

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 1398 of 2011**

**Balaji**

**.....Appellant**

**Versus**

**The State of Maharashtra**

**.....Respondent**

**O R D E R**

The judgment dated 17.11.2009 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No. 500 of 2007 confirming the judgment of conviction and sentence dated 30.11.2007 passed by the Ad hoc Additional Sessions Judge-3, Latur in Sessions Case No. 10 of 2007 is called in question in this appeal by the convicted accused.

2. The brief facts leading to this appeal are that, at about 1:30 p.m. on 28.08.2006, the police officer, Sikander Pakhali (PW12) received information that a woman had been stabbed. Upon reaching the house of Shamalbai Lohare, PW2 (landlady of the house of the deceased), he noticed that the deceased Lata was lying in a pool of blood and she was shifted to the hospital at about 1:45 to 2:00 p.m. PW12 was informed by Dr. Dhele (PW11) that the deceased was in a fit condition to give the statement and PW12 recorded the same. The deceased in her statement stated that the appellant/accused (brother of the deceased) was annoyed with her as she was having an illicit relationship with Mahendra Dhaware (PW4) after the death of her husband and thus, stabbed her in her abdomen, chest, face, right arm, etc. At the same time, i.e. at about 1:45 to 2:00 p.m., the appellant/accused voluntarily arrived at the police station in bloodstained clothes carrying bloodstained knife and disclosed his name as Balaji and the crime committed by him to Changdeo, PW6, the officer of the police station. Lata succumbed to injuries at about 2:45 p.m.

The dying declaration of the deceased itself was treated as the first information and the report was sent to the Jurisdictional Magistrate.

3. The appellant/accused was tried for offence under Section 302 of the Indian Penal Code (for short, “the IPC”). As mentioned supra, the Trial Court convicted the accused for the said offence and sentenced him to life imprisonment. The judgment of the Trial Court is confirmed by the High Court.

We have heard Mr. A. Sirajudeen, learned senior counsel appearing on behalf of the appellant/accused and Mr. Nishant Ramakantrao Katneshwarkar, learned counsel appearing on behalf of the respondent-State, who have taken us through the entire material on record and effectively assisted the Court.

4. The entire case of the prosecution depends upon (a) the dying declaration; (b) motive for commission of offence; (c) the accused voluntarily went to the police station in bloodstained clothes having a bloodstained knife with him.

5. We have perused the original dying declaration which has been tampered with. Though the name of Mahendra (PW4) was written earlier, it was struck off and in its place the name of Balaji (accused) is inserted at one place. No valid reason is

forthcoming from the side of the prosecution for tampering with a vital document such as dying declaration. The dying declaration is at Ext. 51. PW12, the Investigating Officer stated to have recorded the same in the hospital in the presence of the Doctor (PW11), who had certified the fitness of the victim to make the statement. However, in order to satisfy ourselves, we have perused the medical records maintained by the hospital in order to ascertain the correctness of the deposition made by the Doctor (PW11) with regard to the fitness of the victim. The record reveals that the patient was conscious but, was seriously injured. The history recorded in the medical sheets discloses that the victim was stabbed by a sharp iron object. Immediately on admission, the treatment had started. Patient was facing difficulty in respiration and had sustained 17 injuries with haemorrhage. All the injuries were incised and were caused by a sharp object. The patient was having tachycardia. Since the patient was pregnant, the uterus was palpable and pregnancy was about 7-8 months. Immediately, the surgeon was informed in view of the urgency and thereafter treatment was commenced by the surgeon.

PW11, the doctor before whom the dying declaration was recorded, clearly admits in the cross-examination that the patient was in serious condition; immediately on admission of the patient, the surgeon was called. She could not tell exactly before the Court within how much time PW12, the Inspector of Police arrived there after admitting the patient and recorded the statement. She admits that there is no connection between state of mind and consciousness; consciousness merely means the state of being conscious responsiveness of the mind to impressions made by the senses of the patient; the multiple injuries result in giddiness.

PW9 (the surgeon), who was called immediately on admission of the patient, went near the patient and gave I.V. Fluid and antibiotics to the patient; the wounds were sutured; two doctors, namely, Dr. Nisale and Dr. V.R. Patil were called who attended to the patient. PW9 and said two doctors, were constantly supervising the patient. The patient expired at 2:40 p.m.

In the cross-examination, he admits that the patient was admitted to the hospital at 1:45 p.m. and the death of the patient was shown as 2:30 p.m. It is clarified by him that when

he commenced treatment, patient was semi-unconscious. Due to multiple injuries, the patient was semi-unconscious, then she became unconscious and died.

6. Dr. Shirish Maske PW5 conducted the post mortem. Even the post mortem report reveals that the victim had sustained as many as 24 injuries which are all ante-mortem in nature. On examination of the thorax the stab injury No. 9 is cutting of 6<sup>th</sup> and 7<sup>th</sup> ribs and the same is extended to pleural cavity; the cutting of diaphragm and piercing liver for 6 cm; haemothorax on right side, 300 ml blood was collected; there was an incised wound on the right lung, lower lobe margin measuring 3 x 1 cm; the left lung was pale; both the chambers of the heart were partially filled with blood, large vessels had collapsed; the peritoneal cavity contains 1.5 litres of blood. Injury No. 13 was extending to peritoneal cavity cutting fundus of uterus having a size of 4.1 cm and cutting the right side of the foetus neck extending deeply to cervical spine. The doctor has opined that the death of the deceased was due to haemorrhagic shock caused due to multiple stab injuries in the lung, liver and uterus. In the cross-examination, PW5, the doctor who conducted post mortem, has deposed that in cases of such

nature, having 24 injuries, the patient would have immediately felt giddiness and later she would become unconscious which lead to her death. He has clearly admitted that a patient who sustained injury No. 9, i.e. cutting of lung and diaphragm would be in distress and it is sufficiently severe and it may affect respiration.

7. As mentioned supra, Dr. Tushare, PW9/Surgeon who immediately came to treat the victim after being informed by the Doctor (PW11) has deposed that when he started treatment, the patient was in semi-conscious state. He took the help from two doctors, namely, Dr. Nisale and Dr. V.R. Patil and not the help of the Doctor (PW11). He has nowhere deposed about the dying declaration recorded in the presence of the inspector. Since the patient was admitted to the hospital at about 1.45 p.m. and as PW9 was called by PW11 to treat the patient, and consequent to which PW9 came immediately and started treatment with the help of aforementioned two doctors, there was no time gap left for the Police Inspector to record the dying declaration of the victim in the presence of PW11. Though medical case sheet reveals that the patient was conscious, but it has been deposed by doctor PW9 that the patient was semi-

unconscious. Nowhere has PW11 deposed that the victim was in a fit condition to make the statement. Fitness of the statement is totally different from being in a state of consciousness. PW11 has, as mentioned supra, clearly stated that there is no connection between state of mind and consciousness; consciousness merely means the state of being conscious and responsiveness of the mind to impressions made by the senses. It is also admitted by all the three doctors examined before the court that the multiple injuries would lead to giddiness. If it is so, it could not have been possible for the victim to make a one page statement, which details the age of the victim, occupation of the victim, place of the victim, family members of the victim, etc. The dying declaration also reveals entire details of the incident. It should be noted that the victim died within 45 minutes of her admission to the hospital.

8. Though such detailed statement was allegedly made by the deceased immediately on admission before PW12 in the presence of PW11 and though such dying declaration was treated as first information based on which crime was registered, the same was not sent to the Jurisdictional Magistrate inasmuch as there is no endorsement of the



Magistrate on the original of the dying declaration. Since there is no endorsement of the Magistrate on the dying declaration, learned counsel for the defence is justified in arguing that the so called dying declaration was not at all recorded and was subsequently created by the investigation officer only to suit the purpose of the prosecution. Moreover, since the patient was semi-conscious having such severe injuries mentioned supra, she could not have made such detailed statement.

Hence, in our considered opinion, it would be unsafe to rely upon this dying declaration of the victim to base the conviction. We find that the dying declaration bristles with a number of suspicious circumstances mentioned supra.

9. The next circumstance relied upon by the prosecution is regarding motive for the commission of the offence.

It is not in dispute that the deceased had two children through her husband, Laxman; even when said Laxman was alive, the victim/deceased was having an illicit relationship with PW4. PW4 used to come to the house of the deceased and Laxman and he used to have drinks. The husband of the victim was suffering from HIV Aids. The relationship between the deceased and PW4 was known to everybody in the family

including the accused. The accused is none else than the brother of the deceased and he never objected to such a relationship though it continued for years together. Husband of the deceased, Laxman had complained of the illicit relationship between the deceased and PW4. Though a complaint also came to be lodged by him, no such grievance was made by the accused being the brother of the deceased at any point earlier to the incident in question. On the other hand, it has come on record that the accused, deceased as well as PW 4 used to meet each other and have parties. Accused was fully aware of the illicit relationship which was never objected to by him.

In this context, the evidence of Pooja, PW1, the daughter of the deceased could be very relevant. PW1 has admitted in the cross examination that PW4 was acquainted with her; he used to visit her house regularly; the relationship between her mother and father were strained due to PW 4. On the date of the incident at about 9:00 am, PW4 was threatening the mother of PW1 by showing a knife. He threatened the deceased that he would kill her; immediately thereafter the deceased came out of the house and called PW1 to bring her maternal uncle from market. Immediately PW1 rushed to call her maternal uncle

(the accused) who was in the marketyard. On hearing such news, the accused proceeded towards the house and whereas PW1 proceeded towards hospital for getting treatment for her grandmother. She has further admitted that PW4 used to stay in her house at Moti Nagar, Latur and sometimes used to quarrel also. On 29.08.2006, the accused even advised the deceased not to quarrel with PW4. In the cross-examination, PW1 has admitted that PW4 used to consume liquor in her house, he had a knife whenever there was a quarrel with deceased and PW4. The evidence of PW1, if read in its entirety, would clearly reveal that all the family members including the husband of deceased, the accused, PW1 as well as the parents of the deceased, knew about the illicit affairs of the deceased and PW4. He used to have liquor in the house of the deceased and used to sleep in the house of the deceased. In light of such evidence, the defence rightly contends that the motive as alleged is not proved. Since the accused himself was a consenting party to such an illicit relationship between PW4 and the deceased, there is no occasion for him to get enraged on the date of the incident to commit murder of the deceased. On the other hand, the evidence of PW1 raises suspicion in the

mind of the Court about the actions of PW4 who used to have a knife and used to quarrel with the deceased whenever he was drunk. PW4 was none other than the employer of the husband of the deceased. In our considered opinion, the aspect of the motive as sought to be made out is not satisfactorily proved by the prosecution beyond reasonable doubt. Sometimes motive may be hidden also. But in the light of the evidence of PW1 who did not even whisper a word against the accused, the Courts below may not be justified in concluding that the motive for the commission of the offence is proved. It is curious to note that PW1 was not treated as hostile by the prosecution and consequently was not cross-examined in any aspect of the matter.

10. As mentioned supra, the last circumstance relied upon the prosecution is that the accused himself voluntarily went to the police station in bloodstained clothes with a bloodstained knife. In our considered opinion, the prosecution has created a make believe story in that regard. According to the prosecution, the accused went to the police station at about 1:45 p.m. PW6 has deposed that the accused after coming to the police station confessed that he killed the deceased since he was aggrieved by

the action of the deceased having an illicit relationship with PW4 and that she lived a life like a debauched woman. Despite sufficient attempts to convince her to mould her conduct she did not mend her conduct and hence he killed her by stabbing her with the knife. Though such statement was allegedly made by the accused after going to the police station voluntarily, no crime was registered by Changdeo, PW6, the Inspector of Police who was in the police station during the relevant point of time. However, subsequently after calling the police constable, the crime came to be registered under Section 307 of the IPC based on alleged dying declaration. Thereafter, bloodstained clothes and bloodstained knife were seized. The relevant station entry is Ext P31. In the cross-examination, PW6 has admitted that Ext P31 was made out by another police officer namely ASI Sonkavade inasmuch as said Sonkavade was on duty; one Mr. Angule was the Station in-charge during the relevant point of time but he was not present when the accused had come.

He has further admitted in the cross-examination that he has not registered the crime on the basis of statement given by the accused. On the other hand, he registered the crime at 2:15 p.m. and prepared recovery panchnama from 2:15 to 2:30 p.m.

Later he came to know of the death of the deceased based on which information of offence under Section 302 was added. The accused was arrested at 2:25 p.m. These answers in the cross-examination of PW6 clearly reveal the allegation that the accused allegedly came at 1:45 p.m. and confessed about the crime appears to be an afterthought. The very fact that no crime was registered by PW6 who was allegedly very much present when accused went to the police station itself speaks falsely of the case of the prosecution. On the other hand, in the cross-examination as mentioned supra, Ext P31, entry in the station of record which was made at the earliest point of time was recorded by one ASI Sonkavade, police officer on duty and not by PW6 which clearly means that PW6 was not present when the accused allegedly came to the police station and made the statement and whereas ASI Sonkavade was present.

11. Having regard to the aforementioned discussion and other material on record, we find that the origin and genesis of the prosecution is shrouded in mystery; the prosecution has tried to improve its case from stage to stage. In our considered opinion, the prosecution has not proved its case beyond

reasonable doubt against the accused. Hence, benefit of doubt will go in favour of the accused.

12. The impugned judgment of the High Court is set aside and accordingly, the appeal is allowed. The accused/appellant is directed to be released forthwith, if not required in any other case.

.....**J.**  
**(N.V. RAMANA)**

.....**J.**  
**(MOHAN M. SHANTANAGOUDAR)**

.....**J.**  
**(S. ABDUL NAZEER)**

**NEW DELHI,**  
**MARCH 14, 2019.**