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STATE OF MAHARASHTRA

v.

HEMANT KAWADU CHAURIWAL ETC.

(Criminal Appeal Nos.1828-1829 OF 2013)

B

DECEMBER 16, 2015

[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]

Penal Code, 1860 – ss. 302 and 304B r/w. s. 34 and s. 498A – Prosecution under – Of five accused – Trial court, relying on Dying Declaration and the letters written by the deceased to her father, convicted accused No.1 u/ss. 302 and 498A r/w. s. 34 and accused No.4 u/s. 498-A, while other accused were acquitted – In appeal by the convicted accused, High Court, acquitted them giving them benefit of doubt – On appeal by the State, held: There are improvements in the testimony of material witnesses – In the facts and circumstances of the case, the Dying declaration as well as the alleged letters have not been proved – The High Court rightly pointed out lacunae in the shabby investigation of the case – Thus the prosecution failed to prove its case beyond doubt – Rather possibility of suicide (as per the defence version) cannot be ruled out – Hence, the accused was rightly acquitted by High Court.

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Dying Declaration – Evidentiary value – Held: Dying Declaration can be the sole basis of conviction – But, since it goes against the cardinal principle of law that 'evidence must be direct', it must be judged and appreciated in the light of surrounding circumstances and its weight should be determined with reference to the principle governing the weighing of evidence – Evidence.

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Dismissing the appeals, the Court

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HELD: 1.1 It is a settled law that dying declaration can be the sole basis of conviction and it does not require any corroboration. But it is equally true that dying declaration goes against the cardinal principle of law that 'evidence must be direct'. Thus, dying declaration must be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. [Para 8] [1118-A-C]

1.2 In the present case, dying declaration was recorded by the Naib Tehsildar after she was informed vide a Memo by the police authorities. However, the said police official who delivered the Memo was never produced or examined before the Court. The Naib Tehsildar deposed before the Court that fitness certificate as to mental capacity of the deceased was taken from the doctor. However, the certificate nowhere states that the deceased was in a fit and stable mental condition at the time of making the statement. The dying declaration was recorded on the same day of incident but the same was recorded at 5:45 PM while the incident occurred in the morning at 8:00 AM. The dying declaration then formed the basis of the FIR lodged next day of the incident. However, there is no explanation as to in whose custody the said crucial piece of evidence was placed for one full day. The prosecution did not give any evidence to explain the said delay. [Para 8] [1118-C-G]

2. As regards the alleged letters written by the deceased to her father (PW3), PW3 himself testified that the letters were written by the deceased in her own handwriting. The prosecution, however, had a duty to establish the veracity of such an important piece of evidence. The prosecution explained that it was unable

A to find the handwriting of the deceased by any other means. However, it is not explained as to what steps were taken to investigate the said evidence in the case. Further, while recording the dying declaration, Naib Tehsildar
B deposed that the deceased was illiterate and the dying declaration was read over and explained to her. These two facts are self-contradictory and severely detrimental to the prosecution case which ought to have been explained by the prosecution. [Para 9][1118-H;1119-A-D]

C 3. In the evidence of PW3 and PW4 (mother of the deceased) material improvements were made to support the prosecution case. The Investigating Officer (PW5) seemed to have deliberately or negligently erred in investigating the case. The case was of burn injuries,
D there ought to have effect of the incident in the house, the place of occurrence was an important fact, the seizure of surrounding material was also important. However, no such efforts were made. Even the handwriting of the deceased was not investigated.
E [Paras 10 and 11] [1119-E-H; 1120-A]

4.The defence deposed before the Court that the deceased locked herself in the bathroom, poured kerosene and set herself on fire. The probability tilts in
F favour of the accused that possibility of suicide being committed by the deceased cannot be ruled out completely. Therefore, the dying declaration and the alleged letters having not been proved, strikes at the very root of the prosecution case. The High Court rightly
G pointed out the lacunae in the shabby investigation of the case. Moreover, the prosecution failed to stand its ground and bring home its case. [Paras 11 and 12] [1120-A-D]

H CRIMINALAPPELLATE JURISDICTION: Criminal Appeal Nos. 1828-1829 of 2013

From the Judgment and Order dated 02.07.2012 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 53 of 2007 and Criminal Appeal No. 70 of 2007

Siddharth Bhatnagar, Nishant Ramakantrao Katneshwarkar for the Appellant.

Anshuman Animesh, Sakshi, Aastha Deep, Shivaji M. Jadhav for the Respondents.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. These appeals, by special leave, have been directed against the judgment and order dated 2.07.2012 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur, in Criminal Appeal Nos. 53 of 2007 and 70 of 2007. Criminal Appeal No. 53 of 2007 was filed by accused No. 1, who was husband of the deceased and Criminal Appeal No. 70 of 2007 was filed by accused No. 4, who was the mother-in-law of the deceased. Both these accused are respondents herein. Apart from the above two accused, there were three other accused but they were acquitted by the Trial Court while the respondents were convicted. In appeal by the convicted respondents, the High Court quashed and set aside their conviction and sentence and absolved them of all the charges.

2. The facts of the case, as disclosed by the prosecution, are that an FIR was lodged on 21.06.2004 at Ghatanji Police Station after receipt of dying declaration recorded on 20.06.2004, by Naib Tehsildar at Yavatmal General Hospital. In the morning of 20.06.2004, deceased Asha Hemant Chauriwal was brought to Ghatanji Hospital for treatment of burn injuries. She was later shifted to Yavatmal Hospital for further treatment. Her dying declaration was recorded by Naib

- A Tehsildar at around 5:45 PM on the same day, following which the above said FIR was lodged. The deceased died on 22.06.2004 due to septicemia as a result of 88% dermo epidermal infected burn injuries.
- B 3. After investigation, charge-sheet was filed against five accused. After considering the material on record and hearing the counsel for the accused persons, they were charged for offences punishable under Section 302 read with Section 34, Section 304-B read with Section 34 and also under Section
- C 498A of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The charges were read over and explained to them. All the accused persons pleaded not guilty and claimed for trial.
- D 4. The Trial Court by its judgment and order convicted accused Nos. 1 and 4. Accused No. 1 was convicted for offences punishable under Section 302 as well as Section 498-A read with Section 34 of the IPC. However, accused No. 4
- E 498-A of IPC. Upon appeal by the two convicted respondents, the High Court by the impugned judgment and order allowed both the appeals on the ground that the prosecution failed to bring home the guilt of these accused beyond reasonable doubt and as such, they were entitled for benefit of doubt. The
- F High Court quashed and set aside their conviction and sentence and absolved them of all the charges. The State of Maharashtra is in appeal before us, challenging their acquittal order.
- G 5. The prosecution case as accepted by the Trial Court was based on two important evidences: Firstly, the dying declaration made by the deceased to the Naib Tehsildar based upon which the accused husband was convicted for the murder of the deceased. Secondly, the Trial Court relied on the letters
- H allegedly written by the deceased to her father, which disclosed

mental and physical cruelty imputed on the deceased by her in-laws, based upon which the Trial Court convicted accused husband and accused mother-in-law for the offence of cruelty. A

6.Learned counsel appearing for the appellant has made various submissions on the basis of the Trial Court judgment. It was argued that the dying declaration and the evidence of PW1 (Naib Tehsildar) and PW5 (attending Doctor) along with the certificate of the doctor leads to the conclusion that the dying declaration was truthful and reliable and was correctly recorded. The said dying declaration was contended to be consistent with the testimony of the witnesses of PW1 and PW5. As against the alleged letter the petitioner counsel vehemently argued that the evidence of PW3 (father of the deceased) and PW4 (mother of the deceased) corroborated the incidence of cruelty committed upon the deceased. Further the evidence of PW3 proved that the alleged letters were written by the deceased in her own handwriting. B C D

7.Learned counsel appearing for the respondents/ accused made various submissions countering the arguments put forward by the appellant. The FIR was contended to be delayed by about one full day. The learned counsel pointed out various lapses and contended that the prosecution failed to materially explain few facts. For instance, there was no explanation as to why there was delay in lodging the FIR; the dying declaration reached the police station late by about one full day; the material witness were not examined as to explain such delay; material recovery at the spot was not conducted. Another fact which was not explained by the prosecution was as to why no action or investigation was initiated when the police officers came to know about the death of a person on 20.06.2004 in the Yavatmal Government Hospital itself. The respondents' counsel also argued that the alleged letters were not proved by the prosecution to be in the own handwriting of the deceased. E F G H

A 8. In our considered opinion, two main arguments have
been advanced before this Court and we shall now examine
each and every contention in light of the arguments adduced
before us. It is a settled law that dying declaration can be the
sole basis of conviction and it does not require any
B corroboration. But it is equally true that dying declaration goes
against the cardinal principle of law that 'evidence must be
direct'. Thus, dying declaration must be judged and
appreciated in light of the surrounding circumstances and its
weight determined by reference to the principle governing the
C weighing of evidence. In the present case, dying declaration
was recorded by the Naib Tehsildar after she was informed
vide a Memo by the police authorities. However, it is on record
that the said police official who delivered the Memo was never
D produced or examined before the Court. The Naib Tehsildar
deposed before the Court that fitness certificate as to mental
capacity of the deceased was taken from the doctor. However,
the certificate nowhere states that the deceased was in a fit
and stable mental condition at the time of making the
statement. The dying declaration was recorded on 20.06.2004
E i.e. the same day of incident but the same was recorded at
5:45 PM and it is undisputed that the incident occurred in the
morning at 8:00 AM. The Naib Tehsildar specifically deposed
that she ordered the blood relation of the deceased to be
F removed from the ward. The dying declaration was signed by
the Naib Tehsildar PW1, the doctor PW5 and thumb impression
of the deceased was taken at about 5:55 PM. The dying
declaration then formed the basis of the FIR on 21.06.2004 at
G Ghatanji Police Station, however, there is no explanation as to
in whose custody the said crucial piece of evidence was placed
for one full day. The prosecution did not give any evidence to
explain the said delay.

9. The second issue which is of paramount consideration
H is the alleged letters written by the deceased to her father, which

were argued to be in her own handwriting. PW3 himself A
deposed that he only produced a few letters which helped his
case. Further, he himself testified that the letters were written
by the deceased in her own handwriting as was known to him.
The prosecution, however, had a duty to establish the veracity B
of such an important piece of evidence. The prosecution
explained that it was unable to find the handwriting of the
deceased by any other means. However, it is not explained as
to what steps were taken to investigate the said evidence in C
the case. Another important fact which is on record is that while
recording the dying declaration, Naib Tehsildar deposed that
the deceased was illiterate and the dying declaration was read
over and explained to her. These two facts are self-
contradictory and severely detrimental to the prosecution case
which ought to have been explained by the prosecution. D

10. Apart from the above two pivotal facts, the testimonies
of PW3 (father of the deceased), PW4 (mother of the
deceased) and PW5 (investigating officer) are worth
considering. PW3 and PW4 both deposed that the deceased E
used to narrate about the incidents of cruelty committed upon
her. Physical beating after the 12th day of the marriage was
deposed, the taunt which the deceased used to face for not
cooking well, the rationing on edible items, etc.. However, when
the cross-examination was made, these witnesses have not F
stated these facts to the police and it was only before the Court
that such material improvements were made to support the
prosecution case.

11. The Investigating Officer seemed to have deliberately
or negligently erred in investigating the case. The case was of G
burn injuries, there ought to have effect of the incident in the
house, the place of occurrence was an important fact, the
seizure of surrounding material was also important. However,
such efforts were made. Even the handwriting of the H

- A deceased was not investigated. In the light of the above, the defence deposed before the Court that the deceased locked herself in the bathroom, poured kerosene and set herself on fire. It was further stated that the accused had to break open the door and then the deceased was taken to the hospital.
- B The Investigating Officer could have easily located the place of occurrence or even a broken door or lock. The probability here, tilts in favour of the accused that possibility of suicide being committed by the deceased cannot be ruled out completely.

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12. In our opinion, the two pivotal evidence i.e. dying declaration and the alleged letters having not been proved, strikes at the very root of the prosecution case. We are, therefore, of the view that the High Court rightly pointed out the lacunae in the shabby investigation of the case. Moreover, the prosecution failed to stand its ground and bring home its case.

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13. Thus, in the light of the above discussion, we find no compelling and substantial reasons to interfere with the judgment passed by the High Court. The appeals are, accordingly, dismissed.

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Kalpana K. Tripathy

Appeals dismissed.

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