



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPA] No.328 of 2023

in

Criminal Appeal St. No.1408 of 2023

Subhash Chokhaji Balkhande and another

vs.

Ravi Bhagwan Bhalerao and another

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. S.D. Chande, Advocate for the Applicant/Appellant.

Mr. Mir Nagman Ali, Advocate for Non-Applicant/Respondent No.1.

Mr. U.R. Phasate, A.P.P. for Non-Applicant/Respondent No.2/State.

CORAM: SMT. M.S. JAWALKAR AND M.W. CHANDWANI, JJ.

DATE : 3rd DECEMBER, 2024.

This appeal has been filed by the parents of deceased-Ashwini assailing the judgment of acquittal passed by the learned Additional Sessions Judge, Washim in Sessions Case No.62/2018, thereby acquitting respondent No.1 from the charges of offences punishable under Sections 302 and 452 of the Indian Penal Code.

02. The prosecution case before the learned Sessions Judge, in a nutshell, can be summarized as under :

- I. Deceased-Ashwini was having a love affair with accused-respondent No.1. The appellants i.e. the parents of the deceased, were against the relationship of the deceased with respondent No.1 and were not consenting to their marriage. On one hand, the appellants were not consenting to marriage of respondent No.1 with their daughter and on the other hand, the deceased-daughter was not ready to marry respondent No.1 against the will of her parents-

appellants.

- II. It is the specific case of the prosecution that on 19/06/2018 at about 8:00 a.m., when the appellants had been to their field for agricultural work, respondent No.1 entered their house and poured kerosene on the person of the deceased and set her on fire. By the time the appellants received information about the incident, the deceased was hospitalized in Government Medical College and Hospital at Washim. Therefore, they rushed to the Government Hospital at Washim. Thereafter, the deceased was referred to Government Medical College and Hospital at Akola, where she succumbed to the injuries on 23/06/2018.
- III. It is the case of the prosecution that the deceased made an oral dying declaration to her mother-Laxmibai Balkhande (PW-3) while she was being taken to the hospital in an ambulance. It is also the case of the prosecution that a dying declaration was also made by the deceased to Dr. Ghanshyam Ingle (PW-4). After the death of the deceased, F.I.R. came to be lodged with the Police Station by Police Constable Vijay Patange (PW-1). On his report, the aforesaid offence came to be registered against respondent No.1.
- IV. Respondent No.1 was tried and by the impugned judgment, he was acquitted of the charges for the offences punishable under Sections 302 and 452 of the Indian Penal Code.

03. Feeling aggrieved with the order of acquittal recorded by the learned Sessions Judge, the appellants have filed the present appeal.

04. Learned Counsel Mr. S.D. Chande appearing on behalf of the appellants assisted by the learned A.P.P., submitted that the trial Court disbelieved the dying declarations. There is no inconsistency between the two dying declarations. It is a settled principle of law that if the dying declarations are consistent and inspire full confidence of the Court, then dying declarations can be the sole basis of conviction. According to him, this aspect has not been considered by the trial Court. He submits that PW-3, mother of the deceased, PW-4 Doctor and independent witnesses have been erroneously disbelieved by the trial Court with respect to the dying declarations. Therefore, the finding of acquittal is required to be set aside and leave be granted to file an appeal.

05. *Per contra*, learned Counsel Mr. Mir Nagman Ali appearing on behalf of respondent No.1 vehemently submitted that the trial Court has rightly recorded the finding of acquittal. According to him, the trial Court found various discrepancies in the dying declarations and therefore, rightly discarded the versions of the witnesses on the touchstone of the fact that the F.I.R. is filed after two days from the date of the incident.

06. We have gone through the impugned judgment, depositions of the witnesses, particularly the depositions of PW-3 and PW-4. We have also perused the entire record and proceedings. It is a matter of record or rather it is the case of the prosecution that the incident occurred at 08:00 a.m. in the house of the appellants. There are other houses adjoining the house of the appellants. The prosecution did not bring anything on record to prove the presence of respondent No.1 in the nearby area at the time of the incident or any incriminating material, which would connect the presence of respondent No.1 in the house of the appellants or nearby area at the time of the incident. It is

also to be mentioned here that nothing incriminating was seized from respondent No.1 during investigation. In the light of these facts, there are two dying declarations as claimed by the prosecution, one is made to PW-3, the mother of the deceased. She claimed that the dying declaration was made to her by the deceased, when the deceased was being taken from Washim to Government Hospital, Akola in an ambulance, wherein the deceased told that it is respondent No.1, who poured kerosene on her person and set her ablaze. The second dying declaration is made to PW-4, the Doctor, which is also similar to the first dying declaration.

07. It is very surprising that PW-3, to whom the so called dying declaration was made by the deceased on 19/06/2018, kept mum till 22/06/2018 and did not disclose such dying declaration to anyone. That apart, during cross-examination, PW-4 Doctor was shown the case history, wherein the case of the deceased is recorded as an accidental burn injury. It is also a matter of record appearing from the cross examination of PW-4 that two other Doctors viz. Dr. Gaurav Deshmukh and Dr. Umesh Thombe were treating the deceased and they were the ones, who referred her for surgery. The learned Judge has recorded all these discrepancies in the impugned judgment.

08. To sum up, in view of the fact that there is nothing on record to suggest the presence of respondent No.1 on the spot at the time of the incident, nothing incriminating is recovered from respondent No.1 coupled with the delay of three days in lodging the F.I.R. even after PW-3 came to know the culpability of respondent No.1 in the so called dying declaration along with the discrepancies, which have been brought on record in the cross-examinations of PW-3 and PW-4, we find that there is no irregularity committed by the trial Court in discarding the versions of PW-3 and PW-4 over the dying

declarations. No doubt, conviction can be solely based on dying declarations, provided that the said dying declarations are duly proved and inspire confidence of the Court, but this aspect is missing in the present case. That apart, nobody turned up to the Police Station to lodge a complaint.

09. Therefore, we do not find that it is a fit case to grant leave to file an appeal. Accordingly, the application as well as the appeal is dismissed. No costs.

(M.W. Chandwani, J.)

(Smt. M.S. Jawalkar, J.)

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