

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.465/2012

1] Khandu s/o Bapu Pawar,
age 52 yrs., occu.agri.,

2] Latabai w/o Khandu Pawar,
age 40 yrs., occu.agri.,

Both r/o Chichondi Patil,
Tq. & Dist.Ahmednagar.

...Appellants..
(Org.accused nos.1 & 3)

Versus

The State of Maharashtra.

...Respondent...

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CRIMINAL APPEAL NO.386/2012

1] Sandip s/o Khandu Pawar,
age 25 yrs., occu.agri.,

2] Ravi s/o Khandu Pawar,
age 22 yrs., occu.agri.,

3] Deepak s/o Khandu Pawar,
age 20 yrs., occu.agri.,

Both r/o Chichondi Patil,
Tq. & Dist.Ahmednagar.

...Appellants..
(Org.accused nos.2, 4 & 3)

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Versus

The State of Maharashtra.

...Respondent...

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Shri R.N. Dhorde, Senior Advocate i/b Shri V.R. Dhorde,
Advocate for appellants in both the appeals.

Shri A.S. Shinde, APP for respondent - State.

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

DATE: 13.10.2015

ORAL JUDGMENT (Per A.B. Chaudhari, J.) :

1] Being aggrieved by the judgment and order dated 23.5.2012 passed by the learned Additional Sessions Judge-7, Ahmednagar, in Sessions Case No.252/2011 convicting the appellants in both these appeals for the offences punishable u/ss.302, 498-A, 504, 506 and 323, all r/w 34 of the Indian Penal Code and sentencing the appellant no.1 - Khandu Bapu Pawar and his wife - accused no.3 - Latabai Khandu Pawar for the offence punishable u/s 302 r/w 34 of the Indian Penal Code to suffer imprisonment for life and to pay fine; and sentencing all

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the appellants - accused in both the appeals for the offences punishable u/ss.498-A r/w 34 of the IPC to suffer rigorous imprisonment for three years each and to pay fine; u/s 504 r/w 34 of the IPC to suffer rigorous imprisonment for two years and to pay fine; u/s 506 r/w 34 of the IPC to suffer rigorous imprisonment for two years and to pay fine and u/s 323 r/w 34 of the IPC to suffer rigorous imprisonment for one year and to pay fine, these two appeals are preferred by the appellants - accused in this Court. Criminal Appeal No.465/2012 was filed by appellants - original accused nos.1 and 3 whereas Criminal Appeal No.386/2012 was filed by appellants - original accused nos.2, 4 and 5.

2] In brief, the case of the prosecution is that the deceased Priyanka was married to accused no.2 - Sandip and started residing with him and his family members thereafter at village Chichondi. Her husband was serving in M.I.D.C., Ahmednagar and used to reside at Ahmednagar at the house of his relatives and he used to come to his village on holidays. The accused no.1 - Khandu and his wife - accused no.3 - Latabai used to ill-

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treat Priyanka saying that they did not like her. They continued her ill-treatment. On 2.7.2011 at about 10-00 a.m., when Priyanka was sitting in the courtyard cleaning Garlic, accused no.3 – Latabai started abusing her. When asked why she was abusing her, Latabai threatened her that she would cause her death in the night on that day by pouring kerosene on her person and setting her on fire. It is alleged in the FIR (Exh.50) that on the same day in the night, accused no.3 – Latabai and accused no.1 – Khandu again started abusing Priyanka, but her husband did not say anything. Then they went to sleep. However, at about 1-00 a.m. in the mid-night, all the accused came to Priyanka, started abusing her and assaulted her. When she again asked why they were doing so, suddenly the accused no.1 – Khandu poured kerosene on her person while the accused no.3 – Latabai lit the match-stick and set her on fire. None of the accused nos.4 and 5 even tried to extinguish the fire. Thereafter, she was taken to hospital with burn injuries. Shri Shaikh, Police Station Officer, Ahmednagar, on 3.7.2011 directed the Police Head Constable Shri Chavan to record her statement. Shri Chavan went to the hospital and asked the Medical Officer

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to certify about her fitness and thereafter he recorded her dying declaration at Exhibit 50. Offence was registered pursuant thereto. PW8 Sachin Sanap carried further investigation. He visited the spot, drew panchanama, seized some articles containing burnt piece of saree, one lamp containing kerosene, one match-stick box and burnt match stick. During investigation, he recorded the statements of father and mother of Priyanka and other witnesses, who were present in the hospital. He then arrested the accused persons. He then received a medical certificate on 8.8.2011 i.e. after about one month and few days, Priyanka died in the hospital on account of the injuries. He then received the post mortem report, C.A.report and filed the charge-sheet. The charge was denied by all the accused persons. Hence, they were tried. The prosecution examined in all eight witnesses. The defence was that Priyanka wanted to live separately alongwith the accused at Ahmednagar, but her husband was not ready to reside as he had night duties and hence Priyanka was mentally disturbed and, therefore, in a fit of rage, she herself set her on fire. The accused examined DW1 Sanjay Thombre (Exh.65). The

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learned trial Judge, after recording the evidence and hearing the arguments convicted and sentenced the appellants – accused, as stated above. Hence, these appeals.

3] In support of the appeals, Shri R.N. Dhorde, learned Senior Advocate contended that the prosecution does not have any direct evidence in this case and the prosecution did not discharge the initial burden of proof. He submitted that the evidence in the form of dying declaration could not have been relied upon and the trial Court committed a mistake in relying on the said evidence for recording the conviction and sentence against the appellants. The Senior Advocate then contended that the prosecution did not bring any specific evidence on record to show that any demand of money or any sound reason for alleged cruelty and as such no offence u/s 498-A of the Indian Penal Code was at all proved by the prosecution. Whatever evidence was brought on record was vague in nature and could not have been relied upon to order conviction of the appellants. The learned Senior Advocate then contended that the

prosecution thus did not prove any motive for commission of murder, that too by father-in-law and mother-in-law. The theory of commission of suicide by Priyanka was not ruled out by the prosecution, therefore, the benefit of doubt should have been extended by the trial Judge to the accused persons. He then submitted that the incident is said to have occurred on 3.7.2011 while the death of Priyanka took place on 8.8.2011 i.e. almost after one month and five days. The record shows that she had received injuries only to the extent of 42% and not only that she died because of septicemia and lack of proper treatment. Had she been given proper treatment, she would have survived and, therefore, no intention to commit her murder could be said to have been proved and, therefore, the learned trial Judge erred in convicting the appellants for the offence of murder of Priyanka. He then submitted that at any rate, all the accused persons are required to be acquitted. In the alternative, he submitted that the main accused persons namely accused no.1 – Khandu and accused no.3 – Latabai were held guilty of offence of murder, but at the most they could be held guilty of the offence of culpable homicide not amounting

to murder. He, therefore, prayed accordingly.

4] Per contra, the learned APP supported the impugned judgment and order and submitted that the prosecution proved its case in the form of dying declaration of Priyanka that was recorded at Exhibit 50. There is no reason why the said dying declaration could be rejected as the same was recorded by PW 7 – Ravindra Chavan at Exhibit 50 on the same day namely 3.7.2011 at about 1-00 to 1-30 p.m. i.e. hardly after 12 hours of the incident of burning. His evidence and the proof of dying declaration has not at all been shaken and, therefore, there is no reason to interfere in the findings recorded by the learned trial Judge and the appeal deserves to be dismissed.

5] We have heard the learned counsel for the rival parties at length. We have seen the entire evidence tendered by the prosecution. We have gone through the reasons given by the trial Judge and the findings recorded by him. It is not in dispute that the learned trial trial Judge convicted the accused nos.1 and 3 for

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the serious offence of murder u/s 302 r/w 34 of the Indian Penal Code while the other accused including the accused nos.1 and 3 were convicted for the offences u/s 498-A, 323, 504 and 504 r/w 34 of the Indian Penal Code. Insofar as the finding of conviction recorded u/s 498-A, 504 and 506 r/w 34 of the Indian Penal Code is concerned, upon examination of entire evidence on record, we find that there is absolutely no evidence on record for recording conviction of the appellants. The prosecution did not have any evidence that Priyanka was ill-treated with any specific object of demanding money or was being harassed for any reason whatsoever. On the contrary, the prosecution case appears to be even from the dying declaration that frequent quarrels were taking place between Latabai, her husband Khandu and Priyanka. But then those quarrels cannot take the shape of proof of offence u/s 498-A of the Indian Penal Code. Insofar as other offences u/s 323, 504 and 506 of the Indian Penal Code are concerned, there is no specific evidence to that effect on record and, therefore, we do not agree with the trial Court in recording conviction for these offences, which we set aside accordingly.

6] Now coming to the dying declaration (Exhibit 50) recorded by PW7 Ravindra Chavan, we find that the same was immediately recorded and the cross-examination of PW7 Ravindra Chavan does not show any infirmity in the matter of recording of dying declaration (Exh.50). Though there is no direct evidence in this case, we find that the dying declaration (Exh.50) is believable and there is no reason for us to discard the said dying declaration. The learned trial Judge believed the dying declaration recorded by Ravindra Chavan.

7] There is one important dying declaration that was recorded first in point of time after her admission in the hospital, which is at Exhibit 46 proved by PW6 Bhaskar Bhos, Assistant Superintendent in Agricultural Department appointed as Special Judicial Magistrate for the last 10 years. He recorded dying declaration of Priyanka in the hospital immediately after her admission in the hospital at 10-00 a.m. as against the incident of 1-00 a.m. in the night. We have perused the evidence of PW6 Bhaskar Bhos and we find that his evidence is

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consistent and he has proved the dying declaration in its entirety and in fact that was the first dying declaration brought on record by the prosecution. There is no reason as to why the dying declaration (Exh.46) should be discarded. The learned trial Judge discussed the evidence of PW6 Bhaskar Bhos in paragraph no.42, with which we agree and we quote the same as under:-

"42. PW6 Bhaskar Bhos, Special Judicial Magistrate recorded first dying declaration Exh.46. In Exh.46, Priyanka had stated that she was married to accused No.2 Sandip before two years and after passing XIth standard examination, she took admission to XIIth standard. She further stated that her mother in law and father in law were opposing her for taking education and her husband was serving in M.I.D.C., Ahmednagar. She further stated that her husband used to come to the house after gap of eight days and he used to reside at the house of his relative. She further stated that her mother in law did not allow her to reside with her husband and her father in law, mother in law had told to her husband that if he would marry with Priyanka then his life would be ruined. Priyanka had stated in Exh.46 that all the accused were ill-treating her since her marriage and on the day of incident, her husband accused no.2 - Sandip came to the house, quarreled

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with her and beat her. Priyanka stated in her dying declaration Exh.46 that her father in law, mother in law and brothers in law came there, beat her and thereafter her father in law poured rockel on her body and mother in law lit the match stick and set her on fire. She had stated that her husband and brothers in law were present there and they did not try to extinguish the fire and all the accused were saying that they would cause her death by setting her on fire."

8] We thus believe the dying declarations recorded by the learned trial Judge. The next question is as to what offence is committed by accused no.1 - Khandu and his wife accused no.3 - Latabai. We find from the evidence of the prosecution that Priyanka was burnt to the extent of 42%. The incident took place on 3.7.2011 while she died on 8.8.2011. It further appears from the record that she was under treatment and had suffered septicemia and no proper treatment was given to her for the burn injuries. Thus, the burn injuries caused to her were such that she died after one month and five days. The accused no.1 - Khandu and accused no.3 - Latabai appear to have taken ghastly step of putting kerosene on her person and lighting the match-stick purely out of the

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anger towards Priyanka due to the quarrels that were taking place frequently in the house. The cause of death of Priyanka given by the doctor is cardio respiratory arrest due to anemia septicemia. We thus find that the appellant – accused no.1 – Khandu and his wife accused no.3 – Latabai cannot be held guilty of murder, but must be held guilty of the culpable homicide not amounting to murder. Surely they had the knowledge that having poured kerosene on the person of Priyanka, the death of Priyanka could occur and, therefore, they will have to be held guilty of offence punishable u/s 304 Part I and not Part II of the Indian Penal Code. We thus hold that the appellants i.e. accused no.1 – Khandu and accused no.3 – Latabai are not guilty of murder for the offence punishable u/s 302 r/w 34 of the Indian Penal Code, but are guilty of the offence punishable u/s 304 Part I of the Indian Penal Code.

9] The up-shot of the above discussion is that the appeals will have to allowed in part. In the result, we make the following order in these appeals.

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O R D E R

PART [A]

(I) Criminal Appeal No.465 of 2012 is partly allowed.

(II) The Judgment and Order dated 23rd May 2012 passed by the Additional Sessions Judge-7, Ahmednagar in Sessions Case No.252 of 2011 convicting the Appellant No.1 - Khandu s/o Bapu Pawar and Appellant No.2 - Latabai w/o Khandu Pawar for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentencing them to suffer Imprisonment for life and also to pay fine of Rs.2000/-, in default to suffer further Rigorous Imprisonment for six months each, is set aside and is modified.

. Instead the Appellant No.1 - Khandu s/o Bapu Pawar and Appellant No.2 - Latabai w/o Khandu Pawar are held guilty of the offence punishable under Section 304 Part I of the

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Indian Penal Code and are sentenced to the sentence already undergone by them, including that of fine.

(III) The Judgment and order of conviction and sentence awarded against the Appellant No.1 - Khandu s/o Bapu Pawar and Appellant No.2 - Latabai w/o Khandu Pawar for the offence punishable under Sections 498-A, 504, 506, 323 read with 34 of the Indian Penal Code, is hereby confirmed.

(IV) All the above sentences shall run concurrently.

(V) The Appellant No.1 - Khandu s/o Bapu Pawar and Appellant No.2 - Latabai w/o Khandu Pawar be set at liberty forthwith, if not required in any other crime.

PART [B]

(a) Criminal Appeal No.386 of 2012 is allowed.

(b) The Judgment and Order dated 23rd May 2012 passed by the Additional Sessions Judge-7, Ahmednagar in Sessions Case No.252 of 2011 holding the Appellant No.1 - Sandip s/o Khandu Pawar, Appellant No.2 - Ravi s/o Khandu Pawar, and Appellant No.3 - Deepak s/o Khandu Pawar, guilty of the offences punishable under Sections 498-A, 504, 506 and 323, read with 34 of the Indian Penal Code is set aside.

(c) The Appellant No.1 - Sandip s/o Khandu Pawar, Appellant No.2 - Ravi s/o Khandu Pawar, and Appellant No.3 - Deepak s/o Khandu Pawar, are held not guilty of the offences punishable under Sections 498-A, 504, 506 and 323, read with 34 of the Indian Penal Code of the Indian Penal Code and are acquitted of the said charges levelled against them.

(d) The Appellant No.1 - Sandip s/o Khandu Pawar, Appellant No.2 - Ravi s/o Khandu Pawar,

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and Appellant No.3 - Deepak s/o Khandu Pawar be
set at liberty forthwith, if not already
released from the jail.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)