

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1046 OF 2011**

**BHAGWAT**

**Appellant(s)**

**VERSUS**

**STATE OF MAHARASHTRA**

**Respondent(s)**

**J U D G M E N T**

**NAVIN SINHA, J.**

1. The appellant stands convicted under Section 302 IPC and sentenced to life imprisonment for the death of his wife at home by burn injuries on 06.04.2003. The deceased expired the next day. The High Court acquitted him of the charge under Section 498-A IPC regarding dowry demand.

2. Learned counsel for the appellant submitted that

there is no eye witness to the occurrence. There were three dying declarations at variance with each other. Conviction has been erroneously based on the third dying declaration merely because it was made in presence of the Special Judicial Magistrate. Reliance in support of the submission was placed on ***State of Rajasthan v. Shravan Ram & Another***, AIR 2013 SC 1890. In the alternative it was submitted that the deceased may have died on account of accidental burns while cooking or brewing tea. The appellant may have assaulted her under some grave provocation with regard to some occurrence inside the house to which no one else may have been privy. The appellant had also suffered burn injuries on his left hand while attempting to save the deceased. The deceased was taken to the hospital by the appellant which is further proof of his innocence. The conviction under Section 302 IPC therefore deserves to be altered to one under Section 304-II IPC, if not acquittal.

3. Learned counsel for the State opposing the appeal

submitted that the third dying declaration stands proved by PW-7 the Special Judicial Magistrate, who had recorded the same. PW-8, the Doctor who certified the condition of the deceased at the relevant point of time had also been examined. There was no evidence in support of the submission that the deceased had died either in an accidental fire or that the appellant may have assaulted her under grave and sudden provocation.

4. Having heard the learned counsel for the parties, we find that the conviction cannot be said to have been based exclusively on the dying declaration made before PW-7. Though there is no eye witness to the occurrence, there is sufficient circumstantial evidence to hold that the appellant alone was the assailant of the deceased.

5. PW-1 Vijay and PW-9, both sons of the deceased have consistently deposed that the appellant was addicted to consuming liquor and in an inebriated condition, he would often assault the deceased. On the date of the occurrence, the two witnesses were asked by the

appellant to go out of the room. The appellant closeted himself with the deceased. Thereafter, the witnesses heard shouts for help and when the door was opened they saw their mother with burn injuries. The spot map Exh.19 concluded that there was no evidence of any firewood or fire in the kitchen for brewing tea or cooking food. The High Court has appropriately observed that if it was a case of accidental fire in the kitchen, the burn injuries would primarily have been on front portion of the body. The post-mortem report Exh.21 noticed the following burn injuries on the deceased:

Head face neck	9%
Back	18%
Back Upper Limbs	18%
Both Lower Limbs	34%
Anterior Chest upto Umbilicus Deep Burns	11%

6. There is absolutely no material on record to suggest any assault under grave and sudden provocation.

The conduct of the appellant in absconding for approximately three months from the date of the occurrence, till he was taken into custody, was contrary to normal human behavior and belies his claim to innocence. It is not possible to accept the plea of any burn injuries on his hands three months later. The deceased died a homicidal death inside the matrimonial home. In the circumstances noticed hereinbefore, undoubtedly the appellant owed an explanation under Section 106 of the Evidence Act, 1872 with regard to how the deceased had met a homicidal death inside the house. He failed to discharge the onus completely. The aforesaid, in our opinion, are sufficient to uphold the conviction of the appellant.

7. Since an argument has been made with regard to three inconsistent dying declarations, we consider it only proper to deal with them also. The first dying declaration, Exh.10 was recorded by a police officer at the hospital. It speaks of an accidental fire. Though it bears a seal of a medical officer below the certification of fitness, it is not signed by anyone.

Except for the policeman who recorded the same no doctor has been examined in support of the same. The second dying declaration stated to have been made orally before her relatives Pw's- 2,3 and 6 blamed the appellant for having set her on fire, with an additional statement of a dowry demand. The third dying declaration Exh.27 also blamed the appellant for having set the deceased on fire. It was recorded by PW-7, a Special Judicial Magistrate who proved the same. PW-8, the Doctor who certified the fitness and was present during the same has also testified. We consider the dying declaration, in the facts and circumstances of the case, a corroborative material. The dying declaration recorded by PW7 and proved by him certainly commends to us for acceptance.

8. The first dying declaration is not only a suspicious document, but it is also considered a self-serving statement by the appellant, attributed to the deceased for saving himself. If the statement had been recorded in the hospital there is no reason why the

doctor in whose presence it may have been recorded, not to have initialed it and deposed in support of the same. The 2<sup>nd</sup> dying declaration is oral in nature made before the relatives of the deceased, which may be considered self-serving. In any event the appellant has been acquitted of the charge under Section 498A. The third dying declaration has been duly proved by PW-7 and PW-8. We see no reason why it cannot be relied upon as the truth.

9. In ***Harjit Kaur v. State of Punjab*** (1999) 6 SCC 545, the deceased was stated to have made two inconsistent dying declarations. The first declaration before the police spoke of an accidental fire while the second made before the sub-divisional magistrate blamed the accused for setting the deceased on fire. Rejecting the contention for acceptance of the first dying declaration, it was observed as follows :

"7. It was then contended by the learned counsel that this dying declaration should not be accepted as true because in her first dying declaration made to the police officer on 30-4-1992, Parminder Kaur had stated that she had

received burns as a result of an accident and that no one else was responsible for the same. Both the courts below after considering this inconsistency have thought it fit to rely upon the second dying declaration. It has been rightly held as an attempt on her part to save her husband and the in-laws. The circumstance clearly indicates that she was not a free person then. The reasons given by the trial court and the High Court for not considering the first dying declaration as voluntary and true are quite convincing and we see no reason to differ from them. Therefore, the second dying declaration cannot be regarded as untrue merely because it is contrary to her statement made earlier. What she has stated in the second dying declaration appears to be more probable and natural...."

10. In ***Shravan Ram (supra)*** relied upon by the learned counsel for the appellant the dying declaration stated to have been recorded by the Sub-Divisional Magistrate was neither exhibited nor the Sub-Divisional Magistrate was examined.

11. The conviction of the appellant therefore calls for no interference. The appeal is dismissed.



12. We are informed that the appellant has completed approximately 15 years of custody. If that be so, let a copy of this order be forwarded to the Maharashtra State Legal Services Authority so that necessary assistance is made available to the appellant through the concerned District Legal Services Authority with regard to the consideration for remission in accordance with law, if the appellant, so desires.

.....J.  
(NAVIN SINHA)

.....J.  
(K.M. JOSEPH)

New Delhi;  
September 19, 2018