



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 289 OF 2002**

Mohammad Ejaz s/o Mohammad Osman,  
Age : 29 Years, Occ. : Service,  
R/o Kiradpura, Aurangabad.  
(At present in Central Prison,  
Harsool, Aurangabad.)

... Appellant  
[Orig. Accused No.1]

Versus

The State of Maharashtra

... Respondent

.....  
Mr. Niraj Pradeep Chudiwal, Advocate for the Appellant (appointed)  
Mrs. Chaitali Choudhari Kutti, APP for Respondent-State.  
.....

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 02.09.2024  
Pronounced on : 10.09.2024

**JUDGMENT :**

1. The correctness of the judgment and order of conviction dated 16.05.2002 rendered by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 253 of 2000, convicting present appellant for offence punishable under Sections 498-A and 306 of the Indian Penal Code [IPC] is under challenge.

**FACTUAL MATRIX****Prosecution version :**

2. Deceased Shahana Begum was married to present appellant and after marriage, she came to reside with her husband and in-laws. Initially everything was smooth, but subsequently there was ill-treatment at the hands of accused persons. They suspected her fidelity and beat her. Two years after marriage, because of said ill-treatment, she had consumed phenyl and therefore, was brought back by her father PW5. After compromise, she came back to reside with husband and in-laws, but again ill-treatment began. According to prosecution, on 29.05.2000, husband beat her by suspecting her character. Finally, getting fed up of the same, she immolated herself and suffered 92% burns. PW3 Special Executive Magistrate recorded her dying declaration on the strength of which, crime was registered.

3. Shahana Begum succumbed to the burns and therefore, investigation was carried out by PW9, who, after gathering sufficient evidence, chargesheeted accused persons for commission of offence punishable under Sections 498-A and 306 of IPC.

4. Case being exclusively triable to the court of sessions, was on the file of Additional Sessions Judge, Aurangabad, who commenced trial vide Sessions Case No. 253 of 2000 on the charge of commission of offences punishable under Sections 498-A and 306 of IPC. After appreciating the oral and documentary evidence adduced by prosecution, learned trial Judge, by judgment dated 16.05.2002, acquitted accused nos. 2 and 3 from all charges, but convicted husband i.e. present appellant for commission of offence punishable under Sections 498-A and 306 of IPC, giving rise to the present appeal.

### **SUBMISSIONS**

#### **On behalf of the appellant :**

5. Criticizing the judgment of conviction, learned counsel for the appellant pointed out that prosecution had miserably failed to bring home the charges. According to him, neither ingredients for commission of offence under Section 498-A, nor 306 of IPC, as contemplated by law, are available in the prosecution evidence. He pointed out that on the same set of evidence, accused nos. 2 and 3 are already acquitted by learned trial court, but accused no.1 husband alone is held guilty. He pointed out that apparently, deceased had

suicidal tendency. Initially also she had attempted to end up her life without any just and reasonable cause. He pointed out that even regarding second episode of burns, husband appellant was not in the house and it is so evident from the very dying declarations.

6. Challenging the veracity of dying declarations, learned counsel for the appellant submitted that firstly, the dying declarations are undated, and secondly, there is no endorsement of fitness of deceased to give statement, that too when she had allegedly suffered 92% burns. He took this Court through all three dying declarations Exhibits 26, 35 and 39 and submitted that dying declarations are recorded in Marathi whereas deceased was only conversant with Urdu. There is no remark or statement in the dying declaration that statement was read over to deceased. According to learned counsel, this was fatal to the prosecution.

7. On this count, learned counsel for the appellant takes recourse to the following rulings of the Hon'ble Apex :

1. ***Laxman v. State of Maharashtra*** 2002 Cri.L.J. 4095.
2. ***P. Mani v. State of T.N.*** AIR 2006 SC 1319.
3. ***Kanti Lal v. State of Rajasthan*** AIR 2009 SC 2703.

4. ***Sanju alias Sanjay Singh Sengar v. State of M.P.*** AIR 2002 SC 1998.
5. ***State of Maharashtra v. Sanjay D. Rajhans*** AIR 2005 SC 97.
6. ***Tukaram Dashrath Padhen v. State of Maharashtra*** 2013 Cri.L.J. (NOC) 113 (Bom.) (Nagpur Bench).
7. ***Ashok Pandurang Jadhav v. State of Maharashtra*** 2011 (4) AIR Bom R 10.
8. ***Radhakisan Dhondiba Bhalekar v. State of Maharashtra*** 2018 (2) ABR (Cri) 269.
9. ***Arjun Uddhav Arbad v. State of Maharashtra*** 2017 (3) ABR (Cri) 65.

8. Learned counsel for the appellant next took this Court through the observations of learned trial Court and would submit that there is improper appreciation as, according to him, specific instances and specific role of beating is not defined in the testimony of any of the witnesses. There was no previous complaint of any sort at any place. Moreover, according to him, on the day of burns, victim was at her parents house and therefore there is no question of husband being responsible for the burns. He pointed out that all such crucial aspects are lost sight of by the learned trial Judge. Thus, according to him, on mere allegation of suspicion of character and on the basis of omnibus and general allegations, case of prosecution has been straightway accepted without assigning appropriate and sound reasons, and

therefore, according to him, such judgment being not sustainable in the eyes of law, is required to be interfered with by allowing the appeal and setting aside the impugned judgment.

**On behalf of the respondent-State :**

9. Per contra, supporting the judgment of conviction, learned APP pointed out that there are three dying declarations which are consistent. That, just before the incident of burns, husband had beaten her. That, ill-treatment meted out to her was regularly reported by deceased to her father and mother. That, they both are examined by prosecution. Their statements are consistent. Only because of suspicion of character and beating, deceased was forced to commit suicide and there was no other reason. She pointed out that required ingredients for attracting Section 498-A as well as Section 306 of IPC are readily available in the prosecution evidence and therefore, according to her, learned trial court has not committed any error. Rather, trial court's findings are infallible and do not warrant any interference at the hands of this Court. Hence, she prays to dismiss the appeal.

**EVIDENCE BEFORE THE TRIAL COURT**

10. Prosecution has examined 9 witnesses in support of its case. Their role and status, and the sum and substance of their evidence can be summarized as under:

- PW1** Dr, Aparna, Medical Officer at MGM Hospital, deposed about admission of deceased on 20.04.1997 on the history of consumption of phenyl and she being treated from 20.04.1997 to 22.04.1997.
- PW2** Dr. Jinturkar, autopsy surgeon, who, after conducting postmortem, gave percentage of burns to be 92% and cause of death to be “shock due to burns”.
- PW3** Sanjay, Special Executive Magistrate, who, on requisition from police, visited Sushrut hospital on 30.05.2000 and recorded her dying declaration Exhibit 26.
- PW4** Iqbalbegum is mother of deceased. Sum and substance of her evidence is that accused persons doubted character of her daughter and beat her. Due to ill-treated at their hands, once she consumed poison, but was taken back by husband. Ill-treatment and beating continued and so she committed suicide on 01.06.2020.

**PW5** Harunbaig is father of deceased. Sum and substance of his evidence is that after two to four months, accused persons doubted character of his daughter and she reported whenever she visited him. After two to three years, due to cruelty, she consumed poison. On 29.05.2000, husband took her back and later on they learnt about incident of burns suffered by her.

**PW6** Sk. Roshan is the pancha to spot panchanama Exhibit 30.

**PW7** Dr. Yelikar, who gave endorsement about fitness of patient before recording dying declaration by police.

<b>PW8</b>	A.S.I. Mundhe		are the Investigating Officers who
	and		recorded dying declarations Exhibits
<b>PW9</b>	P.S.I. Dabhade		35 and 39 respectively.

### ANALYSIS

11. Here, there are two sets of evidence, **first set** - oral evidence and **second set** – three dying declarations.

First, let us appreciate the oral evidence, i.e. of parents of deceased.



**ORAL EVIDENCE**

12. PW4 Iqbalbegum, mother of deceased, who is examined at Exhibit 27, initially deposed about marriage of her daughter with accused, for some time husband treating her daughter well, however, thereafter, she being ill-treated. **She deposed that accused nos. 1 to 3 along with mother-in-law of her daughter were beating her by doubting her character** and they were saying that she was having illicit relations with somebody. When her daughter came home, she disclosed this fact to her. After two years of marriage, she stated that, due to ill-treatment, her daughter consumed poison. After spending five days in the hospital, she was brought to her house for about two months. Matter was compromised and her daughter went to cohabit with accused no.1. After some days, again ill-treatment started. Regarding incident, she deposed as under :

*“On the day of incident, at about 3.10 p.m., accused no.1 had been to my house with deceased Shahana. Shahana told me that accused nos. 1 to 3 beat her and they were taking doubt on her character. After 10 minutes, accused no.1 took away deceased at his house. Thereafter, we came to know that deceased had committed suicide. After we came to know the incident, we had been to M.G.M. Hospital. We have seen the deceased Shahana in burnt condition. By seeing us the accused persons left the hospital.*

*Thereafter we have taken the deceased at Sushrut hospital at Bansilal Nagar, Aurangabad. At Sushrut hospital, on enquiry deceased told me that she was illtreated by accused nos. 1 to 3 and her mother-in-law, and therefore, she committed suicide. On 1.6.2000 deceased died in the hospital.*

While under cross, she is unable to give time and date of her daughter being beaten by accused persons. She admitted that after every 15 days to 1 month, her daughter was coming to her house and she was reached by accused no.1 and taken away after some time. She also admitted that some months before the incident, her daughter was doing tailoring work. Material omission is brought to the extent that “on the day of incident, accused no.1 along with deceased had been to her house and her daughter disclosed her about beating to her”. Rest is all denial.

13. PW5 Harunbaig, father of deceased, who is examined at Exhibit 28, deposed that after marriage, for about two to four months, deceased was treated well. Thereafter, accused nos. 1 to 3 were taking doubt on her character. On that count, **accused no.1 used to beat deceased**. That, whenever deceased came to the parents' house, she disclosed the ill-treatment. According to him, sometimes they

were keeping daughter to their house, but accused no.1 was threatening to kill her sons. Three years back, his daughter had consumed phenyl because of ill-treatment meted out to her. That, after spending 5 to 6 days in MGM, his daughter was brought to the house and kept for three months. After compromise before panchas, his daughter was sent to the house of accused no.1, but ill-treatment was continued from accused persons. Regarding the incident, he deposed as under :

*“On 29.05.2000, accused no.1 had been to my house with deceased Shahana at around 3.30 p.m.. By leaving Shahana in my house, accused no.1 went away. Accused no.1 was standing outside my house. Accused no.1 has taken away deceased at 4.00 p.m. from my house. Now says after 5 to 7 minutes of stay of Shahana at my house, accused no.1 has taken away her. At about 7.00 p.m. I came to know about the incident. Thereafter my wife has admitted deceased to Sushrut hospital by taking her from M.G.M. hospital. On inquiry, deceased Shahana told me that she was having ill-treatment from accused nos. 1 to 3. She further told me that after leaving my house on 29.05.2000, accused no.1 has beaten her and therefore, she committed suicide.”*

In cross, omission is brought that accused nos. 2 and 3 were taking doubt on the character of his daughter. That, accused no.1 had

been to his house with Shahanabegum at about 3.30 p.m. on 29.05.2000. Rest is all denial.

14. On analyzing the evidence of parents, i.e. PW4 and PW5, they both are found to be deposing about proper treatment for some time after marriage, but there was said to be ill-treatment thereafter. According to mother, **all accused** beat her daughter after doubting her character. Whereas, according to father, **only accused no.1** husband beat her by doubting her character. Therefore, they are not consistent on the point of beating due to suspicion of character. Thus, general allegations are levelled against all in-laws. Regarding visit of deceased on 29.05.2000, material omission is brought that on said date, accused brought deceased to their house and she told that she was beaten by husband that day. For said reasons, oral evidence of parents is not consistent and also carries material omission regarding beating on the day of episode of burns.

## SECOND SET – DYING DECLARATIONS

15. On appreciating the dying declarations which are Exhibits 26, 35 and 39 respectively, the same are recorded by PW3 Sanjay - Special Executive Magistrate and two Police Officials i.e. PW8 ASI

Mundhe and PW9 PSI Dabhade, respectively. Before appreciating the credibility and veracity of dying declarations, it would be fruitful to give brief account of settled position on the point of manner of appreciation of dying declaration, more particularly, when they are plural in number.

16. Here, there are three dying declarations. Therefore, it can be said that there are multiple dying declarations. In such contingency, some judicial precedents need to be dealt and discussed here.

Very recently, the Hon'ble Apex Court in the case of ***Abhishek Sharma v. State (Govt. of NCT of Delhi)*** reported in 2023 INSC 924, while deciding Criminal Appeal No. 1473 of 2011, in para 8 discussed its own previous rulings and observations therein which are borrowed and reproduced as under :

*“8.1 This Court in ***Kamla v. State of Punjab*** [ (1993) 1 SCC 1, AIR 1993 SC 374] has held:*

*“5. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests (vide *Khushal Rao v. State of Bombay* [AIR 1958 SC 22 : 1958 SCR 552 : 1958 Cri LJ 106] ). The ratio laid down in this case has been referred to*

*in a number of subsequent cases with approval. It is also settled in all those cases that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration, they should be consistent. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. In a case where there are more than one dying declaration if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”*

8.2. In **State of Punjab v. Parveen Kumar** [AIR 2005 SC 1277, 2005 (9) SCC 769], this court further observed:

*“10. .... The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this court could have considered such corroborative evidence to test the truthfulness of the dying declarations...”*

8.3. In **Amol Singh v. State of M.P.** [AIR OnLine 2008 SC 62, 2008 (5) SCC 468],

*“13. ... However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”*

*8.4. Faced with multiple dying declarations, this Court in **Lakhan v. State of M.P** [2010 (8) SCC 514] observed-*

*“21. ... In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.”*

*This judgment was also referred to by this court recently in **Makhan Singh v. State of Haryana** (2022) SCC OnLine SC 1019 (2-Judge Bench).*

8.5. In **Ashabai v. State of Maharashtra** [(2013) 2 SCC 224 (2-Judge Bench)] the court observed:-

*“15. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other.”*

8.6. In **Jagbir Singh v. State (NCT of Delhi)**, [2019 (8) SCC 779, AIR 2019 SC 4321] the following principles were observed:

*31. A survey of the decisions would show that the principles of declarations can be culled out as follows: ....*

*31.6. However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconcilable.*

*31.7. In such cases, where the inconsistencies go to some matter of detail or description but is incriminatory in nature as far as the Accused is concerned, the court would look to the material on record to conclude as to which dying*



*declaration is to be relied on unless it be shown that they are unreliable;*

*31.8. The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In a dying declaration, the Accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two.”*

*8.7. In **Uttam v. State of Maharashtra**, [(2022) 8 SCC 576 (2-Judge Bench)] this court observed:*

*“15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of*

*the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the court in exercise of its discretion.”*

In para 9, the principles that emerged on consideration of above rulings, which is observed, is reproduced as under :

*“9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;*

*9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;*

*9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.*

*9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.*

*9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.*

*9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.*

*9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”*

17. Having discussed above settled legal position, it would be further desirable to even reproduce the translated version of dying declarations at Exhibits 26, 35 and 39 in chronology. On careful scrutiny, it is emerging that deceased Shahanabegum suffered burns on the afternoon of 29.05.2000, but Exhibits 26 and 35 are shown to be recorded on 30.05.2000. Admittedly, time of recording both is not

reflected on either of dying declarations. Whereas, third dying declaration Exhibit 39 is recorded on 31.05.2000.

**Dying Declaration Exh. 26**

*Date: 30/5/2000*

*Statement*

*I, Shahanabegum W/o Mohmed Ezaz, age- 22 yrs., occupation-household, R/o Kiradpura, in front of Barkat grocery shop, Aurangabad.*

*Upon asking I do hereby state that, I got married five years ago with Mohmed Ejaz s/o Osman, R/o Kiradpura as per Muslim customs. I have two sons.*

*How the incident took place: - Yesterday on 29/05/2000 in the afternoon my husband quarreled with my by doubting my character. He abused me and beat me with slaps and fist blows. So, I went to the house of my sister-in-law Saliha and stayed in her house. Later, around 3 p.m., my husband brought me to our house and then he went out to the shop. My husband Mohmed Ejaz and my father-in-law Mohmed Osman used to harass me by raising doubts on my character. As I could not bear the harassment, so in the fit of the anger I poured kerosene on my person from the plastic canister and set myself ablaze at around quarter past three to half past three. At that time my mother-in-law Khalidabi and my sister-in-law Munnibi were present at home and my husband, father-in-law and*

*brother-in-law had went out. While I was burning, my mother-in-law and sister-in-law did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Md. Ejaz came home, and he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital. At present I am undergoing treatment at Sushrut Hospital.*

*Therefore, yesterday as I had quarreled with my husband, namely Mohmed Ejaz and he used to harass me by raising doubts on my character and beat me up. Therefore, I got angry and poured kerosene on my person and set myself ablaze. My husband and father-in-law used to harass me by raising doubts on my character.*

*Hence this statement.*

*[ Left toe impression]*

*sd/-*

*30.05.2000*

*Sanjay Kashinathrao Jaibahar*

*[Special Executive Magistrate]*

### **Dying Declaration Exhibit 35**

*Dt. 30.05.2000*

#### **Statement**

*Myself Shahana Begum w/o Mohmed Ejaz, r/at Kiradpura, Near Barkat Grocery Shop, Aurangabad.*

*I do hereby state in person that, I am residing at the*

*above-mentioned place, my parents are residing at Roshan Gate. I am married 5 years ago to Mohmed Ejaz s/o Mohmed Osman from Kiradpura according to Muslim customs and have two children.*

*Yesterday on 29.05.2000 while at home in the afternoon, I had a quarrel with my husband. So, he abused, slapped and beat me with fist blow. So, I went and sat at the home of my sister in-law, namely Saliha. At around 3.00 O'clock my husband brought me to our house from my sister-in-law's house and he went outside to the shop. As my husband and father-in-law, Mohmed Osman used to harass me by raising doubts on my character and yesterday they quarreled with me and beat me up, so in the fit of the anger I poured kerosene on my person from the canister and set myself ablaze at around quarter past three to half past three. At that time my mother-in-law Khaledabi and my sister-in-law, Munnibi were present at home. They did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Mohmed Ejaz came home and at first, he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital.*

*Therefore, yesterday I had quarreled with my husband namely Mohmed Ejaz s/o Mohmed Osman and he beat me up; similarly, as my husband Mohmed Ejaz and my father-in-law Mohmed Osman used to harass me by*

*raising doubts on my character. Therefore, as I could not bear the harassment, I got angry and poured kerosene from the canister on my person and set myself ablaze. At present I am undergoing treatment at Sushrut Hospital, Aurangabad. Hence, you are requested to take action against my husband and father-in-law.*

*The above statement of mine is written as per my say and it is correct and true.*

*Before me*

*Sd/-*

*ASI*

*Jinsi, Police Station, Aurangabad*

*Statement by*

*Sd/-*

*Left Toe Impression.*

### **Dying Declaration Exhibit 39**

*31/5/2000*

*Sushrut Hospital A'bad.*

#### **Statement**

*I, Shahana Begum w/o Mohmed Ejaz, Age -22 years, Occupation- Household, R/o. Kiradpura, Near Barkat Grocery Shop, Aurangabad.*

*I do hereby state in person that, I am residing at the above-mentioned place. My parents reside at Roshan Gate. I got married before 5 years ago with Md. Ejaz s/o. Osman from Kiradpura as per Muslim customs. I have two children; one is 4 years old and the other is 2<sup>1/2</sup> years old.*

*The day before yesterday i.e. on 29/5/2020 in the afternoon while I was at home my quarrel took place with my husband namely Md. Ejaz. He abused me and beat me with slaps and fist blows. So, I went to the house of my sister-in-law Saliha, who lives next door, and stayed in her house. Around 3 p.m., my husband brought me from the house of my sister-in-law Saliha to our house and then he went to the shop. My husband, father-in-law, and elder sister-in-law Munnibi used to harass me by raising doubts on my character and abuse me in filthy language. As day before yesterday my husband quarreled with me and beat me up, I got angry and around three or quarter past three o'clock in the afternoon I poured kerosene from the canister on my person and set myself ablaze. At that time my mother-in-law Khalidabi and my elder sister-in-law Munnibi were present at home, and they did not extinguish the fire. As the burns were causing more pain, I poured water on my person and extinguished the fire. After some time, my husband Md. Ejaz came home, and he took me to the M.G.M hospital for the initial treatment and thereafter he admitted me in Sushrut Hospital.*

*Therefore, the day before yesterday as I had quarreled with my husband namely Mohmed Ejaz s/o Mohmed Osman and he beat me up; similarly, as my husband Mohmed Ejaz and my father-in-law Mohmed Osman, my elder sister-in-law Munnibi alias Surraya used to harass me by raising doubts on my character, beat me and abuse me. Therefore, I got angry and poured kerosene*



*from the canister on my person and set myself ablaze. At present I am undergoing treatment at Sushrut Hospital, Aurangabad. Hence, you are requested to take action against my husband, father-in-law and elder sister-in-law.*

*My above statement is read over to me, and it is true and correct as per my narration.*

*Before.*

*Sd/*

*PSI, Dabhade, P.S. Jinsi*

*31.05.2000*

[Translated by Senior Translator of this Establishment]

18. What is noticed from above dying declarations is that, firstly, there is no prompt recording of dying declarations since afternoon of 29.05.2000 till noon time of 30.05.2000. As pointed out by learned counsel for the appellant, on none of the three dying declarations Exhibits 26, 35 and 39, time of its recording is reflected, and surprisingly, on none of them there is certification of fitness of Shahanabebum to give dying declaration. In the considered opinion of this Court, it was crucial for the simple reason that she had suffered over 92% burns and there was already delay in recording prompt declaration. It is further surprising to note that PW3, who was at that point of time, Special Executive Magistrate, was a tailor by occupation. He claims that he received intimation from police at 4.00 to 4.30 p.m. on 29.05.2000 itself, but Exhibit 26 is recorded by him

on next day and not on same day. In cross he has answered that when he visited hospital, he learnt from police that patient was not in fit condition to give statement and therefore he returned back. Police were not at all competent to inform him regarding fitness of the lady to give dying declaration. But it seems that believing police, he did not record statement on 29.05.2000 itself. As pointed out, the lady gave dying declaration in Urdu but this witness claims to have translated it in Marathi. There is nothing to show that he was conversant in Urdu so as to enable him to translate it in Marathi. As stated above, he has admitted that he did not note the timing and even did not take certification of doctor. Doctor PW7 has not stated about visit of PW3 for recording any dying declaration as said doctor only speaks about police approaching him. Such circumstances compel this court to doubt the veracity of dying declaration.

19. As regards second dying declaration Exhibit 35 is concerned, it is recorded by PW8 ASI Mundhe, who, in his evidence at Exhibit 33, claims that after giving communication to Special Executive Magistrate on 29.05.2000, he approached Sushrut Hospital. He claims that the doctor on duty certified Shahanabegum to be fit to give statement. Such certification is obtained on the carbon copy of communication at Exhibit 34, but it carries date as 29.05.2000,

however, dying declaration Exhibit 35 is surprisingly carrying date as 30.05.2000. Such material clearly suggest that documents are prepared later on. Had PW8 issued letter to PW7 on 29.05.2000 which carries certification of doctor of same day, then, why dying declaration was not recorded at that very time, is not explained by prosecution or even this witness. Rather, he has identified statement of deceased at Exhibit 35 which is apparently of 30.05.2000.

20. PW9 also has recorded 3<sup>rd</sup> dying declaration on **31.05.2000** and the same is at Exhibit 39. PW9, in his evidence at Exhibit 37, deposed about receiving case papers on 30.05.2000 but he appears to have visited Sushrut Hospital, not on same day, rather on next day i.e. on 31.05.2000 and then recorded statement Exhibit 39. It is also pertinent to note that certification is not on statement, rather on a communication Exhibit 38 which is also a carbon copy of communication to hospital authorities. Even time of recording dying declaration Exhibit 39 is not reflected nor there is thumb impression of deceased lady over it.

Above are the stark features emanating on meticulous examination of Exhibits 26, 35 and 39. There is perfunctory or casual

approach by investigating authorities in not recording dying declaration promptly or with due care and caution.

21. On careful scrutiny of Exhibit 26, it is noticed that deceased named husband alone for suspecting character and picking up quarrel and beating her. In Exhibits 35 and 36, she merely informed that there was quarrel between husband and wife, as such, reason stated in Exhibit 26 about suspicion of character is not finding place in Exhibits 35 and 39. It is also emerging from Exhibits 26, 35 and 39 that, after she was brought home back from his sister' place by husband accused, he had left the house, as according to deceased, he went to shop. Her such statement shows that husband was not present around at the time of immolation. She categorically stated that in rage of anger, she poured kerosene and incinerated herself.

22. Resultantly, on carefully analyzing and re-appreciating three dying declarations, the distinct features which are emerging could be summarized as, **firstly**, there is delay in recording dying declarations, **secondly**, time of recording dying declaration is not appearing on any of the dying declarations. **Thirdly**, none of the dying declarations carry certification of doctor regarding fitness to give statement. Exhibit 39 recorded by Investigating officer on 31.05.2000 also does

not carry thumb impression. For such reasons, there is considerable doubt about veracity and credibility of multiple dying declarations. In view of deceased having suffered 92% burns, it is also doubtful whether she was in capacity to give multiple dying declarations. On this count, support can be taken of the judgment of Hon'ble Apex Court in the case of ***Surinder Kumar v. State of Haryana*** (2011) 10 SCC 173.

23. There is conviction for offence under Section 306 of IPC. Before attracting and applying said charge, it is bounden and statutory duty of prosecution to establish that there was abetment, inducement, instigation to commit suicide. Coupled with *mens rea*, positive role must be shown to have been played by accused.

Law to the above extent is time and again dealt and discussed in numerous judgments, including recent judgment of ***Kumar @ Shiva Kumar v. State of Karnataka*** 2024 SCC OnLine SC 216, wherein, from para 60 onwards, the Hon'ble Apex Court has discussed the legal aspect of abetment to suicide, as to what amounts to abetment as dealt under Section 107 of IPC and also, after discussing previous legal pronouncements in ***M. Mohan v. State*** (2011) 3 SCC 626; ***Ramesh Kumar v. State of Chhattisgarh*** (2001) 9 SCC 618, ***Chitresh***

*Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *Rajesh v. State of Haryana* (2020)15 SCC 359 and *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73, culled out a principle that in order to prove guilt of accused for abetment to commit suicide, prosecution has to prove :

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

Referring to the case of *Amalendu Pal* (supra), it has been observed in para 69 that :

69. ... this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the

*evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:*

*13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”*

24. To sum up, here it is emanating from oral evidence of parents that husband suspected and doubted character of deceased and beat her. But when such instances occurred, is not specified. There is material omission regarding beating on the day of episode of burns. As discussed in para 14, parents are not consistent on the point of beating. Therefore, in the considered opinion of this Court, there is no

convincing evidence on the point of subjecting deceased to mental cruelty. Resultantly, he cannot be held guilty of commission of offence under Section 498-A IPC. For above discussed reasons, as essential ingredients for attracting Section 306 IPC are patently missing in the prosecution evidence to hold him guilty for the same, he also deserves to be acquitted from charge under Section 306 IPC.

25. In view of the above discussion, the following order is passed :

#### **ORDER**

- I. The appeal is allowed.
- II. The conviction awarded to the appellant-original accused no.1 by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 253 of 2000 for offence under Sections 498-A and 306 of IPC on 16.05.2002 is hereby quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of IPC
- IV. The bail bonds of the appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.



VII. Fees of the counsel appointed to represent the appellant is quantified at Rs. 15,000/- [Rupees fifteen thousand only] to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

**[ABHAY S. WAGHWASE, J.]**

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