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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 60 OF 2008**

Santosh Pandharinath Dhattrak	]
Age 31 years, R/o Shinde Chawl	]
H.No. 4612, in front of Raghuvit	]
Building, Panchavati, Nashik	]
(Now in Central Prison Nashik Road	]
Nashik)	]..Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
(Through the Inspector of Police	]
Panchwati Police Station,	]
Nashik City Nashik	]..Respondent

....

Mrs. Farhana Shah Advocate appointed for the Appellant
Mr. A.S. Shitole, A.P.P. for the State

....

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

DATED : APRIL 17, 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 12.10.2006 passed by the learned Ad-hoc Additional Sessions Judge-1, Nashik in Sessions Case No. 44 of 2006. By the said judgment

and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to imprisonment for life.

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

(i) Deceased Kavita was the younger sister of P.W. 4 Bhaskar. The marriage of Kavita with the appellant had taken place about 3 years prior to the incident. Kavita had two children from the appellant. Kavita was residing along with her husband, mother-in-law, father-in-law and her children at Shinde Chawl at Panchavati in Nashik. The appellant was addicted to liquor and he used to beat Kavita under the influence of liquor.

(ii) The incident occurred on 14.9.2005. In the evening at about 5 p.m. the mother-in-law and father-in-law of Kavita had gone to the river. Only Kavita, her husband i.e. the appellant and her minor children were in the house. That time, her husband was intoxicated. When Kavita went to prepare tea, her husband came and asked her for money to purchase liquor. Kavita told him that she did not have money. Then the

appellant poured kerosene from the stove on Kavita and set her on fire. Kavita came shouting out of the house. Neighbours then extinguished the fire. Then the relatives of the appellant took Kavita to the hospital. Kavita was first taken to the civil hospital. Thereafter she was shifted to a private hospital i.e. Sai hospital in Nashik. In the hospital, the dying declaration of Kavita was recorded by P.W. 9 Kazi. The said dying declaration is at Exh. 35. Thereafter, P.W. 8 Special Executive Magistrate Shri. Sapute recorded the dying declaration of Kavita. The said dying declaration is at Exh. 31. The dying declaration Exh. 35 was recorded on 14.9.2005 at 9.10 p.m. and dying declaration Exh. 31 was recorded on the same day from 9.30 to 9.45 p.m. In both the dying declarations Kavita stated that the appellant set her on fire. The dying declaration Exh. 35 was treated as F.I.R. Thereafter investigation commenced. Kavita expired after some days. The cause of death was due to "cardio respiratory arrest due to septicemia due to 50% superficial to deep burns." After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions for trial.

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. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant poured kerosene on his wife Kavita and set her on fire which led to her death.

5 The conviction is mainly based on the two dying declarations Exhs. 31 and 35. Dying declaration Exh. 31 was recorded by P.W. 8 Special Executive Magistrate Shri. Sapute and dying declaration Exh. 35 was recorded by P.W. 9 P.S.I.

Kazi. The dying declaration Exh. 35 was recorded first in point of time. It was recorded on 14.9.2005 at 9.10 p.m. P.W. 9 P.S.I. Kazi has stated that on 14.9.2005 since about 4 p.m. he was on duty at the police station. At about 8 p.m. he was informed about a case of burning. He asked the Head Constable to ask the Executive Magistrate to record the dying declaration of the patient. He then went to the civil hospital Nashik. At the civil hospital, he came to know that the patient was shifted to Sai hospital at Nashik, hence, he went to Sai hospital. He met P.W. 6 Dr. Pingle who was on duty. He made enquiry with Dr. Pingle whether the patient was in a position to give a statement. P.S.I. Kazi has stated that he was then taken to the burn ward and Doctor examined the patient and told him that she was conscious and she was able to give a statement. Doctor gave endorsement to that effect which is at Exh. 34. This was made at the beginning of the statement. P.S.I. Kazi then asked the Doctor and relatives of the patient to go out of the room. Thereafter he himself ascertained whether the patient was in a fit condition to give a statement. He then recorded her statement as per her narration. Kavita told him that she was married three years ago. On 14.9.2005 while she

was preparing tea, her husband demanded money for liquor. She told him that she did not have money. Her husband then poured kerosene on her and set her on fire. P.S.I. Kazi has further stated that thereafter the statement of the patient was read over to her. He obtained her signature on the said statement. He also put his signature on the statement. He then again called the Doctor and asked him to check the patient and issue a certificate. The Doctor then issued certificate below the signature of the patient Kavita. The dying declaration recorded by P.S.I. Kazi is at Exh. 35.

6 The second dying declaration of Kavita was recorded by P.W. 8 Special Executive Magistrate Shri. Sapute. He has stated that on 14.9.2005 he received one letter from the Police Head Constable. As per the letter, he went to the civil hospital Nashik. There, he learnt that the patient Kavita was taken to Sai hospital. He then went to Sai hospital and met the Medical officer on duty. He requested Medical Officer to show him the patient. He then along with Medical Officer went to the patient Kavita. Shri. Sapute has stated that he himself confirmed whether the injured was in a fit condition to give a statement. Doctor then checked the lady and gave endorsement that she

was in a fit condition to give a statement. Thereafter he asked the Doctor and relatives of the injured person to go out of the room. Thereafter he recorded the statement of the patient. The patient Kavita told him that her husband used to ill-treat her. Her husband poured kerosene on her person and set her on fire with match-stick and therefore she sustained burn injuries. Shri. Sapute then asked the patient whether she had any complaint against anybody whereupon, the patient replied that she had complaint only against her husband. Thereafter Shri. Sapute obtained signature of Kavita on her statement. Then he again called Doctor and took his opinion regarding the condition of the patient. The Doctor then checked the patient and gave an endorsement that she was conscious and oriented. Nothing has been elicited in the cross-examination of P.W. 9 P.S.I. Kazi and P.W.8 Special Executive Magistrate Mr. Sapute to discredit their testimony. We find their testimony inspires implicit confidence, hence, we have no hesitation in relying on the same.

7 The learned counsel for the appellant contended that both the dying declarations Exhs. 31 and 35 and the evidence

of P.W. 8 Special Executive Magistrate Shri. Sapute and P.W. 9 P.S.I. Kazi cannot be relied on because the evidence of P.W. 8 Special Executive Magistrate Shri. Sapute shows that in the requisition letter which was sent by the police to him, it was mentioned that Kavita sustained burn injuries while preparing tea. He submitted that this shows that in fact Kavita had sustained burn injuries while she was preparing tea and the appellant has been falsely implicated by the prosecution witnesses. As far as this contention is concerned, on going through the requisition letter, it is noticed that Kavita was first taken to the hospital by the relatives of the appellant. She was taken to the hospital by the cousin brother of the appellant and aunt of the appellant. Obviously, the relatives of the appellant would try to save the appellant and would not state that appellant had set Kavita on fire. Looking to the fact that the relatives of the appellant had taken Kavita to the hospital who had given history which is reflected in the requisition letter, we are not inclined to place any reliance on the requisition letter. As observed earlier, we find the evidence of P.W. 8 Special Executive Magistrate Shri. Sapute and P.W. 9 PSI Kazi to be cogent, consistent and reliable, hence, we see no

reason to discard the same.

8 In addition to the two dying declarations Exhs. 31 and 35, the prosecution is also relying on the evidence of P.W. 4 Bhaskar who was the elder brother of Kavita. Bhaskar has stated that Kavita was his younger sister. The appellant was in the habit of drinking liquor and he used to beat his sister under the influence of liquor. Bhaskar has stated that he was informed about the incident hence, he went to the hospital. He saw that his sister Kavita had sustained burn injuries from neck to waist. On making enquiry about the burn injuries, his sister Kavita told him that her husband demanded money for liquor. She did not pay money to her husband, therefore, her husband poured kerosene on her and set her on fire.

9 It is the prosecution case that the appellant poured kerosene on Kavita and set her on fire. This is borne out by the medical evidence. P.W. 5 Dr. Kute conducted the post mortem on the dead body of Kavita. He found that Kavita had sustained 58% burns and the cause of death was "cardio respiratory arrest due to septicemia due to 58% superficial to

deep burns".

10 In addition to the above evidence, the prosecution is relying on the fact that the clothes of the deceased were seized and sent to C.A. and the C.A. report Exh. 40 shows that sari and blouse of Kavita tested positive for kerosene residue. Thus, the C.A. report also corroborates the prosecution case.

11 On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the appellant caused the murder of his wife Kavita by pouring kerosene on her person and setting her on fire. Thus, we find no merit in the appeal. Appeal is dismissed.

12 Office to communicate this order to the appellant who is in jail.

13 We quantify legal fees to be paid to Advocate Mrs. Farhana Shah by the High Court Legal Services Committee at Rs. 5000/-.

[SHRI.B.P.COLABAWALLA,J.]

[SMT. V.K.TAHILRAMANI, J.]