

(1994) 07 BOM CK 0068
In the Bombay High Court
Case No : Criminal Appeal No. 1030 of 1987

Mrs. Nandabai Balu Dusing	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 3, 32, 60
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1995) 1 BomCR 567

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : Anita Agarwal, for the Appellant; B.G. Vaidya, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—The appellant, aggrieved by the order dated 27-11-1987 passed by the Additional Sessions Judge, Pune, in Sessions Case No. 52 of 1987, convicting her u/s 498A I.P.C. and 306 I.P.C. and sentencing her to undergo 3 months rigorous imprisonment and to pay a fine of Rs. 50/- or in default to suffer further rigorous imprisonment for 15 days under the first count and to suffer one year's simple imprisonment and to pay a fine of Rs. 50/- and in default to undergo simple imprisonment for 10 days under the second count, (substantive sentences to run concurrently) has come up in appeal before me. Along with the appellant her mother-in-law Shahabai Sampat Sonawane was also tried but vide the aforesaid order she has been acquitted.

2. The prosecution case in brief is that the deceased Jayashree John Sonawane was married to John Sonawane about 6 months prior to the incident. She used to reside along with her husband and her mother-in-law (acquitted accused) Shahabai Sampat Sonawane, her father-in-law Sampat and her brother-in-law Sunil in Thergaon, Laxmi Nagar, Taluka Mulshi, District Pune. It is alleged that

about a month prior to the incident, her husband's sister, namely, appellant Nandabai Balu Dusing had come to her parent's house and since then was staying with them. It is also alleged by the prosecution that the appellant used to constantly abuse the deceased Jayashree on one ground or the other and constantly used to quarrel with her. Acquitted accused Shahabai always used to take the side of the appellant.

On 25-11-1986, at about 12.00 noon, when Jayashree was going out of the house for washing clothes, the appellant quarelled with her and asked her not to go out of the house. She also taunted her alleging that she was not the daughter of one father and also started abusing her. She is also alleged to have told her that in case she did not want to listen to her then she should pour kerosene oil on her person and set fire to herself. She is also said to have been shouting angrily. The deceased Jayashree told her that she would set fire to herself and to that the appellant is alleged to have replied that she had perfect liberty to set fire to herself. On that Jayashree is alleged to have poured kerosene oil on her body and set fire to herself. It is also alleged that at that time inside the house, the acquitted accused Shahabai, father-in-law of Jayashree Sampat and her brother-in-law were present but none of the aforesaid persons made any endeavour to save her. On the other hand, Jayashree's father-in-law is said to have pushed her away. Immediately, after the incident a car was arranged for and in the same her in-laws brought her to Sassoon Hospital for treatment. On the way, her in laws are alleged to have told her to give a statement that she was burnt on account of bursting of stove.

3. At Sassoon Hospital, Pune, Jayashree was medically examined on the same day by P.W. 1 Dr. Manmohan Vasant Jagade who found that she had sustained burn to the extent of 80%.

4. The same day i.e. 25-1-1986 at 5.00 p.m. the dying declaration of Jayashree was recorded at the Sassoon Hospital, Pune, by P.W. 2 Rajaram Shankar Retwade, Special Judicial Magistrate, Pune. The aforesaid dying declaration was recorded in Ward No. 27 in question and answer form. The dying declaration was recorded in the presence of P.W. 3 Dr. Ulhas Vasudeo Patil who had certified that the declarant was conscious while giving dying declaration. Since the aforesaid dying declaration is a short one, I am reproducing the same.

"Q.1. Whether you are fully conscious?

A. Yes.

Q.2. I am Spl. Judicial Magistrate, Do you understand this?

A. Yes.

Q.3. How you received the burn injuries? or someone else burnt you?

A. Today at about 12.00 to 12.30 p.m. when I am in the house, my sister-in-law Nanda, abused me, and told me to pour kerosene and set myself on fire and

therefore, I poured kerosene and set myself on fire. Always, my sister-in-law used to abuse me.

Q.4. Do you have complaint about this against anybody?

A. I have a complaint against my sister-in-law Nanda."

5. The next day the statement of the victim u/s 161 was recorded and the same was tendered as Exh. 10 and relied upon by the prosecution as a dying declaration. In the aforesaid statement, the victim has stated all the facts which I have mentioned in paragraph 2 of this judgement.

6. On 21-1-1986 Jayashree is alleged to have succumbed to her injuries in Sassoon Hospital, Pune.

7. The usual investigation was done and the Investigating Officer in the instant case was A.S.I. Kubersingh Laxmansingh Dabit, P.W. 5. He went to the place of the incident and prepared panchanama of the scene of offence. He examined two witnesses on 27-1-1986 and three on 28-1-1986. On 30-1-1986, he arrested the appellant and on 31-3-1986 he submitted the charge-sheet. The case was committed to the Court of Sessions in usual course. In the trial Court charges u/s 306 I.P.C. and 498A .I.P.C. were framed against the appellant who pleaded not guilty to them. Her defence is that she has been falsely implicated.

8. In all, in the instant case, prosecution examined 5 witnesses. The bedrock of the prosecution case were the two dying declarations one, recorded by the Magistrate and the other in the form of statement of the deceased u/s 161 of the Criminal Procedure Code. The learned trial Judge believed the aforesaid two dying declarations and passed the impugned order. Inasmuch as the aforesaid two dying declarations did not incriminate co-accused Shahabai, the trial Judge acquitted her. I have heard Mrs. Anita Agarwal, learned Counsel for the appellant and Mr. B.G. Vaidya, Additional Public Prosecutor for the State of Maharashtra at considerable length. I have perused the depositions of the witnesses recorded in the trial Court and the various exhibits tendered and proved by the prosecution in the trial Court. I have also carefully gone through the aforesaid two dying declarations as well as the impugned judgment. After giving my anxious consideration to the matter, I am of the opinion that on merits the conviction of the appellant has been rightly arrived at and this appeal should fail.

10. Mrs. Agarwal, learned Counsel for the appellant could not point out any such infirmity either in the dying declaration recorded by the Magistrate or in that, which is in the form of the statement of the victim recorded u/s 161 of the Criminal Procedure Code, which would persuade me to reject the aforesaid two dying declarations. The evidence of the Magistrate recording dying declaration and P.W. 3 Dr. Patil clearly shows that the victim was in a fit physical and mental condition to make the dying declaration recorded by the Magistrate. In the dying declaration recorded by the Magistrate, I find that there is an endorsement by the doctor to the effect that the victim was conscious while giving dying

declaration. Similarly, I find that the aforesaid doctors has stated that the victim was conscious while her statement was recorded by the police. After going through the two dying declarations, I find the averments contained therein to be perfectly natural and trustworthy . Consequently, I am in agreement with the learned trial Judge that the aforesaid two dying declarations inspire confidence.

11. Mrs. Agarwal, learned Counsel for the appellant also contended that it would neither be legal nor prudent nor safe to sustain the conviction of the appellant on the aforesaid two dying declarations, alone. I regret that this is not the law in our land See *Khushal Rao Vs. The State of Bombay*, . In the aforesaid case it has been held that if a dying declaration inspires confidence, it can form the sole basis of conviction. I am also not in agreement with the submission of Mrs. Agarwal that even if the two dying declarations are accepted on their face value, then no offences under sections 498A I.P.C. and 306 I.P.C. can be said to be made out, against the appellant. In my view, they clearly disclose the commission of offences punishable under sections 498A I.P.C. and 306 I.P.C. against the appellant.

12. In my view, the conviction of the appellant under sections 498A I.P.C. and 306 I.P.C. has been correctly arrived at and on merits this appeal should fail.

13. Mrs. Agarwal in the alternative contended that the instant is not one of those cases in which the appellant should be sent back to jail specially because nearly 8 and 1/2 years have elapsed since the incident took place. Considering the anti-social nature of the crime, on that ground alone, I would not have acceded to her request. However, in the instant case, I find that in her statement recorded u/s 313 of Criminal Procedure Code, the appellant has given out her age about 19 years. There is no observation of the learned trial Judge that the estimate of age given by her is incorrect. As the aforesaid statement was recorded on 9-11-1987, it means that on the date of the incident i.e. on 25-1-1986 the appellant was aged about 17 years and two months. Obviously, a person aged about 17 years cannot be said to possess sufficient maturity and if on account of immaturity and rusticity she committed this crime, in my view, it would be too harsh to send her back to jail. However, I feel that the appellant must be made to realise the gravity of what she did and consequently I direct that the jail sentence of the appellant would be reduced to the period already undergone by her provided she deposits a fine of Rs. 2,000/- within four months from today in the trial Court. If she does that, her bail-bonds shall stand cancelled and sureties discharged.

In case she does not deposit the aforesaid fine of Rs. 2,000/- which is in addition to the fine imposed by the trial Court she would serve out the sentence awarded by the trial Court.

14. With the aforesaid modification in the matter of sentence of the appellant, this appeal stands dismissed.

In case a application for certified copy of this judgment is made by the counsel for the parties the same shall be issued at an early date.