

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.143 OF 2014

Sonu Chandrakant Shrinath
age 34 years, occupation Porter,
r/o Mahatma Phule Nagar,
Behind Payal Peneral Stores,
Ramtekdi, Hadapsar, Pune,
Convict No.C-16585, presently
detained in Yeravada Central
Prison, Pune 6

... Appellant

v/s

The State of Maharashtra

... Respondent

Smt Sarojini Upadhyay, Advocate appointed by Legal Aid Committee
for the Appellant.

Shri A.S. Shitole, APP for Respondent – State.

**CORAM: SMT V.K. TAHILRAMANI &
SHRI B.P. COLABAWALLA JJ.**

RESERVED ON : April 22, 2015

PRONOUNCED ON : April 28, 2015

JUDGMENT :- [Per B. P. Colabawalla, J]

1. By this Appeal, preferred by the Appellant – original

Accused – Sonu Chandrakant Shrinath, exception is taken to the judgment and order dated 18th January, 2013 passed by the Sessions Judge, Pune, in Sessions Case No.341 of 2011. By the said judgment and order, the learned Sessions Judge convicted the Appellant under section 235(2) of the Code of Criminal Procedure, 1973 of the offence under section 302 of IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.200/- and in default thereof, suffer further R.I. for six months.

2. The prosecution case as stated briefly, is thus -

- (a) The deceased – Akshay Ashok Bagav was the son of PW 2 – Anita Ashok Bagav. He was 17 years old at the time of the incident and was taking education in 9th standard in Abasaheb Atre High School at Somwar Peth, Pune. PW 2 – Anita was married to one Ashok Bagav about 17 years before the incident and Akshay was born out of the said wedlock. However, the said Ashok Bagav was not staying with PW 2 – Anita and he had abandoned her and the deceased – Akshay, when Akshay was a small child.

The deceased – Akshay as well as PW 2 – Anita used to reside together at Plot No.4, Sadanand Nagar, Near Nagour Shop, Mangalwar Peth, Pune. PW 2 – Anita used to work at Durga Hotel for rolling chapatis where she met the Appellant – Sonu who was working there as a cook. It is in these circumstances that a love relationship started between the Appellant – Sonu and PW 2 – Anita and the Appellant came to stay with PW 2 – Anita. However, PW 2 – Anita did not marry the Appellant even though he was residing with her. The Appellant was in the habit of consuming alcohol and due to the said fact there were quarrels between PW 2 – Anita and the Appellant. There also used to be quarrels between the Appellant and the deceased – Akshay.

- (b) The incident in question occurred on 31st January, 2011. On that day, PW 2 – Anita had gone to work at 7.00 a.m. and returned back at 9.00 p.m. At that time, the deceased – Akshay was present in the house. The Appellant, after

being released from jail that day, came to the house of PW 2 – Anita after consuming alcohol and thereafter a quarrel started between the Appellant and the deceased – Akshay. During the said quarrel, the Appellant poured petrol on the person of Akshay and set Akshay ablaze by means of a burning match-stick. In an attempt to save Akshay, PW 2 – Anita also sustained burn injuries on her neck, cheek, both hands and one leg. Akshay was thereafter taken to Sassoon Hospital, Pune whilst the Appellant ran away from the scene of the incident.

- (c) When the deceased – Akshay was shifted to Sassoon Hospital, Pune, Station House Officer – PSI Gajare (PW 4) was present at Sassoon Hospital, Pune. PW 4 – PSI Gajare recorded the report of PW 2 – Anita and on the basis of which Crime No.23 of 2011 was registered against the Appellant for the offence punishable under sections 307, 504 of IPC. On 31st January, 2011 at around 11.15 p.m., PW 4 – PSI Gajare also recorded a statement

of the deceased – Akshay in the form of a dying declaration. Pursuant to this, the Appellant was arrested on 1st February, 2011. Thereafter, the investigation commenced. On 3rd February 2011, whilst taking treatment, the deceased – Akshay succumbed to his burn injuries at Sassoon Hospital, Pune. In view thereof, section 302 of IPC was added to the case diary of the crime. After completion of the investigation, the charge-sheet came to be filed and 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 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 earlier in paragraph 1 above. Hence the present Appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. After carefully considering the facts and circumstances of the case, hearing the arguments advanced by the learned Advocates for the parties, and minutely perusing the evidence on record and the judgment delivered by the learned Sessions Judge, for the reasons mentioned hereinafter, we are of the opinion that the Appellant poured petrol on the body of the deceased – Akshay and set him ablaze which caused his death.

5. The conviction of the Appellant is mainly based on the evidence of PW 4 – PSI Gajare, PW 3 – Dr Manoj Pawar and PW 7 – Vasim Makbul Shaikh. PW 4 – PSI Gajare has deposed that on 31st January 2011, whilst he was on night duty as Station House Officer, he received information that one boy has sustained burn injuries at Plot No.4, Mangalwar Peth, Pune and he was taken to Sassoon Hospital, Pune for treatment. Accordingly, PW 4 – PSI Gajare and his writer immediately went to Sassoon Hospital, Pune. On reaching the said Hospital and after making enquiries, PW 4 – PSI Gajare found that treatment was going on for the deceased – Akshay in Ward

No.25. Outside the Ward, relatives of Akshay including his mother PW 2 – Anita were present. PW 4 – PSI Gajare thereafter got a report from PW 2 – Anita that was written by his writer Shri Lokhande, Police Naik, B.No.416. After recording the report as narrated by PW 2 – Anita, he thereafter went to the deceased – Akshay alongwith his writer. He asked Akshay his name who correctly stated the same. PW 4 – PSI Gajare thereafter contacted PW 3 – Dr Manoj Pawar, who was present in Ward No.25 and told him that he wanted to record the statement of the deceased – Akshay. The doctor accompanied PW 4 – PSI Gajare to the deceased – Akshay. PW 4 – PSI Gajare has deposed that when he met the deceased – Akshay, the only persons present were himself, his writer, the doctor and the deceased – Akshay. This was at around 11.15 p.m. PW 4 – PSI Gajare asked the deceased his name who stated that his name was Akshay Ashok Bagav. He also stated that he was taking education in the 9th standard in Abasaheb Atre High School, Somwar Peth, Pune. When asked about his residential address, deceased – Akshay said that his address was at Plot No.4, Sadanand Nagar, Mangalwar Peth, Pune and that he used to reside at the said address with his mother, PW 2 – Anita.

Thereafter, PW 4 – PSI Gajare asked Akshay as to how he had sustained burn injuries. In reply thereto, the deceased – Akshay informed PW 4 – PSI Gajare that the Appellant had love relations with his mother and that the Appellant was released from jail only on that day (i.e. on 31st January, 2011). Akshay further stated that the Appellant had come to their house and at that time, Akshay and his mother PW 2 – Anita had asked him to go away. At that time, the Appellant started shouting and abusing. Akshay further told PW4 – PSI Gajare that at that time, the Appellant was having a bottle containing petrol and that the Appellant poured the petrol on Akshay as well as on the ground and set him ablaze by a match-stick. Akshay further told PW 4 – PSI Gajare that his mother Anita started shouting and then the Appellant ran away. Thereafter, his mother and the neighbours extinguished the fire and brought him to Sassoon Hospital, Pune for treatment. PW 4 – PSI Gajare has deposed that this statement of the deceased – Akshay was recorded by him through his writer Shri Lokhande as per the say of the deceased – Akshay. As the body and hands of the deceased – Akshay were having burn injuries, he obtained the right great toe impression of Akshay on his statement.

Thereafter PSI Gajare again read over the statement to the deceased – Akshay and has deposed that the deceased – Akshay understood the contents thereof. Thereafter, PSI Gajare put his signature on the said statement. PSI Gajare has further deposed that at the time of recording the statement of the deceased – Akshay, the doctor was present through out the said period and that the doctor (PW 3 – Dr. Pawar) also gave his endorsement on the statement of the deceased – Akshay and put his signature thereon. This statement of Akshay (dying declaration) was marked as Exh.22 and was identified by PW 4 – PSI Gajare during the course of his deposition. There is nothing that has been elicited in the cross-examination of PW 4 – PSI Gajare to discredit his testimony. It is not the case of the Appellant that PW 4 – PSI Gajare had any enmity against the Appellant and therefore, sought to falsely implicate him in the present case.

6. The evidence of PW 4 – PSI Gajare is further corroborated by the evidence of PW 3 – Dr Manoj Pawar. Dr Pawar has deposed that on 31st January, 2011 he was working as a Resident General Surgeon at Sassoon Hospital, Pune when a patient named

Akshay Ashok Bagav (deceased) was admitted in the Hospital by his maternal uncle Ramdar Pandale. PW 3 – Dr Pawar has further deposed that at the time of admission of the patient, he was conscious and well oriented. He has stated in his deposition that when the Police came to record the statement of the deceased – Akshay, the Police met him and they both went to the patient (deceased Akshay). Thereafter, Dr Pawar examined the deceased – Akshay and found that he was well oriented and in a condition to speak. Dr Pawar asked the deceased – Akshay whether he wanted to give a statement to the Police to which he replied in the affirmative. Dr Pawar has further deposed that in his presence, the Police recorded the statement of the deceased – Akshay. He has deposed that in his presence the deceased – Akshay stated that the Appellant who had relations with his mother came to his house. At that time he and his mother were present in the house. Akshay further stated that his mother and he told the Appellant to go away when the Appellant started shouting and gave abuses. Dr Pawar has further deposed that in his presence, the deceased – Akshay further told the Police that the Appellant poured petrol on Akshay from the bottle which was in the hand of the

Appellant and set him ablaze. Akshay further told the Police that thereafter his mother shouted loudly and the Appellant ran away. Dr Pawar has deposed that the statement was accordingly recorded in his presence and the same was read over to the deceased – Akshay who understood the same. Thereafter, the toe impression of Akshay was obtained on the statement and PW 3 – Dr Pawar also put an endorsement thereon that it was recorded in his presence and the patient was fully conscious before, during after giving the statement. He has deposed that his endorsement was given at 11.30 p.m. on 31st January, 2011 and it was the Police Sub Inspector who had recorded the statement. He too has identified the dying declaration of the deceased – Akshay (Exh.22) which was shown to him during his deposition.

7. On perusing the deposition of PW 4 – PSI Gajare as well as PW 3 – Dr Manoj Pawar, we find that the evidence of PW 4 – PSI Gajare is adequately corroborated by the evidence of PW 3 – Dr Manoj Pawar. There is nothing in the cross-examination of PW 3 – Dr Manoj Pawar that has been elicited to discredit his testimony. In

fact, his testimony corroborates the testimony of PW 4 – PSI Gajare who has recorded the dying declaration given by the deceased – Akshay. We find the testimony of PW 4 – PSI Gajare and PW 3 – Dr. Pawar, to be cogent, consistent, trustworthy and one which inspires confidence. Hence we have no hesitation in relying upon the same.

8. Over and above these two witnesses, the prosecution is also relying upon the evidence of PW 7 – Vasim Makbul Shaikh who was a neighbour of PW 2 – Anita and the deceased – Akshay. PW 7 – Vasim Makbul Shaikh has deposed that he knew the deceased – Akshay and that his house was situated about 3 – 4 houses apart from the house of PW 2 – Anita. He has deposed that on 31st January 2011, at about 9.00 p.m. to 9.30 p.m., he returned to his house from work. At that time, he heard a shout that there was a fire. He saw the deceased – Akshay and his mother Anita in a burnt condition. He brought a bed-sheet from his house and put it on the person of the deceased – Akshay to extinguish the fire. He thereafter lifted the deceased – Akshay for taking him to the hospital. At that time, one Vasim Abdul Shaikh (not PW 7) came on an Activa vehicle. PW 7 –

Vasim Makbul Shaikh made the deceased – Akshay sit on the said vehicle and then they took Akshay to Todkar Hospital. The Doctor at Todkar Hospital advised them to take the deceased – Akshay to Sassoon Hospital, Pune. At that time, one Pramod, who was the son of the aunt of the deceased – Akshay, also came to Todkar hospital. Then by rickshaw, PW 7 – Vasim Makbul Shaikh, deceased – Akshay and the said Pramod went to Sassoon Hospital, Pune. Upon being asked as to how he had sustained burn injuries, the deceased – Akshay replied that the Appellant had burnt him by pouring petrol. The statement of PW 7 was also recorded by the Police. The evidence of PW 7 – Vasim Makbul Shaikh clearly establishes that an oral dying declaration was made to him by the deceased – Akshay. There is nothing in the cross-examination of PW 7 – Vasim Makbul Shaikh to discredit his testimony. Hence we have no hesitation in relying upon the evidence of PW 7 – Vasim Makbul Shaikh.

9. In addition to the above evidence, the prosecution is also relying upon the evidence of PW 5 – Dr Amol Shinde who conducted the post mortem on the body of the deceased Akshay. PW 5 – Dr

Shinde has deposed that on 3rd February 2011, the dead body of the deceased – Akshay was brought to Sassoon Hospital, Pune for post mortem examination at around 1.10 p.m. PW 5 – Dr Shinde and Dr Aparna Pingale conducted the post mortem on the dead body of the deceased – Akshay from 1.30 p.m. to 2.35 p.m. On external examination of the dead body of deceased – Akshay, PW 5 – Dr Amol Shinde found the following injuries :-

1. Superficial to deep burn present over skin surface areas margins inflamed, floor reddened, reddening blackening, peeling of skin, present over burnt areas at places.

Distribution of burns was as follows :-

<u>Part</u>	<u>Burns</u>	<u>Area</u>
Head, neck and face	08 %	Area over forehead and scalp
Right upper limb	08 %	Patchy area over axillia and antecubital fossa
Left upper limb	08 %	
Chest and Abdomen	16 %	Area below umbilicus
Right Lower Limb	12 %	Patchy areas over posterolateral aspect soles
Left Lower Limb	12 %	
Back	09 %	lower back
Perineum	00 %	Nil

	73 %	

2. Surgical venesection mark present over left ankle, medially reddish. The injuries including burn injuries found on dead body were antemortem in nature.

10. Dr Shinde has deposed that after conducting the post mortem, he and Dr Aparna Pingale came to the conclusion that the deceased – Akshay had died because of “shock due to burns”. He has further deposed that the burn injuries found on the person of the deceased – Akshay were sufficient in the ordinary course of nature to cause death of a human being. It is therefore clear from the evidence of PW 5 – Dr. Shinde, who conducted the post mortem, that the death of the deceased – Akshay was caused due to burn injuries that were found on his body at the time when the post mortem was conducted.

11. After carefully perusing the evidence, we are clearly of the view that the prosecution has proved its case beyond reasonable doubt that the Appellant poured petrol on the deceased – Akshay and set him ablaze, which caused his death.

12. Smt Upadhyay, the learned Advocate for the Appellant,

submitted that the written dying declaration recorded by PW 4 – PSI Gajare as well as the oral dying declaration made by the deceased – Akshay to PW 7 – Vasim Makbul Shaikh, should not be relied upon by us as they do not inspire any confidence in view of the testimony of PW 2 – Anita who was the mother of deceased – Akshay. In this regard, she brought to our attention the cross-examination of PW 2 – Anita wherein she had stated that Akshay had sustained severe burn injuries and he was not in a position to talk and that she was sitting throughout the night beside Akshay in Sassoon Hospital, Pune and he was not conscious and did not speak with anyone during the night. She also highlighted the fact that PW 2 - Anita in her cross-examination has stated that she had not seen the Appellant pouring petrol on the person of the deceased – Akshay or throwing the burning match-stick on the person of Akshay. She has also highlighted the fact that in cross-examination, PW 2 – Anita has stated that when the Appellant came to her house, there was nothing in his hand. For all the aforesaid reasons, she submitted that the dying declaration does not inspire confidence that would entail in a conviction of the Appellant. We are unable to agree. As stated earlier, the evidence of

PW 4 – PSI Gajare who recorded the dying declaration, PW 3 – Dr Pawar who made his endorsement on the said dying declaration and PW 7 – Vasim Makbul Shaikh to whom an oral dying declaration was made by the deceased – Akshay are consistent and trustworthy and there has been nothing elicited in the cross-examination to discredit their testimony. It is true that the testimony of PW 2 – Anita is full of contradictions but that by itself would not make the dying declarations given by the deceased – Akshay, unreliable. We find that the evidence of PW 2 – Anita is full of contradictions and therefore would have to be discarded. On the other hand, we find the testimony of PW 4 – PSI Gajare, PW 3 – Dr Pawar and PW 7 – Vasim Makbul Shaikh to be consistent, cogent and trustworthy. We have no hesitation in holding that by relying upon the evidence of these three witnesses alongwith the evidence of PW 5 – Dr Shinde who conducted the post mortem, that the prosecution has proved its case beyond reasonable doubt that the Appellant poured petrol on the body of the deceased – Akshay and set him ablaze which caused his death.

13. For all the aforesaid reasons, the conviction and sentence of the Appellant under section 302 of IPC is maintained, and the Appeal is dismissed.

14. The Office is directed to communicate this order to the Appellant who is in Yerawada Central Prison, Pune – 6 and to the Superintendent of Yerawada Central Prison, Pune – 6.

15. We quantify the legal fees to be paid by the High Court Legal Aid Services Committee to the Appointed Advocate Smt Sarojini Upadhyay at Rs. 5,000/-.

(SHRI B.P. COLABAWALLA, J.) (SMT V.K. TAHILRAMANI J.)