

bipin prithiani

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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 634 OF 2014

Uttam Anna Lande
Age 42 years, Occ. Service,

... Appellant

Versus

State of Maharashtra
To be served through
Public Prosecutor, High Court,
Bombay.

... Respondents

Mr Abhishek Avachat for the Appellant/Applicant.

Mrs G. P. Mulekar, APP for the Respondent-State.

***CORAM: NITIN W. SAMBRE &
R. N. LADDHA, JJ.***

***RESERVED ON : 5th JANUARY, 2023
PRONOUNCED ON : 23rd JANUARY, 2023***

Judgment (Per R. N. Laddha, J.) :-

By this Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, the Appellant seeks to challenge the

Judgment dated 15th September 2011 passed by the learned Sessions Judge, Pune, in Sessions Case No. 556 of 2010, whereby the Appellant is convicted for committing an offence punishable under Section 302 of the Indian Penal Code, 1860. He was sentenced to undergo imprisonment for life together with payment of the fine of Rs.500/- and in default of payment of fine, he has been sentenced to undergo rigorous imprisonment for six months.

2. Background facts, in a nutshell, are as follows:

i) Accused/Appellant Uttam Lande was residing at village Takve Budruk along with his wife Sangita and two sons, namely, Balaji and Dyneshwar. The accused was addicted to liquor. After consuming liquor, he used to threaten his wife that he would not keep her alive.

ii) On 29.04.2010 at about 6:00 am, accused Uttam consumed liquor and insisted his wife Sangita not go to work. On refusal, the accused got infuriated and raked up a quarrel, stating that he would see how she could go for work. He then poured kerosene on her and set her on fire. Sangita began shouting; hearing her screams, the neighbours rushed to her rescue and extinguished the fire. She suffered burn injuries on her face, chest, abdomen and thighs. She was immediately taken to Dr Dahiphale's clinic in the same village.

On his advice, she was shifted to Sassoon Hospital, Pune. As it was a case of burning, the Police were informed.

iii) Accordingly, Police Head Constable Shashikant Waghule visited the hospital and consulted Medical Officer Dr Raghvendra Chalikwar to record the statement of Sangita. Upon examination of Sangita, Dr Chalikwar found her in a fit condition to give a statement. Accordingly, on 29.04.2010 at about 4:30 pm, PHC Mr Waghule, in the presence of Dr Chalikwar, recorded her statement wherein she alleged that her husband/accused poured kerosene on her person and set her ablaze. Her statement was then forwarded to Vadgaon Maval Police Station for further action. Based on this, an offence bearing C.R. No. 74 of 2010 under Section 307 of the Indian Penal Code came to be registered against the accused. Panchnama of the scene of occurrence came to be drawn. Incriminating articles found thereat were seized. Seized articles were sent to the forensic science laboratory for analysis. The witnesses were interrogated, and their statements were recorded.

iv) On 03.05.2010, the brother of Sangita shifted her to Pawana Hospital for further medical treatment. However, on 06.05.2010, Sangita succumbed to the burn injuries and, therefore, the offence was converted to one under Section 302 of the Indian Penal Code.

v) Inquest on the dead body of the deceased was held. The autopsy examination of the deceased was conducted. Police procured postmortem notes and the report from the forensic science laboratory. As the investigation revealed the complicity of the accused in the offence punishable under Section 302 of the Indian Penal Code, a charge sheet came to be lodged against him.

3. To prove its case, the prosecution examined as many as seven witnesses and tendered a number of documents. The evidence of the prosecution can be conveniently classified into three parts. Firstly, the dying declaration allegedly made by the deceased, which was sought to be proved through the testimony of PHC Shashikant Waghule (PW1) and Dr Raghvendra Chalikwar (PW2). Secondly, the medical evidence formed by the testimony of Dr Raghvendra Chalikwar (PW2), Dr Madhav Waghmare (PW4) and Dr Ashwin Masane (PW5), and the documents came to be proved in their evidence. Thirdly, circumstantial evidence in the nature of the Scene of Occurrence Panchnama and Chemical Analyzer's Report. After the completion of prosecution evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973, wherein the entire incriminating evidence was put to the accused. In reply, the accused pleaded innocence and

false implication at the instance of the deceased's brother. According to him, Sangita sustained burn injuries from the bursting of a kerosene stove while cooking a meal.

4. The learned Sessions Judge relying on the statement of Sangita made before PHC Shashikant Waghule and Dr Raghvendra Chalikwar and which has been treated as the dying declaration of Sangita (hereinafter referred to as 'the deceased') and the testimony of the witnesses and documents, found that the prosecution case had been proved beyond doubt and held the accused guilty and convicted him under Section 302 of the Indian Penal Code. Evidence of PW1 and PW2 are relied upon to repose the faith in the dying declaration.

5. Mr Abhishek Avchat, learned counsel appearing on behalf of the Appellant, submitted that the learned trial Court committed a manifest error in returning a finding of guilt sans legal evidence. According to him, no reliance could be placed on the statement, which was considered to be the dying declaration of the deceased, as the declaration was not made to a Magistrate but to a Police Officer, and no explanation was offered as to why the declaration could not be made to the Magistrate. The cause of burn injuries is attributed to the accidental bursting of the stove.

6. To further raise suspicion on the dying declaration, it is submitted that the facts and circumstances of the case demonstrate that the deceased was in no state to make a statement because of her suffering 72% burn injuries. Also, there was no corroborating evidence of this alleged dying declaration. In his view, in the absence of any corroboration of the dying declaration, the conviction could not be justified.

7. It has been submitted that the neighbours, who took the deceased to the hospital and the brother of the deceased, who got her discharged from Sassoon Hospital and admitted her to a private hospital, have not been examined, nor have any independent witnesses, though available, was examined by the prosecution.

8. It has been submitted that Dr Hariram Dahiphale (PW7) has stated that the deceased informed him that she suffered burn injuries due to the bursting of the stove accidentally. There is inconsistency in the evidence of Dr Dahiphale, narration in the FIR, and the dying declaration of the deceased.

9. It has been submitted that though the incident occurred on 29.04.2010 at about 6:00 am, the dying declaration was recorded at

about 4:30 pm, as such, ample time for tutoring was available. Further, it has been submitted that there are discrepancies in the medical papers of Sassoon and Pawana Hospitals, as the papers of Pawana Hospital show accidental burns as against homicidal burns.

10. According to the learned counsel for the Appellant, the trial Court did not examine the evidence from a proper perspective. He complains that the trial Court has misread the prosecution evidence and was influenced by several assumptions which cannot be sustained based on the material on record, and this has resulted in a grave miscarriage of justice. In support of his contentions, the learned counsel relied on the decision in *Uttam v/s. State of Maharashtra*¹.

11. Mrs G. P. Mulekar, learned Additional Prosecutor appearing for the respondent-State, made various submissions countering the arguments put forth by the Appellant. She submitted that the deceased had narrated a detailed incident, which is amply corroborated by the medical evidence, wherein she had explicitly named the Appellant as a culprit.

12. It has been submitted that the evidence of Dr Chalikwar (PW2) shows that at the time of admission, the deceased had given

1 (2022) 8 SCC 576

a history of homicidal burns. This witness stated that before the recording of the dying declaration of the deceased, he examined her and found her to be conscious and oriented to time, place and person. In his presence, PHC Waghule, as per narration given by Sangita, recorded her dying declaration.

13. Learned APP invited our attention to the fact that the Police Head Constable, who had recorded the dying declaration, was not the Investigating Officer, nor was he posted at Vadgaon Maval Police Station. According to her, the conviction in a murder case based on a truthful dying declaration, even made to the Police Officer and not to the Magistrate, is sufficient to convict the accused. According to her, no fault can be found with the impugned Judgment.

14. It is submitted that there is only one dying declaration recorded on 29.04.2010 at about 4:30 pm. The evidence of PW1 and PW2 corroborates the dying declaration. Panchnama of the scene of occurrence does not support the theory of the bursting of the stove. It is pointed out that after examining Sangita, Dr Chalikwar (PW2) endorsed the dying declaration to the effect that she was in sound condition to give the statement. After that, he

claimed to have signed the dying declaration, which came to be proved in the evidence.

15. It is a settled position of law that a dying declaration must not necessarily be made to a Magistrate only. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind.

16. In *Jaswant Singh v/s. State (Delhi Administration)*², it is held that conviction in the murder case based on a truthful dying declaration, even made to Police Official and not to the Magistrate, is sufficient to convict the accused.

17. In *State of Uttar Pradesh v/s. Ramsagar Yadav & Ors.*³, the Hon'ble Supreme Court, has observed that a dying declaration can be acted upon without corroboration. There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true, it is only if the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the dying declaration.

2 AIR 1979 SC 190

3 (1985) 1 SCC 552

18. In *Ramawati Devi v/s. State of Bihar*⁴, it was enunciated that there is no requirement of law that a dying declaration must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such a statement must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person based on a dying declaration in light of the facts and circumstances of the case.

19. In *Jagbir Singh v/s. State (NCT of Delhi)*⁵, after referring to its previous pronouncements in *Paniben v/s. State of Gujarath*⁶, wherein the principles of a dying declaration were expounded as under :

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja & Anr. v/s. State of Madhya Pradesh⁷)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of Uttar Pradesh v/s. Ram Sagar Yadav⁸, Ramawati Devi v/s. State of Bihar⁹)

4 AIR 1983 SC 164

5 (2019) 8 SCC 779

6 (1992) 2 SCC 474

7 (1976) 3 SCC 104

8 (1985) 1 SCC 552

9 (1983) 1 SCC 211

(iii) *This Court has to scrutinize 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. (K. Ramchandra Reddy v/s. Public Prosecutor¹⁰)*

(iv) *Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v/s. State of Madhya Pradesh¹¹)*

(v) *Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v/s. State of Madhya Pradesh¹²)*

(vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v/s. State of Uttar Pradesh¹³)*

(vii) *Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v/s. Krishnamurti Laxmipati Naidu¹⁴)*

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

10 (1976) 3 SCC 618

11 (1974) 4 SCC 264

12 1981 Supp. SCC 25

13 (1981) 2 SCC 654

14 1980 Supp. SCC 455

the statement itself guarantees truth. (Surajdeo Ojha v/s. State of Bihar¹⁵)

(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 eyewitnesses had said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v/s. State of Madhya Pradesh¹⁶)

(x) Where the prosecution version defers from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of Uttar Pradesh v/s. Madan Mohan¹⁷)”

20. A survey of these decisions would show that the mere fact that the dying declaration was recorded by a Police Official cannot be a ground to discard the same. It is for the defence to demonstrate that the Police Official has some agenda or motive to record a false statement or to fabricate the statement of the victim of the crime. Conviction of a person can be made solely on the basis of a dying declaration which inspires the confidence of the Court. If there is nothing suspicious about the declaration, no corroboration is necessary. The Court must be satisfied that there is no tutoring or prompting.

15 1980 Supp. SCC 769

16 1988 Supp. SCC 152

17 (1989) 3 SCC 390

21. On the aforesaid touchstone, reverting to the facts of the present case, it is pertinent to note that the defence has not disputed the fact of the death of the deceased because of burn injuries on 06.05.2010. The crux of the matter is whether the death was homicidal. Further, whether the deceased was in a fit condition to make the declaration and whether the declaration was voluntary and true.

22. It is not in dispute that Sangita sustained burn injuries at her residential house on 29.04.2010. The plea sought to be raised on behalf of the appellant that the deceased suffered burn injuries due to the accidental bursting of the stove are negatived by the fact that the scene of occurrence panchnama does not show the presence of kerosene stove leaves apart in bursting state at the spot of the incident. Neither accused stepped into the witness box nor examined any witness to prove the case of the accidental bursting of the stove.

23. On the contrary, there is evidence on record, both in the form of oral testimony and documentary evidence, to show that a nylon saree, and a petticoat, in burnt condition, and a plastic can containing kerosene oil and a matchbox were found at the spot of

the incident. These articles were also sent for forensic examination. It is seen from the report of the chemical analyser that traces of kerosene oil were found on the burned clothes of the deceased. Evidence of PW3 Santosh panch witness and PW6, the Investigating Officer Gorakh Tupe, duly proves the scene of offence panchnama Exh.19.

24. The next question is whether the deceased was in a physical and mental condition to make a dying declaration. In this respect, the evidence of PHC Mr Shashikant Waghule (PW1) shows that the deceased was brought to the Sassoon General Hospital, Pune, on 29.04.2010. On receiving information from PHC Tilekar, he went to the Sassoon Hospital, met the Medical Officer and requested him to certify the fitness of Sangita to record her statement. Accordingly, the Medical Officer examined her and found her conscious and oriented to time, place and person. He claimed to have recorded the statement of the deceased as per her version. He further deposed that the statement was read over to Sangita and obtained her foot-thumb impression.

25. According to Mr Waghule (PW1), the deceased had stated that in the last two months, her husband had started taking excessive liquor and used to tell her that one day he would not keep

her alive. On 29.04.2010, at about 6:00 pm, her husband directed her not to go to work, and on refusing, he threatened her that he would see how she would go to work and that he would not keep her alive. After that, her husband poured kerosene on her person and set her on fire with a matchstick. When she started crying and shouting, neighbours came to her rescue and put off the fire and admitted her to the hospital.

26. Mr Waghule (PW1) claimed that he had recorded the statement of the deceased in the presence of the Medical Officer. The Medical Officer then put his endorsement certifying that the deceased was conscious and oriented to time, place and person; before, during and at the end of the statement.

27. Dr Raghvendra Chalikwar (PW2), the Medical Officer attached to the Sassoon General Hospital, seeks to lend support to the claim of Mr Waghule (PW1). Dr Chalikwar (PW2) informed the Court that the deceased was admitted to the hospital on 29.04.2010. At the time of her admission, she had given a history of homicidal burn injuries. He stated that the Police Head Constable recorded the statement of Sangita in his presence as per the narration given by her. He stated that he made an endorsement over the dying declaration of Sangita that she was conscious and

oriented to time, place and person before, during and at the end of the dying declaration (Exh.13). The evidence of PW1 and PW2 would demonstrate that at the time of recording dying declaration of Sangita, she was in a condition to make the statement.

28. There is no acceptable material or circumstances to suspect that the PHC Mr Waghule (PW1), who recorded the dying declaration or the Medical Officer (PW2), had any animus against the accused or were in any way interested in fabricating a dying declaration. In such circumstances, the dying declaration recorded by the PW1, who was performing his official duties, sufficiently assures that the deceased was capable of making the dying declaration.

29. On the next count, as to whether the dying declaration was voluntary and true and free from tutoring or prompting, it is seen from the record, more particularly the hospital papers, that when the deceased was admitted to the Sassoon Hospital, the accused was present with her. This fact automatically rules out the possibility of tutoring the deceased to implicate the accused falsely in the crime. Even the evidence of PW2 shows that at the time of recording the dying declaration of the deceased her relatives were sent out.

30. It is not in dispute that immediately after the incident, the deceased was taken to the clinic of Dr Hariram Dahiphale (PW7). One contradiction is brought on record from the evidence of this witness. This contradiction, on its proof by the Investigating Officer (PW6), is at Exh. 63. This witness had stated to the Police while recording his statement that the deceased had told him that she sustained burns while cooking food because of the bursting of the stove. In this respect, the learned Sessions Judge has rightly observed that this contradiction cannot be accepted as substantive evidence, but it can, at the most, impeach the credit of Dr Hariram (PW7), and no inference can be drawn from the evidence that the dying declaration of Sangita at Exh. 13 is not truthful.

31. Similarly, the confusion created by medical case papers at Exh.23 of Pawana Hospital shows that the deceased sustained accidental burns. But here, we cannot ignore the evidence of PW5 Dr Ashwin, the Resident Medical Officer of Pawana Hospital, who categorically states that at the time of admission of the deceased, she had not given the history. Therefore, it does not amount to her dying declaration. In this respect, the learned Sessions Judge had rightly held that the contention of the learned defence counsel that the first dying declaration was made by the deceased before Dr Dahiphale (PW7) and her third dying declaration was before the

hospital authorities of Pawana Hospital was devoid of substance as no such dying declarations were found to be made by the accused.

32. Lastly, Mr Abhishek Avachat, the learned counsel appearing for the Appellant, submitted that the alleged incident was not pre-mediated. The dispute ensued over a trivial matter. There is no material to suggest that the Appellant had any intention of causing the death of his wife. His rage had dominated his passive spirit, and in an impulsive moment, rage had become an act of aggression. He had no intention to commit an act which would result in the death of his wife and, therefore, his act would fall under Section 304 Part II of the Indian Penal Code.

33. Reference in this connection was made to the following cases:

- (i) *Jai Prakash v/s. State (Delhi Administration)*¹⁸
- (ii) *Kesar Singh & Anr. v/s. State of Haryana*¹⁹
- (iii) *Haridas Bedare v/s. The State of Maharashtra*²⁰
- (iv) *Subhash Kumbar v/s. State of Maharashtra*²¹

34. Mrs Mulekar, the learned Additional Public Prosecutor appearing for the Respondent-State, made various submissions countering the arguments put forward by the Appellant. She

18 (1991) 2 SCC 32

19 2008 AIR SCW 6769

20 Criminal Appeal No. 966 of 2015 decided on 18.10.2022

21 Criminal Appeal No. 744 of 2017 decided on 06.10.2022

submitted that the deceased Sangita had narrated a detailed incident which is amply corroborated by the medical evidence wherein she had specifically named the Appellant as a culprit.

35. We have given anxious consideration to the submissions of the learned counsel for the parties. Also perused the Judgments relied upon by the learned counsel for the Appellant.

36. In order to bring the act of an accused within the purview of Section 304 Part I or Part II of the Indian Penal Code, it is not sufficient to prove that the incident took place all of a sudden without any premeditation, but, it is also to be proved that the accused did not take undue advantage or did not act cruelly. In the present case, the act of the accused of pouring the kerosene oil on the person of the deceased, setting her ablaze and not extinguishing the fire would speak entirely against him and demonstrates the intention and knowledge on the part of the Appellant. The deceased was the wife of the Appellant and was alone in the house. The Appellant had taken undue advantage of the situation and acted cruelly. Even if the incident in question was not premeditated and sudden, the manner of retaliation is disproportionate. The learned Sessions Judge in the impugned judgment has rightly observed that the act of the accused in setting

ablaze the deceased was an intentional act for causing her death, and it was preceded by threats emanated from him that he would not let her alive. Thus, by no stretch of the imagination, it can be said that the offence would not be murder punishable under Section 302 of the Indian Penal Code.

37. We have already concluded that the dying declaration of the deceased recorded by PW1 is truthful and voluntary and that she was in a sound condition to give a valid statement. The learned counsel for the Appellant was not in a position to show any infirmity in this dying declaration, either in the form of procedure adopted or any circumstance leading that it was not voluntary or was given under the influence. Significantly, the Appellant has not come with any version that he tried to rescue his wife from the burning. Again, his act of setting the deceased ablaze and not extinguishing the fire would speak entirely against him. Therefore, in our overall view of the matter, we are not convinced with the case of the defence that the accused suffered from accidental burn injuries, and the instant case is not one of homicidal death. The trial Court has discussed the entire evidence in detail and, in our opinion, has reached the right conclusion that the prosecution has been able to establish the case against the accused beyond a reasonable doubt.

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38. Resultantly, this Appeal fails and is hereby dismissed. The order of conviction and sentence passed by the learned Sessions Judge, Pune, in Sessions Case No. 556 of 2010, is hereby confirmed.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.