



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

CRIMINAL APPEAL NO.472 OF 2003

The State of Maharashtra
(Through Police Station
Kannad District Aurangabad)

.... APPELLANT
(Original Applicant)

VERSUS

1. Suresh Umaji Borde,
Age : 25 years, Occu.: Agriculture,
R/o.: Banshendra, Tq. Kannad,
District : Aurangabad
2. Ramesh Umaji Borde,
Age : 22 years, Occu.: Agriculture,
R/o.: As above.
3. Umaji Nathaji Borde,
Age : 64 years, Occu.: Agriculture,
R/o.: As above.
4. Mandabai Umaji Borde,
Age : 45 years, Occu.: Household,
R/o.: As above.

.... RESPONDENTS
(Original Accused)

....
Mr. S. R. Wakale, APP for the Appellant-State
Mr. Nilesh S. Ghanekar, Advocate for respondent Nos.1 & 2
....

**CORAM : SANDIPKUMAR C. MORE AND
Y. G. KHOBRAGADE, JJ.**

DATED : 07/11/2025.

JUDGMENT : (Per : Sandipkumar C. More, J.)

1. The appellant-State has challenged the acquittal of the present respondents, who were the original accused in Sessions Case No. 219 of 2001, from the offences punishable under Sections 302 and 498-A read with Section 34 of the Indian Penal Code, recorded by the learned Ad-hoc Additional Sessions Judge, Aurangabad (hereinafter referred to as “the learned Trial Judge”), by judgment and order dated 28.03.2003. However, at the stage of admission of the appeal, this Court admitted the same only against respondent Nos. 1 and 2.

2. According to the prosecution, the deceased Manjusha, wife of respondent No.1 – Suresh, started residing with the respondents after her marriage, which was solemnized on 11/05/2000. However, the respondents started harassing her over trivial issues. Respondent Suresh demanded an amount of Rs.10,000/- from the mother of the deceased, Manjusha, purportedly for securing employment in the Telco Company at Pune in November 2000. Although Reshma, the mother of the deceased paid Rs.3,000/- to respondent Suresh, he was dissatisfied with the amount and scolded the deceased.

On 08/07/2001, when the deceased’s father, Namdeorao and her sister, Vaishali, casually visited the respondents’ house,

Manjusha and Vaishali were laughing in the kitchen. At that time, respondent Suresh slapped the deceased for such conduct. When Vaishali questioned him, Suresh also slapped her. As Namdeorao and Vaishali were about to leave, Suresh again demanded Rs.5,000/-. After they left, respondents Suresh and Ramesh became angry. Ramesh allegedly sprinkled kerosene on Manjusha, and Suresh set her ablaze using a matchstick. Thereafter, both respondents extinguished the fire and took her to Apna Hospital on Jalna Road, Aurangabad.

Dr. Satish Mundada examined Manjusha at about 6:30 p.m. and found that she had sustained 85% burn injuries. He admitted her to the hospital and informed the Jawaharnagar Police Station about the incident. ASI Sangale rushed to the hospital and recorded her statement regarding how the incident occurred. On 09/07/2001, he recorded her supplementary statement. On the same day, as per request letter of ASI Sangale, Special Executive Officer Babasaheb Didore recorded Manjusha's dying declaration, in which she made allegations against respondents Suresh and Ramesh.

Subsequently, on 12/07/2001, ASI Mali recorded another statement of the deceased, in which she again incriminated the respondents. Lastly, on 13/07/2001, PSI Kanje recorded a further

statement of Manjusha, which was consistent with her earlier statements dated 09/07/2001 and 12/07/2001. Unfortunately, on 15/07/2001, at about 3:30 p.m., Manjusha succumbed to her injuries at the hospital. Consequently, an offence was registered against the respondents under Sections 498-A and 302 read with Section 34 of the Indian Penal Code. After conducting the trial, the learned Trial Judge, upon considering the evidence on record, acquitted all the respondents of the charges levelled against them.

3. The learned A.P.P. submits that although there is some variance between the dying declaration recorded on 08/07/2001 and the subsequent dying declarations, but the initial dying declaration dated 08/07/2001 was recorded when the deceased was in the company of her husband; therefore, the possibility of tutoring cannot be ruled out. According to him, in her subsequent statements, the deceased consistently stated that respondent Nos.1 and 2 had jointly set her ablaze. She also described in detail the manner in which she was ill-treated by all the respondents. Hence, the learned A.P.P. prayed that the appeal be allowed and the order of acquittal of the respondents be converted into a conviction.

4. On the contrary learned counsel Mr. N. S. Ghanekar, supported the impugned judgment and submitted that, the learned

Trial Judge has taken appropriate view in the light of evidence on record and acquitted the respondents properly.

5. Heard rival submissions and also perused the impugned judgment along with record and proceedings of the original case.

6. On going through the material on record, along with the impugned judgment, it appears that the prosecution case is based upon five written dying declarations namely Exhibit-41 recorded on 08/07/2001, Exhibit-42 recorded on 09/07/2001 by ASI Sangale, Exhibit-33 dated 09/07/2001 recorded by Special Executive Officer Didore, Exhibit-38 dated 12/07/2001 recorded by ASI Mali and Exhibit-27 dated 13/07/2001 recorded by Investigating Officer Babaurao Kanje.

7. However, out of these dying declarations the first dying declaration dated 08/07/2001 at Exhibit-41 is different than the rest of the dying declarations. On going through the same, it reveals that the deceased in the said dying declaration had stated that when her father and husband – Suresh was chatting loudly in the hall, she thought that Suresh was quarreling with her father. Therefore, after her father left the house, she in distressed condition poured kerosene on her on person and set her ablaze on

fire when her husband -Suresh had gone out. On the contrary, in the other four dying declarations she has stated about her alleged illtreatment as per the prosecution story and ultimately told that respondent – Suresh and Ramesh beat her after departure of her father and sister – Vaishali. Ramesh then poured kerosene on her person and Suresh set her ablaze.

8. It is significant to note that there is material variance in the dying declaration Exhibit-41 and rest of the dying declarations. Importantly, the last four dying declarations incriminating the respondent Nos.1 & 2 were recorded after the parents of deceased had met her. As such, the possibility of tutoring at the hands of parents of deceased cannot be ruled out since the deceased was alive till 15/07/2001. It is observed by the Hon-ble Apex Court in so many judgments that in case of multiple dying declarations, the earlier in time is to be believed. Moreover, it is surprising that the prosecution itself admitted the contents of dying declaration Exhibit-41 when it was called upon to admit the dying declarations Exhibits-41 & 42 vide application Exhibit-35 of the defence counsel of the respondents – accused. The learned trial judge has already examined all these dying declarations and come to the conclusion that the initial dying declaration Exhibit-41 would prevail over the subsequent dying declarations.

9. Further, so far as charge under Section 498-A of IPC against the respondents is concerned the trial court has observed the contradictions between evidence of PW-4 Reshma i.e. mother of the deceased and PW-2 Vaishali i.e. sister of the deceased though it was stated by them that respondent – Suresh had demanded an amount of Rs.10,000/- for getting employment in Telco company at Pune, but there is variance in their versions to that effect. PW-4 Reshma is saying that the respondent – Suresh had actually assaulted deceased – Manjusha for having brought lesser amount of Rs.3,000/- whereas PW-2 Vaishali has not stated anything about the same. Further, though it was the case of prosecution that at the time of departure of father of the deceased on the fateful day from the house of respondents, Suresh had demanded an amount of Rs.5,000/-, but the prosecution for the reason best known to it did not examine Namdeorao i.e. father of the deceased. Apart from that there was correspondence brought on record in form of bunch of letters written by Manjusha, the deceased to Suresh. Further, a letter written by Vaishali i.e. PW-2 to Suresh dated 01/09/2000 is also on record. The learned Trial Court, upon examining those letters, clearly concluded that none of them revealed any rift between the respondents and the deceased, Manjusha. On the contrary, those letters indicated that there was peace, harmony and good going between respondents and Manjusha. Therefore, the

prosecution has also failed to adduce reliable and trustworthy evidence in respect of alleged illtreatment of the deceased at the hands of respondents.

10. The Hon'ble Apex Court in many judgments has discussed the scope of appeal against acquittal. It has been consistently held that if the learned trial judge has acquitted the accused persons by properly appreciating the evidence on record and has taken a possible view, then in the appeal the conclusion of learned trial judge cannot be disturbed merely because another view is possible. In the instant case, we are of the opinion that the learned trial judge has rightly appreciated the evidence on record and taken possible view. As such, we do not find any reason to interfere with the impugned judgment and order. In the result, appeal fails and stands dismissed.

(Y. G. KHOBRAGADE, J.) (SANDIPKUMAR C. MORE , J.)