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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 344 OF 2006

Prakash Rohidas Londhe

Age : 20 Years, Occ. : Labour Work,
R/o. House No. 8371/11, Railway Lines,
Forest, Solapur.
(At present lodged in Yerawada
Central Prison, Pune)

.. Appellant
(Org. Accused)

Versus

The State of Maharashtra

.. Respondent

Appearances:-

Ms. Sarojini Upadhyay	<i>Advocate (appointed) for the Appellant</i>
Mrs. A.S. Pai	<i>APP for the State</i>

**CORAM : SMT. V.K. TAHILRAMANI &
SMT. I. K. JAIN, JJ**

DATE : JANUARY 21, 2015.

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. This appeal is preferred by the appellant - original accused against the judgment and order dated 30.1.2006 passed by the learned II Additional Sessions Judge, Solapur in Sessions Case No. 198 of 2005. By the said judgment and order, the learned Session Judge convicted the appellant for

the offence punishable under Section 302 of IPC and sentenced him to suffer rigorous imprisonment for life and fine of Rs. 1000/-, in default simple imprisonment for one month.

2. The prosecution case briefly stated, is as under:

- (a) Appellant Prakash is the brother of deceased Ganesh. On 15.4.2005, quarrel took place in the afternoon during which deceased Ganesh slapped his brother Prakash i.e the appellant. Due to this, the appellant got angry and in the night between 15.4.2015 and 16.4.2015, the appellant poured kerosene on his brother Ganesh and set him on fire. Ganesh was rushed to hospital. At about 2.20 a.m., PW 7 Dr. Patil examined Ganesh. Dr. Patil noticed that Ganesh had sustained burn injuries. Ganesh gave him history that he was sleeping and his brother set him on fire. The police were informed. PW 8 A.S.I. Ghodke came to

the hospital and recorded dying declaration (Exh. 25) of Ganesh. Thereafter, PW 6 Special Judicial Magistrate (S.J.M.) Shri. Mane recorded the dying declaration (Exh. 19) of Ganesh. Ganesh expired on 17.4.2005 on account of shock as the result of burns. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Section 302 of IPC. The appellant/accused pleaded not guilty to the said charge and claimed to be tried. His defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above, hence, this appeal.

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious

consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant poured kerosene on his brother Ganesh and set him on fire which resulted in the death of Ganesh.

5. The conviction is entirely dependent on the dying declarations made by Ganesh. After Ganesh sustained burn injuries, he was rushed to the hospital. PW 7 Dr. Patil has stated that Ganesh was brought to Civil Hospital, Solapur at 2.20 a.m. He saw that Ganesh had sustained burn injuries. Ganesh was conscious. Dr. Patil prepared M.L.C. Paper of the patient and started treatment. Ganesh gave history to Dr. Patil that when he was sleeping, his brother set him on fire.

6. PW 8 A.S.I. Shri. Ghodake was on duty in charge of Police Chowky. He received information from the hospital,

therefore, he went to Civil Hospital at Solapur. He went to Civil Hospital, Solapur at 2.45 a.m. He asked the medical officer on duty (PW 7 Dr. Patil) whether the patient was in a position to speak. The doctor gave his endorsement that the patient is conscious and in a position to give a statement. Accordingly, he made an endorsement on top of the paper. Thereafter, PW 8 A.S.I. Shri. Ghodke recorded the statement of Ganesh. After recording the statement, again the medical officer (PW 7 Dr. Patil) made an endorsement at the bottom of the paper that the patient is conscious and his statement is recorded in front of him. In this dying declaration (Exh. 25), Ganesh stated that quarrel took place in the afternoon during which he slapped his brother Prakash i.e the appellant. Due to this, the appellant got angry and in the night between 15.4.2015 and 16.4.2015, the appellant poured kerosene on him and set him on fire.

7. The second dying declaration is recorded by PW 6 S.J.M. Shri. Mane. Shri. Mane has stated that on 16.4.2005 at

about 3 a.m., police van came to his house and they handed over a letter to him requesting him to record dying declaration of Ganesh Londhe. Shri. Mane then went to Civil Hospital. He asked the medical officer (PW 7 Dr. Patil) to give his opinion regarding the consciousness of the patient. The doctor gave his endorsement that the patient is conscious and can give a statement. Shri. Mane also got it confirmed himself that patient Ganesh was in a position to give statement. Thereafter, Shri. Mane recorded the dying declaration (Exh. 19). In the dying declaration, Ganesh stated that in the afternoon, quarrel took place with his brother Prakash; thereafter at night at 2 a.m., his brother Prakash poured kerosene on him and set him on fire.

8. It is the prosecution case that the appellant poured kerosene on his brother Ganesh and set him on fire. The clothes of Ganesh were sent to chemical analyzer. The C.A. report (Exh. 28) shows that the clothes of Ganesh tested positive for detection of kerosene residues.

9. PW 4 Dr. Sardar conducted the postmortem on the dead body of Ganesh. He has stated that the death of Ganesh took place as a result of burn injuries. He has further stated that the burn injuries sustained by Ganesh were sufficient to cause death in ordinary circumstances. Thus, the medical evidence as well as C.A. report also supports the prosecution case.

10. On going through the record, we are of the opinion that the prosecution has proved beyond reasonable doubt that the appellant poured kerosene on his brother Ganesh and set him on fire and caused his death. Thus, we find no merit in the appeal. The appeal is dismissed.

11. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Sarojini Upadhyay at Rs. 5000/-.

[SMT. I. K. JAIN, J]

[SMT. V.K. TAHILRAMANI, J]

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