

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 612 OF 2022

Ram s/o Kundlik Kharat
Age: 42 years, Occu. Labourer
R/o. Hanwatkhedha, Tq. Mantha,
District Jalna
At present R/o. Balajinagar,
Ranjangaon, Tq. Gangapur,
District: Aurangabad

**...APPELLANT
(INFORMANT)**

VERSUS

- 1) The State of Maharashtra
Through Police Inspector,
Police Station, Mantha,
Tq. Mantha, District Jalna
- 2) Kapil S/o Raju Dahije,
Age: 22 years, Occu. Agril.,
R/o. Hanwatkhedha, Tq. Mantha,
District Jalna

**...RESPONDENTS
(RES.NO.2 – ORIG.ACCUSED)**

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Mr. A. N. Nagargoje, Advocate for appellant
Mr. R. D. Sanap, APP for respondent No.1 - State

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 06.03.2023.

ORDER [PER Y. G. KHOBRAGADE, J.] :

The present appeal under Section 372 of the Code of
Criminal Procedure directed by the appellant / complainant,

challenging the judgment and order dated 02.05.2022 passed by the learned Sessions Judge, Jalna in Sessions Case No.144/2021, thereby acquitted the accused / respondent No.2 - Kapil Raju Dahije for the offence punishable under Section 302 of Indian Penal Code in Crime No.210/2019 registered with Mantha Police Station.

2. Heard Mr. Nagargoje, learned Advocate for the appellant and the learned APP for the State at length.

3. With the able assistance of the learned Advocate for the appellant as well as the learned APP, we have gone through the record which was produced before the learned Sessions Judge.

4. The prosecution story in short is that on 02.04.2019 the love marriage between the respondent No.2 / accused and deceased Shalan was solemnised in Buddha Vihar at village Hanwatkhedha, but, prior to that the love marriage between the deceased Shalan and the respondent No.2 was already solemnised in the Court at Bandra (Mumbai). According to the informant, his daughter Shalan was cohabiting with the respondent No.2 accused at Hanwatkhedha. On 12.06.2019 his daughter Shalan, accused Kapil, his cousin father-in-law Nayabrao Dahije and his cousin brother Akash were present at her home and provoked the respondent accused that they don't want

Shalan and they will see that nothing will be happened to him. On the said provocation the deceased Shalan poured kerosene on her person and set on fire. Due to which the deceased was received severe burn injuries and thereafter Nayabrao Dahije and Akash Kharat took the injured Shalan in private hospital and subsequently she was admitted in Civil Hospital, Mantha, District Jalna, Civil Hospital, Jalna, Parbhani and lastly at Ghati Hospital, Aurangabad. She died on 02.07.2019 while hospitalisation. The appellant, therefore, lodged a report Exh.17 at Mantha Police Station. On the basis of said report, Crime No.210/2019 came to be registered against the respondent - accused for the offence punishable under Section 302, 108, 34 of Indian Penal Code.

5. The Investigation Officer, PSI Shri Gattuwar conducted the investigation and further investigation carried by PW6 Police Inspector Shri Vilas Dinkar Nikam. The Investigation Officer visited at the spot of incidence, drawn spot panchanama Exh.19 in presence of panchas and recorded statement of the witnesses. Accordingly, the present respondent No.2 - accused, came to be arrested under arrest panchanama Exh.34. On completion of the investigation, the Investigating Officer filed charge-sheet against the accused. On the

basis of material evidence available on record, the learned trial Court framed the charge against the accused for the offence punishable under Sections 302, 108 of the Indian Penal Code. Obviously, the plea of the accused recorded. However, the accused pleaded not guilty and claimed for trial.

6. In order to bring home the guilt of the accused, the prosecution examined six witnesses.

- (1) PW-1 Ram Kundlik Kharat, complainant at Exh.16;
- (2) PW02 Balasaheb Ganeshrao Mane, spot panch at Exh.18;
- (3) PW-3 Anita Ram Kharat, wife of complainant and mother of deceased at Exh.24;
- (4) PW-4 Dr. Aniket Pandurang Varatkar, Medical Officer at Exh.28;
- (5) PW-5 Nandkumar Balkrushna Shimbire, who recorded statement of deceased Shalan at Exh.31 and
- (6) PW-6 Vilas Dinkar Nikam, Investigating Officer at Exh.33.

7. Apart from oral evidence, the prosecution proved following documentary evidence.

Sr.No.	Document	Exhibit No.
1.	Report	17
2.	Spot Panchanama	19
3.	Statements of deceased	20, 21 (admitted by defence)
4.	Statement of deceased	30
5.	Inquest Panchanama	22
6.	Medico Legal Injury Certificate of accused	23 (admitted by defence)
7.	Postmortem report	32
8.	Arrest Panchnama of accused	34

8. After conclusion of the trial, the learned trial Court recorded the statement of the accused under Section 313 of the Code of Criminal Procedure. The defence of the respondent accused is that the deceased, his wife Shalan herself poured the kerosene on her person and set on fire and committed suicide and he has not committed murder of his wife. Hence, prayed for acquittal.

9. On perusal of cross examination of PW-1 Ram, it appears that the marriage of his daughter Shalan was solemnised with the accused against wish of her father. The marriage between the deceased Shalan appears to be out of love affair and said marriage was performed at Bandra Court, Mumbai. However, subsequently on 02.04.2019, the marriage between the accused and deceased Shalan was solemnised at Buddha Vihar, Hanwatkhedha. After the marriage, the deceased Shalan and the accused were residing at village Hanwatkhedha. On 12.06.2019 at about 5.00 p.m., the informant received a message about burning of his daughter Shalan. She was initially hospitalised at Civil Hospital, Jalna. The informant had visited at hospital, but he was not permitted to meet his daughter deceased Shalan. Subsequently his daughter was shifted at Civil Hospital, Parbhani and then at Ghati Hospital at Aurangabad.

10. On face of record, it appears that soon after the incident of burning, the victim Shalan was hospitalised at Civil Hospital, Parbhani and her first dying declaration was recorded by Police Chowki Officer attached with Civil Hospital, Parbhani. The Duty Officer obtained the endorsement of the Medical Officer Dr. Khandare who certified that the patient was in conscious and mentally sound to give her statement. Thereafter the Duty Officer recorded the statement of the victim wherein she had stated that on 02.04.2019 her marriage solemnised with the accused / Respondent No.2 and she was cohabiting with her husband and Respondent alongwith her mother-in-law, father-in-law and brother-in-law. On 12.06.2019 at about 12.30 p.m., her mother-in-law had gone to attend marriage and her father-in-law had gone for agricultural work in the field of one Prakash Ganage. Her husband / accused was sleeping in another room, her brother-in-law and her sister-in-law were sitting on cot under the Neem tree and she was cooking noodles in kitchen. She had kept a pot on the earthen stove for boiling of water, but firewoods were wet due to rain fall and fail to light up. Therefore, she brought a kerosene lamp and dropped some kerosene from said lamp on firewood and kept the kerosene lamp near the earthen stove, but she

did not notice about some kerosene was fallen on her saree and when she lightened the matchstick to firewood, all of sudden fire got exposed and her saree came into the contact with fire. Therefore, she shouted and after hearing her shouts, the accused who was sleeping in adjacent room, came there and extinguished the fire by putting quilt on her. She received burn injuries on her back, chest, stomach, both hands, both legs, face, and neck. Her husband – accused also sustained burn injuries on his both hands while extinguishing the fire. At that time, her brother-in-law, cousin father-in-law, cousin sister-in-law came and brought her at Civil Hospital at Mantha, then at Civil Hospital , Jalna and subsequently she was hospitalised at Parbhani and thereafter, she was shifted at Ghati Hospital, Aurangabad.

11. Since the case was of burning and the patient was hospitalised on 28.06.2019 in night time at Ghati Hospital, Aurangabad, therefore, PW-5 Nandkumar, PSI attached with Begampura Police Station was summoned to record statement of victim Shalan. Accordingly, PW-5 visited at Ghati Hospital, Aurangabad in intervening night of 28.06.2019 and 29.06.2019 and after seeking permission and opinion of the Medical Officer vide Exh.29, he recorded statement of the victim at about 3.00 a.m. at

Exh.30, wherein the victim Shalan stated that her husband - accused on number of occasions was saying her that he wants to die. One day they both decided to die together and both of them sat together but on that day they changed their decision. On the day of incident, she and her husband both decided to die and both were present in their house and she poured kerosene on her person from a can and then her husband (accused) ignited one matchstick, but he (accused) himself extinguished the same. Thereafter her husband (accused) ignited another matchstick and thrown on her body. Therefore, she received burn injuries. Thereafter, her husband (accused) and her cousin father-in-law extinguished fire by putting clothes on her person and he admitted her in the hospital.

12. Spot panchanama Exh.19 drawn by PW-6 Vilas Nikam, Police Inspector of Mantha Police Station, not been disputed by the accused. The prosecution examined the informant – appellant i.e. PW-1 Ram, the father of the deceased at Exh.16, who admitted that the marriage of his daughter Shalan with the accused was against his wish and while performing the marriage ceremony, he himself and family members of the accused prepared one document that in future they will not give trouble to each other in any manner. The evidence

of PW-1 does not suggest that the deceased was ill-treated at the hands of the accused for demand of dowry. No doubt the prosecution case is based on two dying declarations, but both dying declarations do not suggest about raising mental or physical harassment to the victim. Both dying declarations Exh.20 and 30 which have been produced on record itself suggest that the accused was only earning member in his family and deceased and the accused both were thinking to end their life, may be due to poverty or insufficient income. As per the second dying declaration, prior to 2-3 days of the incident, the accused disclosed to end his life, but the deceased Shalan was saying to the accused that both of them would die and on the day of incident both, the deceased and accused were decided to commit suicide and both of them sat together for some time. Thereafter, the deceased Shalan herself poured kerosene on her person with an intention that her husband / accused would say her to let plan to die, but her husband / accused was saying that they both would die. Her husband / accused firstly ignited matchstick, but he extinguished and but again her husband ignited second matchstick and dropped the lighted matchstick on her person and due to which she burned and soon after, her husband – accused extinguished fire by putting quilt on her person and hospitalised her. Therefore, it does

not suggest there was intention of the accused person to commit murder of the deceased Shalan. So also the statements given by the deceased in first dying declaration recorded on 13.06.2019 by the Duty Officer at Government Hospital, Parbhani and Exh.30 statement given to PW-5 are not in corroboration and both are contrary to each other, because as per first dying declaration, the cause of fire that she poured kerosent on wetness firewood from kerosene lamp and kept said lamp near earthern stove and some kerosene was fallen on her saree, which she did not notice and when she (victim) lighted the matchstick to put fire to the firewood, but fire was blown and her saree caught fire. Whereas, as per second dying declaration Exh.30 the victim deceased herself poured kerosene on her person and her husband ignited matchstick first time but he extinguished and then her husband (accused) ignited second matchstick and thrown on her body. The evidence of the prosecution witness does not reveals about abetment against the deceased to commit suicide and on the day of incident the accused and the victim were in dilemma to end their life and it can seen from the conduct of the accused that he first time though ignited matchstick, but he extinguished and then second time he lighted the matchstick and put the victim on fire but when accused observed fire to his wife deceased Shalan, he immediately brought

quilt and put on the person of the deceased. Therefore, it appears that there was no intention of the accused to commit murder of deceased.

13. On 02.07.2019, the deceased Shalan died while undergoing treatment and the incident had occurred on 12.06.2019. Therefore, it appears that the deceased had survived approximately twenty days and her statements were recorded, but the deceased has not attributed any ill-treatment raised against her at the hands of the accused. So also there is no corroborative piece of evidence to show that the accused had abetted the victim to commit suicide.

14. On 02.05.2022, the learned trial Court passed the impugned order and acquitted the respondent No.2 – accused for the offence punishable under Section 302 of the Indian Penal Code after considering the evidence available on record, which is justifiable and no substantial grounds have been set out to interfere with the findings of the acquittal of the accused.

15. In view of the above discussions, we are not inclined to allow the present appeal. Accordingly, the appeal is dismissed.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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