

ASHABAI & ANR.

v.

STATE OF MAHARASHTRA
(Criminal Appeal No. 1062 of 2008)

JANUARY 4, 2013

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

PENAL CODE 1860:

ss. 302/34 and 498-A/34 – Death of a married woman caused by burn injuries – Dying declaration and oral evidence establishing ill-treatment to deceased and role of accused persons in causing her death – Medical evidence and oral evidence supporting prosecution version – Conviction of mother-in-law (who died during pendency of appeal before Supreme Court) and two sisters-in-laws (appellants) of deceased and sentence of life imprisonment – Affirmed by High Court – Held: There is no infirmity in the order of conviction and sentence recorded by trial court and affirmed by High Court – Evidence Act, 1872 – s.32 – Sentence/Sentencing.

EVIDENCE ACT, 1872:

s. 32(1) – Multiple dying declarations – Held: When there are multiple dying declarations, each one has to be assessed and evaluated independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other – In the instant case, prosecution relied on four dying declarations of the deceased – At the time of recording of these statements, medical officers on duty had certified that the deceased was fully conscious and was in a fit state of mind to make the same – Though, in one of the statement, the deceased implicated two more persons (who were acquitted by trial court) she was consistent about the role

A *played by her mother-in-law and sisters-in-law (appellants) – The Court fully endorses the view expressed by trial court and affirmed by High Court about acceptability of four dying declarations implicating the appellants.*

B **CRIME AGAINST WOMEN:**

Punishment – Held: In the cases of bride burning, cruelty, suicide, sexual harassment, rape, suicide by married women etc. a complete overhaul of the system is a must in the form of deterrent punishment for the offenders – Sentence/
 C *Sentencing – Punishment.*

Consequent upon the death of a woman by burn injuries received by her in her matrimonial home, her two sisters-in-law (A-2 and A-3, the appellants) the mother-in-law (A-1) and two others faced trial. The case of the
 D **prosecution was that the deceased was ill-treated by A-1, A-2 and A-3 as she could not conceive a child; that on the date of occurrence, on the instigation of A-2 and A-3, A-1 poured kerosene on her and set her on fire. Four**
 E **dying declarations were recorded of the victim on the day of incident and the following day. The victim succumbed to her injuries after 1½ months of the incident. The trial court convicted A-1, A-2 and A-3 u/ss 498-A/34 and 302/34 IPC and sentenced them to one year’s imprisonment u/s 498-A/34 IPC and imprisonment for life u/s 302/34 IPC.**
 F **The High Court affirmed the conviction and the sentence. A-2 and A-3 filed Crl. A. No. 1062 of 2008 whereas A-1 filed Crl. A. No. 1063 of 2008. A-1 died during the pendency of the appeal and her appeal was dismissed as abated.**

G **It was contended for the appellants that there were four dying declarations in the instant case and there were contradictions and improvements which were not mentioned in the first two dying declarations, and as the**
 H **version of the incident given in all the four dying**

declaration was inconsistent, no reliance could be placed on them. A

Dismissing the appeal, the Court.

HELD: 1.1. The statement made by the deceased by way of a declaration is admissible in evidence u/s 32(1) of the Evidence Act. It is not in dispute that her statement relates to the cause of her death. In that event, it qualifies the criteria mentioned in s. 32(1) of the Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor is it required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. [para 12] [126-G-H; 127-A-B] B C D

1.2. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. The law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. [para 12] [127-B-E] E F G

1.3. When there are multiple dying declarations, each one has to be assessed and evaluated independently on H

A its own merit as to its evidentiary value and one cannot
be rejected because of certain variation in the other. [para
12] [127-E-F]

B 1.4. In the instant case, though, in one of the
statement, the deceased implicated two more persons
(who were acquitted by the trial Court) she was
consistent about the role played by her mother-in-law and
her sisters-in-law (the appellants). It is relevant to note that
the incident took place in the bedroom of the deceased.
C It is also clear that she was subjected to torture as she
had not conceived a child even after three years of the
marriage and in all the four dying declarations, she was
conscious in mentioning the role of her mother-in-law
and sisters-in-law. There is no contradiction as to the
main aspect, namely, implicating her mother-in-law and
D sisters-in-law as well as the role played by them. [para 11]
[125-F-H]

E 1.5. At the time of recording of the statements of the
victim, medical officers on duty had certified that she was
fully conscious and was in a fit state of mind to make the
same. The persons who recorded the four dying
declarations were examined and were also cross-
examined about the statement made by the deceased and
recorded by them. In such circumstances, this Court fully
F endorses the view expressed by the trial court and
affirmed by the High Court about the acceptability of four
dying declarations implicating the mother-in-law and
sisters-in-law (the appellants). [para 13] [127-G; 128-A-B]

G 1.6. As regards oral evidence, PW-1 is the mother of
the deceased. She explained about the marriage of her
daughter and the strained relationship with her family
members including the appellants. PW-2, the elder
brother of the deceased, deposed about the torture and
ill-treatment meted out to the deceased in her matrimonial
H home, and the burn injuries sustained by her. He also

stated that when he met her in the hospital, she was conscious and disclosed that her mother-in-law and sisters-in-law put her on fire. The analysis of the oral evidence of PWs and medical evidence clearly shows that the deceased was in a fit state of mind to make dying declarations and her statements in those dying declarations are consistent and truthful. There is no infirmity in the order of conviction and sentence recorded by the trial Judge and affirmed by the High Court. [para 14,15 and 17] [128-C-D; F-G; 129-B-C]

1.7. In view of clinching evidence led in by the prosecution, there cannot be any leniency in favour of the appellants, who are sisters-in-law of the deceased and at whose instance the deceased was burnt at the hands of her mother-in-law. Accordingly, the conviction of the appellants u/ss. 302/34 and 498-A/34 IPC and sentence of life imprisonment awarded by trial court and affirmed by High Court are upheld. [para 2, 18] [121-C; 129-F]

2. In spite of stringent legislations in order to curb the deteriorating condition of women across the country, the cases relating to bride burning, cruelty, suicide, sexual harassment, rape, suicide by married women etc. a complete overhaul of the system is a must in the form of deterrent punishment for the offenders so that the problem can be affectively dealt with. [para 18] [129-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1062 of 2008.

From the Judgment & Order dated 11.04.2007 of the High Court of Bombay, Bench at Aurangabad in Criminal Appeal No. 252 of 2005.

Sudhanshu S. Choudhari, Rajshree Dubey, Naresh Kumar, Sunil Kumar Verma for the Appellants.

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A Aprajita Singh, Asha Gopalan Nair, Ravindra Keshavrao
Adsure for the Respondent.

The Judgment of the Court was delivered by

B **P. SATHASIVAM, J.** 1. This appeal is directed against the
judgment and order dated 11.04.2007 passed by the High
Court of Bombay, Bench at Aurangabad in Criminal Appeal No.
252 of 2005 whereby the High Court dismissed the appeal filed
by the appellants herein and confirmed the order dated
30.03.2005 passed by the Court of IInd Ad-hoc Additional
C Sessions Judge, Jalgaon in Sessions Case No. 165 of 2003.

2. Brief facts:

(a) On 28.02.2000, Vandana Raghunath Tayade (since
deceased) was married to one Raghunath Puna Tayade at
D Village Khirwad, Taluq Raver, Dist. Jalgaon, Maharashtra. After
marriage, she was staying at her matrimonial home in a joint
family consisting of her husband, Kesharbai (A-1) mother-in-
law, father-in-law and two sisters-in-law, viz., Ashabai and
Kavita (appellants herein). Since there was no issue from the
E marriage, she was ill-treated by her mother-in-law and sisters-
in-law. On that count, they used to harass her and both the
families were not in good terms.

(b) On 05.03.2003, at about 1645 hrs., when Vandana was
in her matrimonial home, Kesharbai (mother-in-law), in order
F to get rid of her, poured kerosene on her body and Ashabai
and Kavita (appellants herein) – sisters-in-law instigated
Kesharbai to lit the fire by using a matchstick. She started
shouting and caught hold of her mother-in-law in the burnt
condition. Vandana and Kesharbai, both were taken to the
G Railway Hospital, Bhusawal and her statement was recorded
on the very same day. Between 05.03.2003 to 06.03.2003, the
injured gave, in all, 4 dying declarations one by one to the
authorities concerned. On 18.04.2003, she succumbed to her
injuries and the post-mortem was conducted on the same day
H and a case being A.D. No. 15 of 2003 was registered.

(c) After investigation, charge sheet was filed against six accused persons, i.e., Kesharbai (A-1), Ashabai Puna Tayade (A-2) and Kavita Ajay Medhe (A-3)-appellants herein, Puna Mitharam Tayade, Shobha Sitaram Tayade and Sitaram Ramaji Tayade and the case was committed to the Court of the IInd Ad-hoc Additional Sessions Judge, Jalgaon and numbered as Sessions Case No. 165 of 2003. The Additional Sessions Judge, by order dated 30.03.2005, convicted A-1, A-2 and A-3 under Section 498-A read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') and sentenced them to undergo RI for 1 year along with a fine of Rs. 1,000/- each, in default, to further undergo RI for 3 months. They were also convicted under Section 302 read with Section 34 of IPC and sentenced to suffer imprisonment for life along with a fine of Rs. 2,000/- each, in default, to further undergo RI for 6 months and acquitted the other accused persons.

(d) Challenging the said judgment, the appellants herein filed Criminal Appeal No. 252 of 2005 before the High Court. By impugned order dated 11.04.2007, the High Court, dismissed the appeal filed by the appellants herein and confirmed their conviction and sentence passed against them by the trial Court.

3. Heard Mr. Sudhanshu S. Choudhari, learned counsel for the appellants-accused and Ms. Aprajita Singh, learned counsel for the State.

Discussion:

4. The present appeal is by Ashabai (A-2) and Kavita Ajay Medhe (A-3), both sisters-in-law of the deceased. Kesharbai (A-1) - mother-in-law of the deceased, who was also convicted and sentenced to RI for life filed a separate appeal being Criminal Appeal No. 1063 of 2008 before this Court. Since she died on 10.02.2012, by order dated 13.12.2012, this Court dismissed her appeal as abated. Therefore, we are concerned about the present appellants, namely, Ashabai (A-2) and Kavita

A Ajay Medhe (A-3) respectively.

B 5. The marriage of the deceased Vandana with one Raghunath was solemnized on 28.02.2000 and her death occurred on 18.04.2003, i.e., her married life came to an end within 3 years of her marriage. The entire prosecution case lies on 4 dying declarations made by the deceased and the oral evidence of PWs 1, 2, 3 and 11.

Dying Declaration No. 1 (Exh.76):

C 6. The first dying declaration was recorded by Shri Dhondu (PW-14), Sub-inspector of Police, Sarkarwade P.S., Nasik on 05.03.2003. In her statement before PW-14, she narrated that her marriage was solemnized on 28.02.2000 at Khirwar and she was residing at Shantinagar, Someshwar Colony, Dhusawal along with her husband-Raghunath, Punna - father-in-law, Kesharbai - mother-in-law, Ashabai and Kavita - sisters-in-law. She further stated that her husband was working as an Assistant Station Master at Dhusawal, her father-in-law retired from Railways and she along with her mother-in-law and sisters-in-law stayed at home. As she was not able to conceive even after 3 years of marriage, her mother-in-law and sisters-in-law always used to abuse her that she was 'barren'. They used to say that she should not stay in the house and better she would die. On 04.01.2003, all the three assaulted her in front of her brother. On 05.03.2003, at about 7 o'clock in the morning, when she entered into the house along with her husband after their return from Mumbai, her mother-in-law and sisters-in-law, viz., Ashabai and Kavita shouted that the barren lady has come and telling her husband that he should not keep the unproductive lady in their house. After quarrelling with her mother-in-law, her husband went for duty. At about 4.45 p.m., when she came to her bedroom after taking a wash and was standing facing towards east in the place in between the cupboard and the cot, at that time, her mother-in-law – Kesharbai (A-1) came from behind with her sisters-in-law Ashabai and Kavita. She was holding a tin of kerosene in her hands and she poured kerosene

on her from neck to legs. While doing so, her sisters-in-law directed her mother-in-law to light the matchstick. Accordingly, the mother-in-law lit the matchstick. On seeing this, her father-in-law and sisters-in-law poured water on her and extinguished the fire. The above statement is duly certified by the Doctor on duty- Shri T.F. Ramesh that she was conscious and able to give a statement. It is clear that in this declaration she has not implicated her husband and father-in-law. On the other hand, she asserted that she was tortured by her mother-in-law (A-1) and sisters-in-law (A-2 and A-3). She also specified that it was her mother-in-law who poured kerosene on the direction of her sisters-in-law.

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Dying Declaration No.2 (Exh. 45):

7. This statement was made by the deceased before the Executive Magistrate, Bhusawal on 05.03.2003 at 11.10 p.m. which was marked as Exh. 45 and is in the form of questions and answers. When the Executive Magistrate asked what had happened on that day, she answered that "my mother-in-law by name, Kesharbai Puna Tayde poured kerosene on me and burnt". She further mentioned that the said incident took place at about 4.30 to 5.00 p.m. on 05.03.2003. In respect of another question by the Magistrate, namely, who were there in the house, she answered that her mother-in-law and sisters-in-law, by name, Ashabai and Kavita were there in the house and they told to light the matchstick. She also mentioned that at the relevant time, her husband and father-in-law were not in the house. The very same doctor, who certified her condition in the statement recorded by PW-14 also certified that the declarant was conscious to give a statement. He also mentioned the date and time as 05.03.2003 at 11.10 p.m. This declaration, which was duly recorded by the Executive Magistrate, Bhusawal (PW-7) clearly shows that it was her mother-in-law who poured kerosene on her on the direction of her sisters-in-law (A-2 and A-3).

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A Dying Declaration No.3 (Exh. 47):

8. On 06.03.2003, injured Vandana again made a statement before the Executive Magistrate, Bhusawal at 19:25 hrs. Here again, her statement was recorded in the form of questions and answers. The said document has been marked as Exh.47. After narrating that her marriage took place on 28.02.2000 at Khirwar, she informed that her mother-in-law and father-in-law used to quarrel with her and her husband never used to say anything. No doubt, in this statement, she mentioned that she was threatened by Shobha Sitaram Tayade (sister-in-law) and Sitaram Ramji Tayade (husband of Shobha Sitaram Tayade). After mentioning their names, (both of them were acquitted by the trial Court) she further narrated that amongst them, her mother-in-law poured kerosene on her and sisters-in-law (Ashabai and Kavita) were standing by closing the door. For another question, namely, whether she had suspicion on anyone, she answered that she was tried to be burnt by her mother-in-law Kesharbai, Ashabai, Shobha, Kavita, Sitaram Ramji Tayade. While recording the above statement, here again, duty Doctor Dr. C.N. Pimprikar certified that Vandana was fully conscious to give a statement. He also mentioned the time and date of recording of the above statement as 7:25 p.m. dated 06.03.2003.

9. Learned counsel for the appellants pointed out certain contradictions and improvements which were not mentioned in her first two statements. It is true that in the third statement made before the Executive Magistrate, she implicated Shobha and Sitaram Ramji Tayade and according to her, they also threatened her along with her mother-in-law and sisters-in-law. Merely because she mentioned two other names, who were acquitted by the trial Court, it cannot be presumed that her earlier statements were unacceptable. However, it is to be noted that even in the third statement before the Executive Magistrate duly recorded by him, she mentioned the role of her mother-in-law and sisters-in-law. There is no reason to

disbelieve or reject the above statement as claimed by learned A
counsel for the appellants.

Dying Declaration No.4 (Exh. 36):

10. On 06.03.2003 itself, at about 7.30 p.m., again the B
injured Vandana made a statement before Shri Dilip, Sub-
Inspector of Police who was examined as PW-6 and the
statement was marked as Exh. 36. Here again, in respect of
the questions put by the recording officer, she answered by
implicating her mother-in-law and sisters-in-law. For a specific
question, namely, on 05.03.2003, whether she was at home C
and how she got burn injuries and who was responsible for the
same, she answered that "on 05.03.2003, I was at home only.
At about 5 o'clock, her mother-in-law, sisters-in-law poured
kerosene and burnt". Here again, she specifically implicated
her mother-in-law and sisters-in-law for pouring kerosene and D
litting fire.

11. Learned counsel for the appellants argued that the
version of incident as given by the deceased in all the four dying
declarations is inconsistent and no reliance can be placed on E
it. We have already referred to the persons who recorded all
the four statements, her condition and the certificate issued by
the doctor as well as the contents of the statements. Though,
in one of the statement, she implicated two more persons (who
were acquitted by the trial Court) she was consistent about the
role played by her mother-in-law and her sisters-in-law F
(appellants before us). It is relevant to note that the incident
took place in the bedroom of the deceased. It is also clear that
she was subjected to torture as she had not conceived a child
even after three years of the marriage and in all the four dying
declarations, she was conscious in mentioning the role of her
mother-in-law and sisters-in-law. We are satisfied that there
is no contradiction as to the main aspect, namely, implicating
her mother-in-law and sisters-in-law as well as the role played
by them. G

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A Evidentiary value of Dying Declaration:

12. About the evidentiary value of dying declaration of the deceased, it is relevant to refer Section 32(1) of the Indian Evidence Act, 1872, which reads as under:-

B “32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or
C whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

D (1) when it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

E Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

F (2)
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G (8)”

H It is clear from the above provision that the statement made by the deceased by way of a declaration is admissible in evidence under Section 32(1) of the Evidence Act. It is not in dispute that her statement relates to the cause of her death. In that event, it qualifies the criteria mentioned in Section 32(1) of the

Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor it is required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assess independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other.

13. We have already noted that in the present case, prosecution relied on four dying declarations of the deceased. We have also noted that at the time of recording of these statements, medical officers on duty had certified that the deceased was fully conscious and was in a fit state of mind to make the same. As a matter of fact, the deceased has given proper replies to the questions put to her by various authorities. Further, it is not in dispute that the incident occurred on 05.03.2003 and she sustained 54% burns and, ultimately, she died only on 18.04.2003. In other words, she survived for about 1 ½ (one and a half) month which speaks for the fitness of the

- A declarant to make a statement. The persons who recorded the four dying declarations were examined as PWs 14, 7 and 6 and they were also cross-examined about the statement made by the deceased and recorded by them. In such circumstances, we fully endorse the view expressed by the trial Court and affirmed by the High Court about the acceptability of four dying declarations implicating the mother-in-law and sisters-in-law (appellants herein).

Oral Evidence of PWs 1, 2 and 11:

14. Malatabai (PW-1) is the mother of the deceased Vandana. She explained about the marriage of her daughter and the strained relationship with her family members including the present appellants. Sanjay (PW-2) - elder brother of the deceased Vandana, in his evidence has stated that he along with her mother took the deceased to her matrimonial home on 04.01.2003 and as soon as the deceased entered into the house A-1, A-2, A-3 and A-5 assaulted her in their presence. He also stated that when he protested, they also assaulted him and, thereafter, he informed his parents about the same. In response to this information, his father and maternal uncle came to the matrimonial home of the deceased but none of them were allowed to enter the house to meet the deceased.

15. PW-11, maternal uncle of the deceased, also narrated about the marriage of the deceased with her husband. He also said that on receipt of information about the incident of burning, he rushed to the Railway Hospital, Bhusawal and enquired about the deceased. He noticed that Vandana sustained burn injuries. However, she was conscious and he asked her as to what had happened. She disclosed that her mother-in-law and sisters-in-law put her on fire. PW-11 also stated that Vandana was in the Hospital for about one and a half month.

16. Apart from the above witnesses, prosecution has also examined the doctors who certified her fitness while making the

statement, the doctor who conducted her post-mortem and I.Os., who completed the investigation and filed charge sheet.

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Conclusion:

17. The above analysis clearly shows that the deceased was in a fit state of mind to make dying declarations and her statements in those dying declarations are consistent and truthful. In addition to the same, the prosecution also examined PWs 1, 2 and 11 as well as the Doctors, I.Os., and other witnesses in support of their claim. We do not find any infirmity in the order of conviction and sentence recorded by the trial Judge and affirmed by the High Court.

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18. In spite of stringent legislations in order to curb the deteriorating condition of women across the country, the cases related to bride burning, cruelty, suicide, sexual harassment, rape, suicide by married women etc. have increased and are taking place day by day. A complete overhaul of the system is a must in the form of deterrent punishment for the offenders so that we can effectively deal with the problem. In the case on hand, Vandana died within 3 years of her marriage at the instance of her mother-in-law and sisters-in-law due to the harassment meted out to her because of the inability to conceive a child and she was poured kerosene and burnt to death. Even though, the mother-in-law, who also filed a separate appeal, died on 10.02.2012, in view of clinching evidence led in by the prosecution, there cannot be any leniency in favour of the appellants, who are sisters-in-law of the deceased and at whose instance the deceased was burnt at the hands of her mother-in-law.

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19. Accordingly, while agreeing with the conclusion arrived at by the trial Court and affirmed by the High Court, we find no merit in the appeal. Consequently, the same is dismissed.

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R.P.

Appeal dismissed.