

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 417 OF 2012

Shivaji s/o Sahebrao Doiphode,
age 35 years, occ. Nil,
R/o Village Sarola, Tq.Washi,
District Osmanabad

...APPELLANT
[Orig. Accused]

VERSUS

1] The State of Maharashtra

...RESPONDENT

Mr. H.V.Tungar, Advocate appointed for the Appellant
Mr. K.S.Patil, APP for Respondent/State

**CORAM : A.B.CHAUDHARI &
INDIRA K. JAIN, JJ.**
DATED : 30th September, 2015

ORAL JUDGMENT [Per Indira K.Jain, J.]

1] This appeal takes exception to the judgment and order, passed by the learned Additional Sessions Judge, Osmanabad, on 20.5.2011, in Sessions Case No. 83 of 2010. By the said judgment and order, learned Additional Sessions Judge convicted the accused

for the offences punishable under Sections 498-A and 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and fine of Rs.2,000/-, in default to suffer two months rigorous imprisonment for the offence punishable under Section 498-A of the Indian Penal Code; and imprisonment for life with fine of Rs.3,000/-, in default rigorous imprisonment for three months for the offence punishable under Section 302 of the Indian Penal Code. Both the substantive sentences of imprisonment were directed to run concurrently.

2] For the sake of convenience, we shall refer the 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 Chhaya was the daughter of Shankar Gholve, resident of Sarni Sangvi in Taluka Kaij, District Beed. She was married to accused before ten years of the incident. The couple was blessed with two sons, Satish and Amol.

(ii) It is the case of prosecution that initially for few years Chhaya was treated well by the accused.

Accused was addicted to liquor. He then started raising quarrel with his wife on the ground that she was not working in the field and often visiting her parents house. He was raising suspicion on her conduct and abusing and beating her in drunken condition.

(iii) On 25.6.2007 at about 10.00 a.m. Chhaya along with her father-in-law went to the market at Kallam. They purchased a goat and came to the house. Chhaya was suffering from stomach ache. She did not go to the doctor and when she came home she found that accused had locked the house and went away. Then she slept in the cattle shed. At around 8.00 p.m. accused came under the influence of liquor, opened the door of house and had the food which was prepared in the morning. Chhaya ignited chula for cooking food for her father-in-law and others. Accused poured water on chula and extinguished it. He abused her alleging that she does not work and does not behave properly. Then without food she went to sleep along with her children. Accused bolted the door from inside and started threatening Chhaya that he would not keep her alive. He uttered that, her parents howsoever financially

strong, would not be able to do anything and he is ready to suffer in jail.

(iv) On 26.6.2007 at around 5.30 a.m. while Chhaya was sleeping, accused poured kerosene from a plastic can on her person and set her on fire. On setting Chhaya ablaze, accused fled away. Asha, wife of brother of accused and nephew, Rajabhau saw Chhaya burning. So, they threw blanket on her person and extinguished the fire. An auto rickshaw was brought and Chhaya was taken to PHC, Washi. From there she was referred to the Civil Hospital, Beed.

(v) An intimation of MLC case was given to police chauki attached to the Civil Hospital, Beed. ASI Balaji Jadhav was on duty at the said police chauki. On receiving intimation of MLC case, he rushed to burn ward and inquired from lady doctor on duty whether patient was fit to make statement. Doctor examined the patient and certified that Chhaya was able to give her statement. Thereafter, ASI Jadhav recorded statement of Chhaya. In the said statement Chhaya narrated that in the morning her husband poured kerosene on her person and set her on fire. The said

statement was forwarded to police station, Kallam through City police station, Beed.

(vi) Crime No. 104 of 2007 came to be registered at Kallam police station, for the offences punishable under Sections 307, 498-A, 323, 504 and 506 of the Indian Penal Code against the accused.

(vii) It appears that ASI Jadhav also informed Special Judicial Magistrate to record the dying declaration of Chhaya. Accordingly, PW 6 Digambar Wanewadekar, Special Judicial Magistrate visited the hospital and recorded dying declaration of Chhaya after the doctor certified that she was able to give her statement. In the said dying declaration Chhaya narrated the manner of the incident almost in the same way as in her first statement before ASI Jadhav.

(viii) Chhaya succumbed to burn injuries on 4.7.2007 at 10.45 a.m. in the hospital. The offence under Section 302 of the Indian Penal Code was then added.

(ix) Inquest panchanama was drawn. The dead body was sent for postmortem. Dr. P.P.Rautmare examined the dead body. During postmortem, he found that deceased sustained 55 per cent burns. Doctor

opined, cause of death due to cardio respiratory arrest due to septicemic shock due to 55 per cent burns.

(x) During investigation, statements of several witnesses were recorded. Accused was arrested. On completion of investigation, charge sheet was submitted to the court of Judicial Magistrate, First Class, Kallam, who in turn committed the case for trial to the Court of Sessions.

4] Charge of the alleged offences came to be framed against the accused at Exh.9. He pleaded not guilty to the charge and claimed to be tried. His defence was of total denial and false implication.

5] The prosecution examined in all nine witnesses to substantiate guilt of the accused. After going through the evidence adduced by the prosecution, accused was convicted and sentenced by the trial court as stated in paragraph no.1 above. Hence, this appeal.

6] We have heard the learned counsel for the parties. Considering the facts and circumstances of the case, submissions

made on behalf of the learned counsel for the appellant and the learned A.P.P. for the State, reasoning recorded by the trial court and evidence on record, for the below mentioned reasons, we are of the opinion that appellant poured kerosene on his wife Chhaya and set her ablaze, which resulted into her death.

7] Conviction of appellant is mainly based on two written dying declarations, Exhs. 26 and 35 recorded by ASI Jadhav and Special Judicial Magistrate Digambar Wanewadekar, 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 the 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 parameters, we now advert to the dying declarations on which reliance is placed by the prosecution.

9] PW 7 ASI Balaji Jadhav had recorded the first dying declaration Exh.26 between 10.10 and 11.00 a.m. on 26.6.2007. He was attached to police chouki, Civil Hospital, Beed at the relevant time. He received an intimation from the medical officer that Chhaya Shivajirao Doiphode, a burn patient was admitted to the hospital. MLC was proved at Ex.23.

10] On receiving intimation, ASI Jadhav went to burn ward. He inquired from the lady doctor on duty regarding physical and mental condition of the patient to give her statement. After doctor examined and certified that patient was conscious and fit to give her statement, ASI Jadhav recorded statement of Chhaya. In the said statement, Chhaya stated that she was married to Shivaji before ten years and as she was not working in the agricultural land, her husband poured kerosene on her person and set her on fire. She also narrated that her father-in-law and Asha wife of her husband's brother brought her to PHC, Washi and then to Civil Hospital, Beed. After the writing of statement was concluded, same was read over to the patient. She admitted it to be true and correct. Thereafter ASI Jadhav obtained thumb impression of the left hand of Chhaya.

11] Second dying declaration (Exh.35) was recorded by

PW 6 Special Judicial Magistrate Digambar Wanewadekar on 26.6.2007 at 5.15 p.m. It is stated by Special Judicial Magistrate that on receiving letter (Exh.34) from police chouki, he went to the General Hospital, Beed. He met the medical officer and informed him that he had to record statement of patient Chhaya Shivaji Doiphode. He ascertained from the doctor whether patient was in a position to give her statement. Doctor examined the patient and certified that she was conscious and oriented to give her statement. Accordingly, an endorsement was given on the top of paper of dying declaration.

12] Then, Special Judicial Magistrate himself ascertained by putting preliminary questions to Chhaya as to whether she was able to give her statement or not. He then recorded dying declaration of Chhaya. In this dying declaration, Chhaya had given details about her family members and the manner of incident occurred on 25.6.2007. She narrated that she had been to Kallam along with her father-in-law as she was suffering from stomach ache. They purchased a goat and came back without going to the doctor. When they reached home at around 2.30 to 3.00 p.m. they noticed that her husband had locked the house and went away. Thereafter she was sleeping in the court yard. At 8.00 p.m. her husband came under

the influence of liquor and opened the door of the house. He had the food cooked in the morning. When Chhaya lighted the chul to prepare food for herself and father-in-law, her husband extinguished the chul and started quarreling with her. He then abused and threatened to kill her. She went to sleep. On 26.6.2007 at 5.30 a.m. her husband Shivaji poured kerosene from a can on her person and set her ablaze. Her sister-in-law Asha and nephew Rajabhau extinguished fire and brought her to the hospital.

13] It is stated by PW 6 Special Judicial Magistrate that after recording her statement he read over the same to Chhaya. She admitted the same to be true and correct. He obtained her left hand thumb impression. The said dying declaration is duly proved at Exh.35 by the Special Judicial Magistrate.

14] From the cross-examination of PW 6 Special Judicial Magistrate and PW 7 ASI Jadhav, it can be seen that their version is consistent throughout. Their evidence has received corroboration from the evidence of PW 9 Dr. Pranita Lagdive, who was medical officer on duty at the time of recording both the dying declarations. Nothing could be elicited in cross-examination of these three important witnesses. On close scrutiny, we find that both the dying

declarations (Exhs. 26 and 35) proved by ASI Jadhav and Special Judicial Magistrate Digambar Wanewadekar are voluntary, truthful and believable statements of the deceased free from doubt and inspire confidence.

15] It is pertinent to note that couple had two sons. There was no reason for Chhaya to falsely implicate her husband. Through the evidence of PW 1 Shashikant Gholve, brother of Chhaya, PW 4 Kashibai, her mother and PW 5 Shankar, her father, prosecution has succeeded in proving that Chhaya was illtreated and often harassed by the accused.

16] Another significant factor in the present case is that after setting Chhaya on fire accused ran away from the spot. The post conduct of the accused clearly indicates that he is the culprit, as he poured kerosene, set his wife on fire and fled away from the spot.

17] 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 Chhaya sustained burns. Accused does not dispute that at 5.30 a.m. when incident occurred he was present in the house. Under Section 106

of the Indian Evidence Act it was for the accused to explain the circumstances under which Chhaya sustained 55 per cent burns. Failure on the part of the accused to explain such circumstances strengthens the case of prosecution and negatives the defence of false implication.

18] In the light of the above and on appreciation of evidence of material witnesses, particularly on both the consistent dying declarations (Exhs. 26 and 35), we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that accused poured kerosene on his wife Chhaya and set her on fire, which resulted in her death. Prosecution has also succeeded in proving the cruelty as defined under Section 498-A of the Indian Penal Code. Thus, we find no merit in the appeal.

19] In the result, Criminal Appeal No. 417 of 2012 is dismissed. Fees be paid to the advocate appointed as per rules.

[INDIRA K. JAIN, J.]

[A.B.CHAUDHARI, J.]

