

Bombay High Court

The State Of Maharashtra vs Vyankat Survase And Ors on 10 October, 2017

Bench: T.V. Nalawade

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APEAL262.2002

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

CRIMINAL APPEAL 262 OF 2002

The State of Maharashtra  
Through S.H.O., Police Station,  
Nilanga, Dist.Latur.

... Appellant  
(Orig. Complainant)

VERSUS

1. Vyankat S/o Vishvanath Survase @ Kamble,  
Age : 36 years, Occu. Labour Work.
2. Govind S/o Vishvanath Survase @ Kamble  
Age : 33 yrs., Occu. Labour Work.
3. Gangubai W/o Vishvanath Survase @ Kamble,  
Age : 65 yrs., Occu. Household.
4. Nilubai W/o Govind Survase @ Kamble  
Age : 30 yrs., Occu. Household & Labour Work.

All R/o. Gurhal, Tq. Nilanga.

... Respondents  
(Orig. Accused)

.....  
Mr V. S. Badakh, APP for the appellant  
Mr R. N. Dhorde, Sr. Counsel i/b Mr V. R. Dhorde, Advocate for the  
respondents.

.....

CORAM : T. V. NALAWADE &  
A. M. DHAVALA, JJ.

DATE : 10.10.2017.

ORAL JUDGMENT (PER A. M. DHAVALA, J.) :-

1. This is an appeal against the judgment of acquittal of respondents No. 1 to 4 for offences punishable u/s 498A, 302, 304-B 2 APEAL262.2002 & 306 r/w 34 of the IPC by Addl. Sessions Judge, Nilanga in Sessions Case No. 11 of 2001.

2. The facts relevant for deciding this appeal may be stated as follows :

Deceased - Mandubai from village Jajnoor, Tq. Nilanga, daughter of PW3-Tanaji was given in marriage to respondent No. 1 - Vyankat about 6-7 years before the incident. R-2 to 4 are original accused nos. 2 to 4. They are brother, mother and brother's wife, respectively of accused no. 1. After the marriage, deceased- Mandubai started cohabiting with her husband at village Gurhal in the same taluka Nilanga. Out of the wedlock, Mandubai gave birth to two sons and one daughter. There are allegations about dowry demand and ill-treatment and payment of dowry of Rs. 5,000/- in the past. There are also allegations that, three days before there was further dowry demand of Rs. 10,000/- and beating by the accused to Mandubai. She had narrated these facts when she had visited her maternal house. On 18.02.2001, Mandubai was admitted in the hospital of Dr. Maknikar at Nilanga by her husband as she had sustained around 80% burns. The said fact was intimated to the maternal relatives of Mandubai. On the same day i.e. 18.02.2001, dying declaration of Mandubai was recorded by Police Chowki 3 APEAL262.2002 Amaldar which disclosed that on that day at 09:00 am, she sustained accidental burns as her saree caught fire from the flames from the organic stove (Chool) The dying declaration (Exh. 50) discloses that, her husband and mother-in-law poured water and extinguished fire and took her in Auto-rickshaw to Nilanga and admitted her in Hospital of Dr. Maknikar but, thereafter, she was shifted to Civil Hospital at Latur for better treatment. She specifically stated that, there was nothing suspicious about the incident. This certificate bears the endorsement of the Doctor that the patient was conscious while giving statement to the police. On the next date i.e. 19.02.2001, brother of deceased - Kalidas lodged a report (Exh. 49) at Police Station Nilanga that Mandubai's husband, mother-in-law and wife of brother-in-law had poured kerosene on her person and set her on fire. He disclosed that, Mandubai had earlier given a false statement of accidental burns under the pressure of her husband but, later on she had told him that her husband, mother-in-law and wife of brother-in-law had poured kerosene on her person and set her ablaze. She was threatened that, if she would disclose the real incident to anybody, she and her children would be killed. It is alleged that, accused no. 1-Vyankat had illicit relations with wife of his brother and as Mandubai was raising objection to it, she was set on fire.

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3. On 20.02.2001 at 07:30 p.m, PW8 - Naib Tahsildar - Ganpati Kamble recorded dying declaration of Mandubai. He had obtained medical certificate of Doctor about consciousness of the patient and thereafter recorded the statement. Mandubai told him that, her husband and mother-in-law and wife of brother-in-law set her on fire by pouring kerosene on her person in connection with dowry demand. The said dying declaration is at Exh. 45. However, it shows the cause of the incident as on account of 'Karni-Dharni' (Witchcraft). Thereafter, on the same night at about 10:05 pm, Mandubai succumbed to the burn injuries. As per PM notes, she had 86% burns. Surprisingly, the police did not register any crime on the basis of second dying declaration before Naib-Tahsildar nor on the basis of report of Kalidas, brother of Mandubai. On 27.03.2001 i.e. after 1 month & 7 days, the police received report of Mandubai's father-Tanaji dt. 21.02.2001 and on the basis of the same, crime was registered as C.R. No. 33/2001 u/s 302, 498A r/w 34 of IPC and the offence was investigated into. Meanwhile, in accidental death case inquiry, inquest panchanama was drawn and autopsy was conducted. During investigation, the relevant documents were collected and statement of material witnesses were recorded. After completion of investigation, PW9-Shivajirao Suryawanshi filed

charge-sheet. In due 5 APEAL262.2002 course, the case was committed to the court of Sessions. The Id. Addl. Sessions Judge framed charge u/s 498A/34, 302/34, alternatively, 304B/34, 306/34 at Exh. 3. The accused pleaded not guilty. The prosecution examined nine witnesses. The defence of the accused is of total denial of material allegations. After hearing the learned advocates for the parties, Id. Additional Sessions Judge, Nilanga, held that it was not a case of homicidal death or suicide and in consonance with his findings, he acquitted all the accused of all the offences charged. Hence this appeal.

4. Shri. Badakh, learned APP for the State argued that, the initial dying declaration dt. 18.02.2001 was given by deceased- Mandubai under pressure of the accused but subsequently after arrival of her relatives, she has given another dying declaration on 20.02.2001 before Naib Tahsildar. He had obtained necessary certificate about consciousness of the patient from the doctor and thereafter recorded dying declaration. This, dying declaration has more evidentiary value as he is independent person. Id. APP argued that, there is evidence of maternal relatives of deceased-Mandubai regarding ill-treatment, dowry demand and acceptance of dowry of Rs. 5,000/-. There was recent incident of dowry demand of Rs.

10,000/- just three days before the incident. He, therefore,

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submitted that the prosecution evidence should be believed and the accused should be convicted.

5. Per contra, Shri. R. N. Dhorde, Id. Sr. Counsel for respondents No. 1 to 4 argued that, the marriage of Mandubai had taken place seven years earlier. She had given birth to two sons and one daughter. There was no previous history of any dispute between the husband and wife. The husband himself had brought deceased - Mandubai to the hospital. The spot panchanama does not support the allegation of pouring kerosene on her person and setting her on fire. The causes for assault given by brother of the deceased and the deceased are different. In view of inconsistent dying declarations, there is necessity of some corroboration to the second dying declaration but there is no corroboration whatsoever. The clothes of the deceased were not forwarded to CA office. The FIR was registered one month after the incident. Hence the appeal should be dismissed.

6. After giving careful consideration to the submissions by Id. respective advocates and after going through the record, the points for our determination with our findings thereon are as follows :

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Sr. No.	Points	Findings.
1	Whether deceased met with homicidal	Not proved.

death or suicide?

2	Whether accused nos. 1 to 4 committed murder of Mandubai or her dowry death ?	Not proved.
3	Whether accused nos. 1 to 4 in furtherance of common intention abetted the commission of suicide of Mandubai?	Not proved.
4	What order	The appeal is dismissed.

#### REASONS

7. The prosecution has examined following witnesses.

[I] Group A :

(I) PW8 - Ganpati Kamble, Naib Tahsildar, who recorded dying declaration (Exh. 45).

(ii) PW7 - Dr. Sanjay Warad, who had given certificate about fitness of Mandubai at the time of dying declaration. His endorsement on dying declaration (Exh.45) are at Exh. 39 & 40.

(iii) Mandubai's earlier dying declaration dt.18.02.2001 (Exh.50).

[II] Evidence of ill-treatment :

PW3 - Tanaji (FIR at Exh. 28).

PW1-Jayant & PW2-Manik, inquest of the deceased.

PW4 - Sachin, cousin of the deceased.

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[III] Medical Evidence :

(i) PW6 - Dr. Shobha Jadhav, who conducted PM (Exh.

19) and gave provisional certificate (Exh. 18) and reported death to police (Exh. 37).

(ii) Inquest Panchanama (Exh. 32).

[IV] Other Evidence :

- (i) Spot Panchanama (Exh. 16) .
- (ii) Search of persons of the accused (Exh. 17) .
- (iii) Photographs (Exh. 20 to 24) .
- (iv) Statement of brother of the deceased dt. 19.02.2001 (Exh.49).
- (v) The police report about dying declaration no. 1 under pressure (Exh. 51).
- (vi) PW9 - Investigating Officer has deposed about the investigation carried out by him and has proved contradictions in the evidence of PW1 - Jayant, PW9 Manik (Exh. 57 to 61).

8. On going through the evidence, we find that deceased- Mandubai was married to accused no. 1 - Vyankat about 5-6 years before the incident. She had no ill-treatment initially for a period of one year. She has given birth to two sons and one daughter. Though there are allegations by father and uncles of the deceased about ill- treatment and dowry demand, there is no documentary evidence. There is no evidence that Mandubai was constrained to leave her matrimonial house and reside at her maternal house. The alleged 9 APEAL262.2002 demand and acceptance of Rs. 5,000/- is quite improbable. PW1, 2 & 3 have deposed that, about three days before the incident, deceased had been to her maternal house and had disclosed about dowry demand of Rs. 10000/- but the conduct of her father PW3-Tanaji is not consistent with this dowry demand. Even the dying declaration is silent about this dowry demand. PW3 - Tanaji had accompanied deceased Mandubai from Nilanga to Latur. He stated that, during the journey, Mandubai did not tell him anything.

9. The evidence shows that, on the day of incident, the accused brought Mandubai in burn conditions to hospital of Dr. Maknikar at Nilanga and she was immediately shifted to Civil Hospital at Latur. Her dying declaration was recorded by a police officer on 18.02.2001 (Exh. 50). As per the said dying declaration, the deceased while cooking food in the morning caught fire to her clothes and she sustained burns. Her husband and mother in law poured water on her person and extinguished the fire and they brought her to the hospital at Nilanga.

10. The accused have also intimated this incident to her parents. The conduct of the accused is consistent with the case of accidental burns.

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11. On 19.02.2001, Kalidas, brother of Mandubai made a report to the Police. For the first time it was alleged that, the earlier dying declaration given by Mandubai was under pressure of her husband as there was threat to her and her children that they would be killed. This statement at Exh. 49 shows that, Mandubai told her brother that her husband was having illicit relations with his brother's wife which was objected by Mandubai and therefore kerosene was poured on her person

and she was set on fire. The statement indicates that, such illicit relations were existing for three years. Surprisingly, no role was given to accused No. 2, who is brother of accused no. 1 - Vyankat. He also happens to be husband of accused no. 4 with whom accused no. 1 was having illicit relations. Still accused no. 2 was prosecuted. It is surprising that, accused no. 2 would help his wife and brother to have illicit relations and for that he joined them for removing wife of accused no. 1, who was obstructing to their relationship. It is pertinent to note that, the evidence of father and uncles of the deceased make no reference whatsoever to this illicit relationship. The police did not take any cognizance on the basis of this report disclosing cognizable offence.

12. Thereafter, PW8 - Naib Tahsildar - Ganpati Kamble has recorded dying declaration on 20.02.2001 at 07:30 pm. Before that, 11 APEAL262.2002 PW7 - Dr. Sanjay was requested to examine the patient and certify about her consciousness to give a statement. Dr. Sanjay stated that, he had examined the patient and she was conscious and able to give statement. He has recorded his endorsement on Exh. 39 and 40 at the beginning and end of dying declaration but these endorsements do not speak about her mental soundness.

13. PW8 had received a letter of the police dt. 18.02.2001, but he did not immediately visit the hospital for recording the dying declaration. He has deposed that, on 20.02.2001 at 07:30 pm, he visited General Hospital at Latur, obtained certificate from Dr. Warad and thereafter made inquiry with patient Mandubai. He stated that he put certain questions to her perhaps for testing her mental capacity. Those questions and answers are not on record. Dying declaration recorded by him shows that, accused Nos. 1, 3 & 4, who are her husband, mother-in-law & wife of brother-in-law poured kerosene on her person and set her on fire. Pertinently, the cause of death given is 'Karni-Dharni' (Witchcraft), it means on the suspicion that she was doing witchcraft. The cause given by her brother and given by her father are different. It is pertinent to note that, on the same day within two hours, Mandubai had died. It is common knowledge that when a patient sustains severe burns, she is kept 12 APEAL262.2002 under sedatives in order to relieve her of pains. In such case, such late recording of dying declaration creates doubt about sound, mental and physical state of the deceased.

14. We find that, there are two dying declarations which are contradictory to each other. The reasons given in dying declaration at Exh. 45, which is in favour of prosecution, are quite different from the reasons given by her maternal relatives and by her brother in his report to police.

15. The spot panchanama (Exh. 16) shows that, the floor on the spot was not reportedly damp with kerosene. No samples of soil mixed with kerosene were taken. The burnt pieces of saree of the deceased were seized but those were not forwarded to CA office to find out whether there was residue of kerosene in the soil of the floor and in the pieces of saree or not. The photographs at Exh. 20 to 24 disclose that, the surrounding combustible articles did not catch fire though those were very near to the spot. It is seen that the deceased was wearing a polyester saree. The clothes of the accused were also not seized and sent for Chemical Analyzer for chemical tracing kerosene residues. The FIR was lodged one month and seven days after the death of deceased - Mandubai. We find no substance in the 13 APEAL262.2002 allegations of dowry demand or ill-treatment. We find no corroboration to the dying declaration recorded by Naib Tahsildar. In the light of all these facts, we hold that, the prosecution has failed to prove beyond reasonable doubt that the accused had

committed murder by setting Mandubai on fire by pouring kerosene on her person. The prosecution of accused no. 2 was certainly unwarranted as there was no material against him. Hence, we find no substance in the challenge to the judgment of acquittal. The ld. Trial Judge has properly appreciated the material on record and the view taken by him is reasonable and proper, which needs no interference. Hence the following order.

ORDER

(i) The appeal is dismissed.

(ii) All the accused shall furnish P.R. bond of Rs.

10,000/- each with like solvent sureties u/s 437A of IPC before the trial Court.

[ A. M. DHAVALA ]  
JUDGE

[ T. V. NALAWADE ]  
JUDGE

sgp