IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 267 OF 2004

Vasant s/o Nagnath Amilkantwar
Age 45 years, Occ. Business
R/o. Mugat, Tq. Mudkhed
District Nanded ...Petitioner

versus

1. The State of Maharashtra
Through the in charge Police Officer
Police Station Mudkhed
(Copy to be served on Public
Prosecutor, High Court, Bench
at Aurangabad)

2. Santosh s/o Laxmanrao Wattamwar
Age 29 years, Occ. Business

3. Laxman s/o Digambarrao Wattamwar
(died)

4. Sow. Harshbala w/o Laxman Wattamwar
Age 62 years, Occ. Household
All R/o. Mudkhed, Tq. Mudkhed
District Nanded ...Respondents

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Ms. Aummaheshwari S. Jadhav h/f Mr. P.R. Katneshwarkar, advocate for the petitioner
Mrs. Geeta L. Deshpande, A.P.P. for respondent No.1
Mr. S.R. Bagal h/f Mr. B.N. Gadegaonkar, advocate for respondent Nos. 2 and 4.

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CORAM : BHARAT P. DESHPANDE, J.

Date of Reserving the Judgment : 02.08.2022

Date of pronouncing the Judgment : 05.08.2022

JUDGMENT:-

1. The original informant filed present criminal revision application under Section 401 of Cr.P.C. thereby challenging the judgment and order of acquittal dated 23.3.2004 passed in Sessions Case No. 26 of 2002 by the learned Sessions Judge, Nanded.

2. The learned Sessions Judge, Nanded in his judgment dated 23.3.2004 found that the prosecution has failed to prove charges levelled against accused persons and accordingly said three accused persons were acquitted of the offences punishable under Sections 498A, 304-B, 306 r.w. 34 of I.P.C.

3. The petitioner, unfortunate father of deceased Vandana @ Seema, preferred present revision application basically on three different aspects. (i) Firstly, it is claimed that learned Sessions Judge ignored basic principles of law with regard to offences punishable under Sections 498A and 304-B while appreciating evidence and giving more importance to surmises and conjunctures as well as fancy reasons for discarding the evidence of P.W.3, 4 and 5. (ii) Secondly, the applicant claimed that learned Sessions Judge completely lost sight of provisions of Section 113-A of Indian Evidence Act. (iii) Thirdly, it has been claimed that the learned Judge accepted defence version and more particularly alleged dying

declaration of deceased which in fact has not been proved in evidence as recorded by exercising judicial norms and settled proposition of law.

4. Vide order dated 14.7.2006, Rule was issued. Accordingly, respondents appeared in the matter. Record and proceedings were called for. It has been informed that during pendency of present revision application, respondent No.3 Laxman Digambarrao Wattamwar (original accused No.2) expired. Therefore, as far as respondent No.3 is concerned, the matter stands abated.

5. Heard learned counsel for the petitioner, learned A.P.P. for respondent No.1 and learned counsel for respondent Nos. 2 and 4.

6. With the assistance of learned counsel appearing for the respective parties, I have perused entire record as well as impugned judgment and order and more specifically the reasons disclosed therein while acquitting the accused persons. This application was filed much prior to amendment effected to the provisions of Section 378 of Cr.P.C., as at the relevant time, there was no provision for the informant to file appeal challenging the order of acquittal. It is an admitted fact that inspite of acquittal passed by learned Sessions Judge, the State did not file any appeal challenging such decision. Accordingly, the present criminal revision application is now taken up for final disposal.

7. Learned counsel for the applicant strenuously urged that the reasons given by the learned Sessions Judge in acquitting the accused persons are prima facie perverse, against settled propositions of law and by ignoring law laid down by the Apex Court in connection with appreciation of evidence of the dowry matters and also with regard to accepting of dying declaration. She forcefully submitted that reasons for discarding evidence of the parents of deceased the learned Sessions Judge has considered the flimsy grounds. Such finding is purely perverse and by ignoring the presumption under Section 113-A of Indian Evidence Act. She then claimed that deceased sustained burn injuries of 97% in her matrimonial house and that too in presence of accused persons. The incident occurred within three years from the date of marriage and therefore, learned Judge ought to have presumed that it is a case of dowry death. She then claimed that the dying declaration of deceased produced by the defence evidence is not at all reliable, authentic and raise suspicion. Inspite of above aspects, learned Sessions Judge accepted such dying declaration and thereby committed patent illegality in acquitting accused persons.

In support of her submissions, learned counsel for the petitioner placed reliance on the following decisions:-

i) Paparambaka Rosamma and Ors. vs. State of Andhra

Pradesh, reported in AIR 199 SC 3455;

ii) Atbir vs. Govt. of N.C.T. of Delhi, reported in AIR 2010 SC 3477;

iii) Tapinder Singh vs. State of Punjab and Ors. reported in AIR 1970 SC 1566;

iv) Ravindra Trimbak Patil vs. State of Maharashtra, reported in 2014 Cri.L.J. 2664;

v) Harbans Singh and another vs. State of Punjab, reported in AIR 1962 SC 439;

8. Learned A.P.P. appearing for State submitted that the findings of learned Sessions Judge cannot be accepted and this is a fit case for quashing of such judgment and remanding the matter back for deciding afresh.

9. Learned counsel appearing for respondent Nos. 2 and 4 forcefully submitted that the grounds in the present revision application are devoid of merit and learned Sessions Judge considered all aspects and appreciated the evidence of witnesses in proper manner. He submitted that during defence evidence, the burden on accused persons to prove their defence is on the preponderance of probabilities and while appreciating such aspect, the learned Sessions Judge found that such dying declaration is trustworthy. He therefore, claimed that no interference is warranted

with the findings in the impugned judgment and order of acquittal.

10. Before considering the above submissions, it is necessary to look into the observations of learned Sessions Judge while deciding the points framed at page No.4. Point No.1 is with regard to the aspect of cruelty meted out to deceased by accused persons. Point No.2 is whether death had occurred otherwise than in normal circumstances and within 7 years of her marriage. Point No.3 is again referring to the cruelty at the hands of accused Nos. 1, 2, and 3. Point No.4 is whether accused with their common intention abetted/instigated Vandana to commit suicide. All said points were taken for discussion jointly. Learned Sessions Judge observed in para 5 itself that accused admitted that Vandana died of burn injuries on 14.6.2001 i.e. within a period of three years from her marriage. Accused persons then admitted inquest panchnama (Exh.18), post mortem report (Exh.20). Post mortem report shows that Vandana sustained 97% burn injuries. The cause of death as per doctor is due to shock due to burn injuries.

11. Learned Sessions Judge then appreciated the evidence of prosecution witness with regard to aspect of cruelty from para 7 onwards. He refused to accept the version of parents of deceased on the ground that accused knew about the financial status of parents of deceased, who were poor as compared to accused persons and therefore, there was no question of asking dowry. Such

finding, with utmost sincerity has to be considered as flimsy and imaginary.

12. The aspect of dowry in our society is clearly a social menace. Inspite of strict legislation and punishments imposed by the courts from time to time, many cases are coming in the courts of law. A greed is not dependent upon the status of persons. Demand of dowry even by reach persons against poor family members of the wife is rampant. Thus, discarding evidence of parents on such flimsy grounds is clearly against settled principles and propositions of law. Learned Sessions Judge has completely lost sight of settled propositions to be considered while deciding dowry case and thereby arrived at erroneous conclusion.

13. As far as so called drying declaration of deceased Vandana is concerned, admittedly, it was not relied upon by the prosecution, however, it was brought on record through defence witness. Such dying declaration is at Exh.19 and the same was brought on record through the defence witness, who was A.S.I. Kisan Bokare (Exh.29). Learned Sessions Judge has fully relied upon such dying declaration and considered the contents mentioned therein. In the said dying declaration, Vandana disclosed to A.S.I. Kisan Bokare that she committed suicide, as she was unable to bear the pains in stomach, which she was suffering since long. She further stated in the said dying declaration that no one was responsible for her death.

14. Learned counsel appearing for the petitioner was fully justified in her statement that patent illegality has been committed by learned Sessions Judge while relying upon said dying declaration which was not at all proved to be authenticate. She invited my attention to the deposition of D.W.1 Kisan Bokare (A.S.I. police station Vaijabad). The cross examination of D.W.1 clearly goes to show that he did not inquire from doctor whether the patient was in a position to give statement and whether she was in fit state of mind.

15. It is settled propositions of law that before accepting dying declaration the court must satisfy itself certain parameters which are mandatory to be gone into by the person who has recorded it. First of all, doctor has to certify that the patient is in fit state of mind, conscious and able to record her statement. Such certificate of the doctor must appear in writing, either on declaration itself or separately attached to it. Admittedly, in the present matter, there is no medical certificate obtained by D.W.1 to show the statement of doctor that the patient was in sound state of mind and fit to give statement. It is fact that deceased Vandana had suffered 97% burns and D.W.1 stated that she was screaming. He did not tell what type of medicines were administered to her after she was admitted. The doctor, who was present in the hospital is not examined in defence to prove that deceased Vandana was in a fit state of mind to give her statement.

16. In the case of ***Paparambaka Rosamma and Ors. vs. State of Andhra Pradesh (supra)*** the Hon'ble Apex Court considered Section 32 of Indian Evidence Act and more particularly dying declaration and thereafter observed that in case no evidence is led to prove that person is in sound state of mind to make declaration and if there is no medical certificate for certifying state of mind of persons making declaration, such dying declaration is of no substance. Learned counsel for the petitioner then pointed out to the observations in para 16 of the above decision and submitted that such dying declaration can be sole basis for conviction if it inspires full confidence of the court. Similarly, if after careful scrutiny the court is satisfied that it is true and free from any sufferings to induce deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it base of conviction even if there is no corroboration.

17. It is settled propositions that dying declaration is not deposition in court and it is neither made on oath nor in presence of the accused. It is therefore, not tested by cross examination on behalf of the accused. The dying declaration is admitted in evidence by way of exception to the general rule against admissibility of hearsay evidence, on the principle of necessity. The weak point of a dying declaration merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinize all the

relevant attendant circumstances. Each case must be determined on its own fact keeping in view the circumstances in which dying declaration was made. It is equally true that it cannot be laid down as a general proposition that dying declaration is weaker kind of evidence than other pieces of evidence. The dying declaration which has been recorded by the competent Magistrate, in proper manner, i.e. to say in the form of questions and answers and as far as possible practical in words of maker of declaration stands on much higher even than the dying declaration which depends upon oral testimony which may suffer from all infirmities of human memory and human character. In order to rely on dying declaration, the court has to keep in view the circumstances like an opportunity to a dying person for observations. Hence, in order to pass test of reliability the dying declaration has to be subjected to a very close scrutiny keeping in view with the fact that the statement has been made in absence of accused, had no opportunity to test the veracity of such statement by cross examination.

18. In the present matter, though the prosecution did not rely upon dying declaration, it was brought on record through the defence witness. However, before accepting the said dying declaration as reliable and trustworthy, it was the duty of learned Sessions Court to scrutinize it closely. The observations of learned Sessions Court in the impugned judgment while relying upon such dying declaration are very cryptic and he failed to consider settled parameters before

accepting it. Admittedly, there is no certificate issued by the Medical Officer to certify that deceased was in fit state of mind before making such declaration. There is only endorsement “She was conscious throughout”. Such statement by medical Officer is not sufficient enough to prove actual state of mind of patient and whether she was in sound state of mind. Remaining conscious and in fit state of mind are two different aspects.

19. It is no doubt true that the burden on the defence is not as heavy as that of prosecution. However, before accepting such dying declaration in favour of accused persons, it was the duty of learned Sessions Court to first of all satisfy himself that such declaration was obtained by following all parameters.

20. The matter in hand clearly goes to show that such dying declaration was not recorded by observing all parameters and therefore even placing reliance on it on preponderance of probabilities in favour of the accused persons is not at all justified.

21. Admittedly, deceased sustained 97% burns in her matrimonial house when all accused persons were present in the house. Such burn injuries were sustained within a period of three years from her marriage. Prior to the said incident, there are allegations by the parents that she was subjected to ill-treatment and demand of dowry. Therefore, rejecting such contention of assumptions and conjectures

as well as on flimsy ground, is not at all justified.

22. This is a fit case for exercising jurisdiction under Section 401 of Cr.P.C. as it is found that learned Sessions Judge completely ignored settled propositions of law with regard to dowry death, appreciation of evidence in connection with demand wherein normally there is no independent witness and thirdly, with regard to dying declaration which appears to be not genuine. Thus, acquitting all accused persons on these grounds is a miscarriage of justice. Deceased and her parents suffered at the behest of said judgment and therefore, interference is necessary.

23. Having said so, the impugned judgment of acquittal of persons by the trial court for the offences punishable under sections 498A, 304-B, 306 r.w. 34 of I.P.C. in Sessions Case No. 26 of 2002 decided on 23.3.2004 by the learned Sessions Judge, Nanded is required to be quashed and set aside. The matter is therefore, required to be remanded to the learned Sessions Judge, Nanded to decide the said Sessions Case afresh after hearing the parties by giving them opportunity to argue the matter. Hence, the following order:-

O R D E R

I. Criminal revision application stands allowed.

II. The impugned judgment and order dated 23.3.2004 in Sessions Case No. 26 of 2002 is hereby quashed and set aside.

III. The Sessions Case No. 26 of 2002 is therefore remanded to the learned Sessions Judge, Nanded. The learned Sessions Judge after hearing the parties afresh shall decide it as expeditiously as possible, however, within a period of six (06) months from the date of receipt of writ from this Court.

IV. Original accused Nos. 1 and 3 shall appear before the Sessions Court Nanded on 22.8.2022.

V. Criminal Revision application stands disposed of.

VI. Rule made absolute in the above terms.

VII. Record and proceeding be returned to the Sessions Court forthwith.

(BHARAT P. DESHPANDE, J.)

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