceased had two issues. On close examination and appreciation of informant's evidence at Exh.11, it is revealed that, according to him, after marriage his daughter used to visit his house. According to him, at that time, she used to tell that, husband maintained her nicely for initial two years, but thereafter he ill treated her. He used to beat her under influence of liquor. According to him, such complaint made by her daughter five to six times. So much is only his testimony, which shows that, during five to six years of cohabitation, there are allegations of beating after getting drunk. On what count there was beating has not come on record.

In cross examination, informant father has admitted that, his daughter was of suspicious nature. She used to insist accused to reside another area. He admitted that, accused and his daughter, both visited during Diwali festival and even three months prior to the incident. He admitted that he did not lodge any complaint against the accused till his daughter was alive.

7. PW3 Savita, immediate neighbour and tenant of sister of accused, merely stated about hearing regarding the incident and she denied any inquiry made by police. Not finding as supporting, learned Public Prosecutor seems to have cross examined. Except such two witnesses, there is no other evidence on the point of 498A of IPC.

8. Charge against accused is that, Bali committed suicide by incinerating herself because of physical and mental harassment and torture. There are allegations that, accused had extra marital affair. However, this court has already appreciated testimony of father informant PW1 Bholanath. His substantive evidence is absolutely silent about any such accusation of son-in-law maintaining illicit relations. Deceased had suffered burns on 24.12.2002. There seems to be two dying declarations on record i.e. one recorded by PW4 Nalini Joshi, which is at Exh.17 and second one at Exh.34 recorded by Police Officer PW6 PSI Anil Sonawane.

9. For proper comprehension first dying declaration (Exh.17), in translated version, is reproduced as under:-

FIRST DYING DECLARATION

“Exhibit No. 17

O
Patient Conscious
12.20 p.m. 25.12.2002

The Statement started at 12.10 in the morning on 25.12.2002 before the respected Executive Magistrate, Jalgaon at Civil Hospital, Jalgaon.

Question : What is Your Name? Where do you live ?

Answer : My name is Bali Dinesh Yadav, I am residing at Samatanagar, Jalgaon.

Question : Can you tell me when and how the incident happened?

Answer : Yes. The said incident was occurred at in my residential house at 10.00 to 10.30 pm in the night. At that time me and my husband was at home. In the night there was a quarrel between me and my husband. When he went to fill water at the hand pump in front of the house, I poured kerosene can on my person with my hand and set ablaze myself. Immediately my husband ran from the outside and they extinguished me and admitted me to this hospital for treatment. I have a 3 years old daughter. She was at home. I replied again that my husband was secretly meeting a woman outside on the pretext of filling water. So I got angry and burnt myself. I have given this statement in full consciousness without taking pressure from anyone. Said statement finished at 12.20 p.m.

TI Left hand
(Bali Dinesh Yadav)

Received
Sd/-
Before Me,
Sd/xxxxxx
Executive Magistrate, Jalgaon.”

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

10. In first dying declaration, on being questioned about occurrence, she reported that, incident took place at around 10:00 to 10:30 p.m. She and her husband in the house. There was quarrel between them for filling water. When her husband went out to hand pump, she claims that, she poured kerosene on herself and set herself on

fire. Husband doused the fire and shifted her to the hospital. In same answer she stated that, again she wants to give statement and then stated that, her husband used to go out on the pretext of fetching water and was secretly meeting a lady. Getting annoyed, she incinerated herself.

11. Second dying declaration (Exh.34) recorded by PW6 PSI Sonawane, in translated version, is reproduced as under:-

SECOND DYING DECLARATION

“Exhibit No. 34

*Sd/xxxxxx
02.01.2003
S.D.P.O. Jalgaon*

*Civil Hospital, Jalgaon.
Date : 25.12.2002*

*The patient is in state of giving statement.
There is no objection to taking a statement.
Signature/xxxxxx*

*Sau Bali Dinesh Yadav, Age -19yrs, Occupation: Household work
R/at Samtanagar Slum Area, near Shiv Mandir.*

I do hereby giving written statement that, I am residing at the above mentioned place. I have one daughter named Dipali, 3yrs old. My maternal house is at Shahu Nagar, Jalgaon. My husband has relation with my husband's neighbor Sunita. They always meet at the hand pump for watering. And the husband doing gestures for her even while taking a bath. Due to this, my husband and I had quarreled 2 to 3 times. From that, my husband always tells me that, if you like it, stay, otherwise, you can leave. I do not know the full name of Sunita. Her husband goes to work in the fields.

Yesterday on 24.12.2002, Tuesday in the night at 10.00 hrs. we had quarreled and a fight over Savita. Then I got angry, I poured kerosene from the house lamp on my person and burnt myself, then my husband and the neighbor, Pawan's father extinguished me. And my husband has admitted me to the Government hospital. Due to husband's affair with neighbor lady Savita, there was always quarrel in the house and in that anger I burnt myself.

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

*Before me,
Signature/xxxxx
PSI, Jilha Peth,
Jalgaon.*

*Statement by
TI, Sau Bali Dinesh Yadav*

*Before Me,
Nirmala Santosh Yadav
Age-24, TI Left Hand
R/at In front of Dudh Federation,
Dandekar Nagar, Jalgaon.*

*The patient was conscious while giving statement.
sd/xxxx , 25.12.2000, 3.20 pm”*

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

12. On appreciating the same, second dying declaration is recorded on 25.12.2002. She reported that, her husband had maintained relationship with neighbour Savita and they used to meet at hand pump and she saw her husband gesticulating at the time of taking bath. On such count, twice – thrice there was quarrel between her and her husband. Her husband used to say that, he disliked her and asked her to leave. On 24.12.2002 around 10:00 p.m., there was quarrel between husband and wife in the backdrop of relations with one Savita and in anger, she poured kerosene and ignited herself.

13. 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 declaration 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.

- 14. Keeping above settled legal position in mind, it is now to be seen whether both dying declarations are consistent.

15. On carefully appreciating the first dying declaration at Exh.17, it is noticed that, therein initially deceased reported that around 10:00 p.m. there was quarrel with her husband in the backdrop of filling water on the hand pump and when her husband went towards hand pump, she incinerated herself. In the same dying declaration, she has to again states that, because of her husband secretly went to meet neighbouring lady on the pretext of filling water, she incinerated herself.

16. Second dying declaration at Exh.34 is placed in juxtaposition, carries contents that, husband had affair with a neighbour lady and on this count there were quarrels twice thrice previously. That, on 24.12.2002 also at around 10:00 p.m. on the issue of neighbour lady, there was quarrel and she incinerated herself. It is pertinent to note that, there is no evidence and in fact there cannot be any evidence about so called affair between husband and neighbour lady. There is no evidence to show that on the night of 24.12.2002, accused was seen in the company of neighbour lady. It is worth noting that, very father informant, in his cross examination, in paragraph no.3, has admitted that, his deceased daughter was of suspicious nature. As noticed, father has not uttered single word about any alleged affair between husband and neighbour lady. For the first time, in dying declaration, allegations

are about accused husband secretly meeting neighbouring lady. The second dying declaration (Exh.34), which is little bit elaborate, is apparently recorded in presence of her sister that too on the next day. In the first dying declaration, deceased has merely narrated that, there was quarrel between husband on account of fetching water and after husband went, she incinerated herself. But, second dying declaration, which is in presence of relatives i.e. sister, elaborate version is given.

17. Question is whether so called alleged secret meeting by husband with neighbouring lady, was the cause for deceased to ignite herself. As stated above, father has already admitted that his daughter was of suspicious nature. Therefore, deceased lady must be over sensitive. It is not a situation that she is left with no other alternative, but to end up her life. She had other various courses opened, if at all, there was substance in the allegations. Apparently, she has incinerated herself and she has also clarified to that extent that in rage of anger, she incinerated herself. What role accused played or in what manner he abetted or induced her to do so, has not come on record. Apparently, it is the case of self immolation.

18. Taking such fact into consideration and more particularly, when her own father accepts that his daughter was of suspicious nature, in the episode of immolation, accused cannot be connected for above

reason of which there is no distinct and independent evidence. That apart, there is no disclosure to father, who met her in the hospital, regarding husband meeting neighbouring lady secretly and quarrel taking place on that count. What father deposed is that his daughter after two days stated to him that husband set her on fire. This is very contrary to the prosecution version as it is the case of immolation, and not setting her on fire.

Therefore, taking such quality of evidence into consideration, in the considered opinion of this court, it is unsafe to connect appellant husband with episode of burn suffered by Bali.

19. Perused the judgment under challenge, learned trial Judge, who seems to have made elaborate discussion from paragraph no.19 onwards, has already doubted testimony of informant father i.e. in paragraph no.22, holding that, witness is giving self contradictory statement. Discussion about two dying declarations is found in paragraph no.23. In spite of noting that even on court question, PW6 PSI Sonawane, who recorded dying declaration admitted presence of sister, at the time of recording dying declaration. Said dying declaration is accepted and put to use. Therefore, when sister is present at the time of second dying declaration, which is recorded on next day, there is doubt about voluntariness and therefore benefit has to go to accused.

Paragraph no.25 shows that, observations and findings are drawn on assumptions and presumptions. Consequently, such judgment cannot be allowed to be sustained. Hence, I pass the following order :

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Dinesh S/o. Pannalal Yadav in Sessions Case No.55 of 2003 by the learned IIIrd Additional Sessions Judge, Jalgaon on 12.02.2004 for the offence punishable under Sections 498A and 306 of the Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 498A and 306 of the Indian Penal Code.
- IV) The bail bonds of the appellant stands 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.)