

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

CRIMINAL APPEAL NO.144 OF 2013

Balasaheb Laxman Anarse,  
Age 42 years, Occu. Labour  
R/o Kerul, Taluka Ashti,  
District Beed

..Appellant

Versus

The State of Maharashtra  
through Police Station Officer,  
Police Station, Ashti, Tawka Ashti,  
District Beed

..Respondent

Mr T.M. Tandale, Advocate for appellant  
Mrs V.A. Shinde, A.P.P. for respondent

**CORAM : P.V. HARDAS AND  
N.W. SAMBRE, J.**

**DATE : 18th June 2015**

**ORAL JUDGMENT**

1. The appellant, who stands convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.500/- in default of which to undergo further simple imprisonment for six months, by the Additional Sessions Judge, Beed by judgment dated 31<sup>st</sup> January 2013 in Sessions Case No.67/2012, by this appeal questions the correctness of his conviction and sentence.

2. Facts in brief as are necessary for the decision of this appeal may be stated thus :

P.W.8 Police Head Constable Mahadeo Shinde, who was attached to Tophkhana Police Station, Ahmednagar and was on duty on 6<sup>th</sup> February 2012 at the Civil Hospital, Ahmednagar was informed by Dr. Deshmukh about admission of injured Mangal in the hospital with burns. P.W.8 Shinde contacted the Medical Officer and requested him to ascertain if the injured was in a fit condition to give her statement. Thereafter, they visited the injured at about 12.10 pm and asked the relatives to withdraw themselves from the ward. The Medical Officer P.W.6 Dr. Deshmukh examined Mangal and opined that she was in a fit condition to give her statement. Statement of Mangal was accordingly recorded by P.W.8 Head Constable Shinde at Exh.17. In the said statement Mangal had stated that the appellant who had returned home in an intoxicated condition told Mangal not to go for work and quarreled with Mangal. The appellant thereafter poured kerosene on Mangal and set her ablaze. P.W. 1 Tukaram extinguished the flames by wrapping a quilt. According to P.W.8 Head Constable Shinde, he had read over the statement to Mangal and since her hands were burnt, he obtained the toe impression of the left leg. P.W.3 Police Constable Ramdas Giri who was attached to the Ashti Police Station received a covering letter enclosing the statement of injured Mangal. On the basis of dying declaration of Mangal at Exh.17, he registered an offence vide Crime No.24/2012 initially under Section 307 of Indian Penal Code and entrusted the investigation to P.W.9 P.S.I. Syed Jilani Qadar Sayed. Meanwhile, P.W.4 Satish Chilwar, Special Executive Magistrate also recorded the statement of Mangal at Exh.24.

3. P.W.9 P.S.I. Syed Jilani, who was attached to Ashti Police Station was entrusted with the investigation of Crime No.24/2012. He accordingly proceeded to scene of the incident and in presence of Panchas drew the scene of the incident panchnama at Exh.44. From the scene of the incident he drew samples of ordinary mud and mud mixed with kerosene. From the scene of the incident he has also seized match stick and a Can containing kerosene. Since injured Mangal had succumbed to her injuries, Section 302 of the Indian Penal Code came to be added. He recorded the statements of witnesses and referred the seized articles for examination to the Chemical Analyzer along with the carrier P.W.10 Police Constable Sanjay Gangurde. The requisition to the Chemical Analyzer is at Exh.45. Further to the completion of investigation, a charge-sheet against the appellant was submitted.

4. Post mortem on the dead body of deceased Mangal was performed by P.W.5 Dr.Shahadeo Sonawane. According to P.W.5 Dr. Sonawane, Mangal had died due to cardio respiratory failure due to septicemia due to 97% superficial to deep burns. The post mortem report is at Exh.28.

5. On the case being committed to Court of Sessions, trial Court framed charge against the appellant for offence punishable under Section 302 of Indian Penal Code. The appellant denied his guilt and claimed to be tried. Prosecution, in support of its case examined ten witnesses. The defence of the appellant is of denial. The trial Court

accepted the evidence of the prosecution witnesses and convicted and sentenced the appellant as afore-stated.

6. Prosecution has examined P.W.1 Tukaram, uncle of the appellant, who deposes that on the day of the incident he had heard cries coming from the house of the accused at about 7.00 pm. According to him, the appellant was addicted to liquor and used to come home under the influence of liquor. The appellant used to quarrel with his wife Mangal often. According to him, he had wrapped a quilt around Mangal and extinguished the flames. In cross-examination he has admitted that the appellant was residing in the house of his parents-in-law for a period of twenty years. Mangal was insisting the accused to reside with her in the house of her parents. He has also admitted that deceased Mangal was a hot tempered lady and, therefore, a husband like appellant was chosen for her. He has also admitted that Mangal used to get angry whenever the appellant used to return home under the influence of liquor. He has also admitted that Mangal was of quarrelsome nature and was quarrelling with everyone in the agricultural field.

7. Prosecution has examined P.W.2 Dada, who is brother-in-law of the appellant, as wife of P.W.2 Dada is the sister of deceased Mangal. P.W.2 Dada has admitted that the appellant was addicted to liquor and, therefore, there used to be frequent quarrel between the appellant and his wife deceased Mangal. He has admitted that he along with one Gadade had gone in the hospital. Gadade asked

Mangal about the incident. P.W. 2 Dada deposes that Mangal had informed Gadade that the accused had poured kerosene on her and set her ablaze.

8. The entire evidence against the appellant is the evidence of the two dying declarations at Exh.17 and Exh.24. Though P.W.8 Police Head Constable Shinde has deposed that he had read over the dying declaration to Mangal, yet there is no endorsement in the dying declaration at Exh.17 that the dying declaration had been read over to Mangal and Mangal had admitted the contents to have been correctly recorded. Similar is the challenge in respect of dying declaration at Exh.24. P.W.4 Satish Chilwar, a Special Executive Magistrate also does not depose about the dying declaration being read over to injured Mangal. In the light of the aforesaid infirmities and in the light of the judgment of the Supreme Court in **Shaikh Bakshu & Ors. Vs. The State of Maharashtra**, reported in **(2008) 1 SCC (Cri) 679** and the Division Bench judgment of this Court in **Abdul Riyaz Abdul Bashir Vs. State of Maharashtra**, reported in **2012 ALL MR (Cri.) 2188**, two dying declarations at Exh.17 and Exh.24 cannot be made the foundation for sustaining the conviction. In the absence of any other corroborative evidence, the oral dying declaration alleged to have been offered her by P.W.2 Dada also cannot be relied upon. The person to whom the dying declaration had been made had not been examined as a witness.

9. Thus, we find that there is hardly any evidence for sustaining the conviction of the appellant and possibility of deceased Mangal committing suicide cannot be ruled out. Deceased Mangal was a hot tempered lady who used to get annoyed on the appellant returning home under the influence of liquor. Mangal was of quarrelsome nature and used to quarrel with everyone in the agricultural field. The possibility of deceased Mangal committing suicide and falsely implicating the appellant also cannot be ruled out. Thus, the appellant is entitled to be given the benefit of doubt.

10. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid be refunded to the appellant.

Since the appellant is in jail, he be released forthwith, if not required in any other case.

**( N.W. SAMBRE, J.)**

**( P.V. HARDAS, J.)**

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