

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 341 OF 2012

Sunil S/o Gangadhar Folane,
Age: 32 years, Occu: Agricultural,
R/o Dhanora (B) Tq. Ambajogai,
Dist. Beed.

... **APPELLANT**
(Original Accused)

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Police Station Ambajogai (Gramin),
Tq. Ambajogai, Dist. Beed.

... **RESPONDENT**

...
Mr. P. M. Shinde, Advocate for Appellant.
Mr. K. S. Patil, APP for Respondent / State.
...

**CORAM : A. B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATED : 28th September, 2015.

JUDGMENT: (Per Indira K. Jain, J.)

. This is an appeal preferred by original Accused against the judgment and order dated 9th March, 2012, passed by learned Additional Sessions Judge, Ambajogai, District Beed, in

Sessions Case No.9 of 2011. By the said judgment and order, learned Additional Sessions Judge convicted Appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default, three months rigorous imprisonment.

2 For the sake of convenience, we shall refer Appellant in his original status as Accused as he was referred before the Trial Court.

3 Prosecution case briefly stated is as under:

- i. Deceased Manesha was the wife of Appellant. She was married to Accused before 10 years of incident. Couple was blessed with two sons Vaibhav and Suntosh.
- ii. Incident occurred on 21st October, 2010 between 07:00 pm and 07:30 pm when Manesha returned home from work of cutting grass in the field of Accused. As she was to attend naming ceremony in a neighbouring house, she was getting ready.

That time Accused came under influence of liquor. He raised doubt on character of Manesha and threatened to kill her. Then he picked up a can containing kerosene, poured it on the person of Manesha and set her on fire. Manesha raised cries for help. Accused Sunil ran away from the spot. Anurath, brother-in-law of Manesha residing in a neighbouring house rushed to the spot and extinguished fire. Manesha was taken to S.R.T.R.M.C. Hospital, Ambajogai.

- iii. PW-1 A.S.I. Dinkar Ekal was attached to S.R.T.R.M.C. Hospital Police Chouki, Ambajogai on 21st October, 2010. At around 08:30 pm he received telephonic message from hospital that Manesha was admitted in Ward No.14 as she sustained burns. PW-1 A.S.I. Ekal rushed to the hospital. He inquired from Dr. Ashok Shinde, Medical Officer on duty regarding fitness of patient to give her statement. After Dr. Ashok Shinde examined patient and certified that Manesha was able to give her statement PW-1 A.S.I. Ekal

recorded dying declaration of Manesha. In the said dying declaration, Manesha narrated that she was set on fire by her husband Sunil.

- iv. After recording statement of Manesha PW-1 A.S.I. Ekal wrote a letter to Naib Tahsildar for recording her statement. The statement recorded by PW-1 A.S.I. Ekal was forwarded to Police Station, Ambajogai (Rural). Crime No.122 of 2010 was registered under Sections 307 and 506 of the Indian Penal Code against Accused. On the same day, PW-2 Naib Tahsildar Dagadu Kasbe recorded dying declaration of Manesha. In this dying declaration also she narrated the incident in the same manner as she disclosed before PW-1 A.S.I. Ekal.
- v. On 23rd October, 2010 Manesha succumbed to injuries. On 24th October, 2010 dead body of Manesha was sent for postmortem in the same hospital. PW-3 Dr. Pawar performed postmortem and noticed 95% burns on the dead body. Doctor

opined cause of death due to shock as a result of 95% superficial and deep burns of total body surface area.

- vi. PW-11 P.I. Maruti Pandit received investigation of Crime No.122 of 2010 registered on the basis of dying declaration of Manesha recorded by PW-1 A.S.I. Ekal. During investigation he recorded spot panchanama in the presence of panch witnesses. During spot panchanama, one kerosene can, match box, burnt pieces of saree and blouse came to be recovered. Accused was arrested. Witnesses were examined. On completing investigation charge-sheet was submitted to the Court of learned Magistrate who in turn committed the case for trial to the Court of Sessions.

4 Charge came to be framed against Accused at Exhibit 3. He pleaded not guilty to the charge and claimed to be tried. Appellant raised a specific defence that he was addicted to liquor and Manesha had to share responsibility of maintaining two children and household expenses. Their financial condition was

poor and so she committed suicide.

5 Prosecution examined in all 11 witnesses to substantiate the guilt of Accused. After going through the evidence adduced by prosecution, learned Additional Sessions Judge convicted and sentenced Accused as stated in paragraph No.1 above. Being aggrieved, this appeal has been preferred by the Accused.

6 We have heard Mr. P. M. Shinde, learned counsel for Appellant and Mr. K. S. Patil, learned APP for State. Considering the facts and circumstances of the case, submissions made on behalf of parties, reasonings recorded by Trial Court and evidence on record, for the below mentioned reasons we are of the opinion that Appellant poured kerosene on his wife Manesha and set her on fire.

7 Conviction of Appellant is mainly based on two written dying declarations at Exhibits 15 and 19 recorded by PW-1 A.S.I. Dinkar Ekal and PW-2 Naib Tahsildar Dagadu Kasbe respectively.

8 Needless to state that in order to pass the test of reliability a dying declaration has to be subjected to a very close

scrutiny keeping in view the fact that statement has been made in the absence of Accused who had no opportunity of testing the veracity of the statement by cross-examination. It is a settled law that once the Court comes to a conclusion that dying declaration was the truthful version as to the circumstances of death and the assailant of victim no further corroboration is required to such a dying declaration. Keeping in view these legal principles in mind we now advert to the dying declarations on which reliance is placed by the prosecution.

9 As stated above, dying declaration recorded by PW-1 A.S.I. Ekal on 21st October, 2010 between 21:00 and 21:20 hours was the first in point of time. PW-1 A.S.I. Ekal was attached to S.R.T.R.M.C. Hospital Police Chouki at the relevant time. On receiving telephonic message from the hospital he rushed to Ward No.14. PW-10 Dr. Ashok Shinde was Medical Officer on duty. It is stated by PW-1 A.S.I. Ekal that he intimated Dr. Shinde to remain present while recording dying declaration. He recorded dying declaration in the presence of Dr. Shinde. PW-1 A.S.I. Ekal stated that in her statement Manesha told that between 19:00 and 19:30 hours her husband came to the house under influence of liquor. He doubted her chastity and then poured kerosene on her person

and set her on fire. She also stated that her brother-in-law brought and admitted her to the Government Hospital. On completion of dying declaration the same was read over to victim. The said dying declaration is proved at Exhibit 15.

10 It is apparent from dying declaration Exhibit 15 recorded by PW-1 A.S.I. Ekal that in the beginning and on conclusion of dying declaration Medical Officer certified that patient was conscious and oriented to give her statement. The evidence of PW-1 A.S.I. Ekal is fully supported by PW-10 Dr.Ashok Shinde.

11 Second dying declaration Exhibit 19 was recorded by PW-2 Naib Tahsildar Dagadu Kasbe between 11:05 pm to 11:10 pm on the same day. It is stated by PW-2 Naib Tahsildar Kasbe that on 21st October, 2010 he received a letter from Police Chauki Amaldar S.R.T.R.M.C. Hospital to record dying declaration. On receiving letter Exhibit 16, he went to hospital and met Dr. Ashok Shinde. The evidence of PW-2 Naib Tahsildar Kasbe further shows that he inquired with Dr. Shinde whether Manesha was in a position to give her statement. Dr. Shinde told him that she was fit to give her statement. An endorsement was accordingly made by

Dr. Shinde in the beginning of the statement. After ascertaining that Manesha was fit to make her statement, PW-2 Naib Tahsildar Kasbe recorded her dying declaration. Before PW-2 Naib Tahsildar Kasbe, Manesha narrated the incident in the same manner as stated before PW-1 A.S.I. Ekal. The dying declaration recorded by PW-2 Naib Tahsildar Kasbe was duly proved at Exhibit 19. It shows that Manesha was conscious throughout while recording her statement. She stated that on 21st October, 2010 at around 07:30 pm her husband came under influence of liquor. He doubted her chastity, threatened to kill her and then picked up a can containing kerosene, poured it on her person and set her on fire. The testimony of PW-2 Naib Tahsildar Kasbe is corroborated by PW-10 Dr. Shinde.

12 From cross-examination of PW-1 A.S.I. Ekal, PW-2 Naib Tahsildar Kasbe and PW-10 Dr. Shinde it can be seen that their evidence is consistent throughout. Nothing could be elicited in the cross-examination of these three star witnesses. On close scrutiny we found that both the dying declarations Exhibits 15 and 19 proved by PW-1 A.S.I. Ekal and PW-2 Naib Tahsildar Kasbe are voluntary, truthful and believable statement of the deceased free from suspicion and inspire confidence.

13 It is pertinent to note that couple had two sons. There was no reason for Manesha to falsely implicate her husband. Through the evidence of PW-4 Vithal Latal father of Manesha it is brought on record that Accused was addicted to liquor and raising doubt about the chastity of his wife. He used to harass her.

14 Another significant factor in the present case is that after setting Manesha on fire, Accused ran away from the spot and fire was extinguished by Anurath, brother-in-law of Manesha residing in a neighbouring house. If Manesha committed suicide as contended by Accused there was no reason for him to flee away from the spot. The post conduct of Accused falsifies his defence of suicidal death and further strengthens the case of prosecution that Manesha died of homicidal death.

15 There is one more reason to accept the prosecution evidence and that is the absence of plausible explanation from the side of Accused to point out the circumstances under which Manesha sustained burns. Accused does not dispute his presence on the spot at the time of occurrence of incident in the evening. No one except Accused was present in the house. Under Section 106 of the Indian Evidence Act it was for the

Accused to explain the circumstances in which Manesha sustained 95% burns. Failure on the part of Accused to explain tilts in favour of prosecution and further negatives the defence raised by Accused in its entirety that it was a suicidal attempt.

16 Thus on appreciation of evidence of material witnesses and placing reliance on both the consistent dying declarations Exhibits 15 and 19 we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that Accused poured kerosene on his wife Manesha and set her on fire, which resulted in her death. We find no merit in the appeal. Appeal is dismissed.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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