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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 194 OF 2014**

Dattatraya Pandurang Jadhav	]
Age about 42 years, Farmer,	]
Residing at Malewadi, Taluka Sirala	]
District Sangli at present at	]
Kolhapur Central Prison, Kalamba,	]
Circle 5/2 Convict No. C/6117,	]
Dist. Kolhapur 416007	] .. Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
Through Kokrud Police Station	]
Taluka Sirala, Dist. Sangli	]
in C.R. No. 2/2012	].. Respondent

....

Mrs. Farhana Shah Advocate appointed for the Appellant
Mrs. A.S. Pai A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI,JJ.**

DATED : JULY 22, 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 6.12.2013
passed by the learned District Judge-2 and Additional Sessions

Judge, Islampur in Sessions Case No. 12 of 2012. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs. 1000/- i/d S.I. for one month.

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

(i) Deceased Laxmi was the wife of the appellant. The marriage of the appellant and Laxmi had taken about about 25 years prior to the incident. The appellant and the deceased had two daughters and one son. One daughter was married prior to the incident. At the time of the incident, the appellant, his wife Laxmi and their son P.W. 8 Dhiraj were residing in village Malewadi in District Sangli. The appellant was addicted to liquor. The appellant used to suspect that his wife Laxmi had illicit relations with another person and on this ground, he used to quarrel with her and assault her. Laxmi used to do cooking for the students of primary school (Anganwadi) of the village.

(ii) Incident occurred on 17.1.2012. At about 9.00 a.m. the appellant, his wife Laxmi and their son Dhiraj were in the

house. Laxmi was cooking rice for the students of the primary school. Then quarrel started between the appellant and his wife Laxmi. The appellant started abusing and beating Laxmi. The appellant asked Laxmi where she had gone and why there was delay in returning ? Laxmi kept quiet. Dhiraj then went to his mother Laxmi and told her to keep quiet and not to talk. Then the appellant picked up a can of kerosene and poured kerosene on Laxmi. Sari of Laxmi was drenched due to pouring of kerosene. Dhiraj told his mother Laxmi to go to the side. At that time, the appellant kicked Dhiraj on his stomach. Laxmi told Dhiraj to call her brother P.W. 2 Bhimrao. Then Dhiraj went running to the house of his maternal uncle Bhimrao. He told Bhimrao that his father abused and beat his mother Laxmi and his father had poured kerosene on his mother Laxmi. Dhiraj asked his maternal uncle Bhimrao to come to their house. Then Dhiraj rushed back towards his house. When Dhiraj came back to his house, he saw crowd of people near his house. He saw that his mother had burn injuries on her hands, legs and face. Sari on her person was burnt. Meanwhile, P.W. 2 Bhimrao reached the house of Laxmi. Dhiraj also noticed burn injuries on the hands and abdomen of

the appellant. Then the ambulance came to the spot. The appellant and his wife Laxmi were put in the ambulance and they were taken to the hospital for treatment.

(iii) In the hospital dying declaration (Exh.20) of Laxmi was recorded by P.W. 5 ASI Sutar. In the said dying declaration, Laxmi stated that since four months prior to the incident, her husband (appellant) was taking doubt about her character. Laxmi further told ASI Sutar that her husband told her that she had come back after meeting some other person. Her husband then poured kerosene on her person and set her on fire with match stick. Laxmi shouted and embraced her husband. People gathered on the spot and took her and her husband to the hospital. This dying declaration (Exh. 20) was treated as F.I.R. Laxmi expired the next day. Thereafter the dead body of Laxmi was sent for post-mortem. During the post-mortem it was found that the death of Laxmi was caused due to shock due to 94% mixed 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 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. The appellant has raised further defence that when his wife Laxmi was cooking food on the stove, accidentally she caught fire and received burn injuries. It is his further defence that when he tried to extinguish the fire, he received injuries. After going through the evidence adduced in the present case, the learned Sessions Judge did not find favour with the defence raised by the appellant and 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 there is no merit in the appeal.

5 The conviction of the appellant is mainly based on the dying declaration (Exh. 20) and two oral dying declarations which were made to P.W. 7 Meenakshi and P.W. 8 Dhiraj. P.W. 7 Meenakshi was the sister of Laxmi and P.W. 8 Dhiraj was the son of Laxmi and the appellant. P.W. 5 ASI Sutar recorded the dying declaration (Exh. 20) of Laxmi. ASI Sutar has stated that on 17.1.2012 at about 1.30 p.m. he received telephone call from P.S.O. of Vishrambaug Police Station Sangli informing him that one lady Laxmi Jadhav was admitted in the civil hospital and she had sustained burns. The P.S.O. directed ASI Sutar to record the statement of Laxmi Jadhav. ASI Sutar then went to civil hospital at Sangli. He met Dr. Sushil (P.W. 6 Dr. Sushil Bhogawar) who was present in the burn ward. ASI Sutar then told Dr. Sushil about recording of the statement of lady who had sustained burn injuries. Dr. Sushil then examined Laxmi and told ASI Sutar that she was in a position to give a statement. Dr. Sushil put his endorsement on the paper to that effect. Then ASI Sutar recorded the statement of Laxmi. Throughout the recording of the statement, Dr. Sushil was present. ASI Sutar has stated that Laxmi told him that on the

day of the incident at 9.00 a.m. she was preparing food for students. Since about 4 months prior to the incident, her husband was taking doubt on her character. Her husband told her that she had come back from some other person. Her husband then poured kerosene on her person and set her on fire. Laxmi shouted and she embraced her husband. People gathered on the spot. Then Laxmi and her husband were taken to the hospital. ASI Sutar stated that after the dying declaration was recorded, Dr. Sushil again examined Laxmi and put his endorsement below the said dying declaration. This dying declaration was recorded on 17.1.2012 between 2.00 to 2.30 p.m.

6 The prosecution has also relied on two oral dying declarations which were made by Laxmi to her sister Meenakshi and to her son P.W.8 Dhiraj. P.W.7 Meenakshi has stated that deceased Laxmi was her sister. Laxmi was the wife of the appellant. The appellant was addicted to liquor. The appellant used to doubt character of Laxmi and on that ground, the appellant used to abuse and assault Laxmi. Laxmi had personally told these facts to Meenakshi. Her relatives and

local residents requested the appellant not to doubt the character of Laxmi and not to abuse and assault Laxmi, however, the appellant did not listen to them. Meenakshi has stated that on 17.1.2012 at about 9.30 a.m. she was at her residence at Kokrud in Sangli. At that time, she received telephone call from her husband. Her husband told her to visit Malewadi as something had happened to her sister Laxmi. Meenakshi then immediately went to the house of her sister Laxmi in Malewadi. At that time, she saw that ladies were taking her sister to the ambulance. She also went and sat in the ambulance. She took the head of Laxmi on her lap. She asked Laxmi what had happened ? Thereupon, Laxmi told her that her husband had poured kerosene on her person and set her on fire. Laxmi further told Meenakshi that she immediately embraced her husband, due to which, her husband also sustained burn injuries.

7 The next witness to whom oral dying declaration was made is P.W. 8 Dhiraj. Dhiraj is the son of deceased Laxmi and the appellant. Dhiraj has stated that at the relevant time, he was studying in 5th standard. His mother Laxmi was doing job

of cooking food for the students of Anganwadi in village Malewadi. His father was addicted to liquor. His father used to abuse and beat his mother Laxmi as his father used to doubt the character of Laxmi since about six months prior to the incident. 15 days prior to the incident, his mother Laxmi had sent his sister to the house of her parents at Khirwade. Dhiraj has stated that the incident occurred on 17.1.2012. On that day at about 9.00 a.m. he, his father (appellant) and his mother Laxmi were present in the house. His mother was cooking rice for the students of the primary school. Then quarrel started between his father and his mother. His father started abusing and beating his mother Laxmi. His father asked his mother Laxmi where she had gone and why there was delay in returning? Laxmi kept quiet. Dhiraj then went to his mother Laxmi and told her to keep quiet and not to talk. Then the appellant picked up a can of kerosene and poured kerosene on Laxmi. Sari of Laxmi was drenched due to pouring of kerosene. Dhiraj told to his mother Laxmi to go to the side. At that time, the appellant kicked Dhiraj on his stomach. Laxmi told Dhiraj to call her brother P.W. 2 Bhimrao. Then Dhiraj went running to the house of his maternal uncle Bhimrao. He

told Bhimrao that his father abused and beat his mother Laxmi and his father had poured kerosene on his mother Laxmi. Dhiraj asked his maternal uncle Bhimrao to come to their house. Then Dhiraj rushed back towards his house. When Dhiraj came back to his house, he saw a crowd of people near his house. He saw that his mother had burn injuries on her hands, legs and face. Sari on her person was burnt. In the meanwhile, P.W. 2 Bhimrao reached the house of Laxmi. Dhiraj also noticed burn injuries on the hands and abdomen of the appellant. Then the ambulance came to the spot. Then the appellant and his wife Laxmi were put in the ambulance and they were taken to the hospital for treatment.

8 The evidence of P.W. 8 Dhiraj is corroborated to some extent by the evidence of P.W. 2 Bhimrao. Bhimrao has stated that deceased Laxmi was his maternal cousin sister. The appellant was the husband of Laxmi. The appellant is the son of his maternal uncle. The house of the appellant was situated at a distance of 1 km. from his house. Bhimrao used to visit the house of the appellant. Since six months prior to the incident, quarrels used to take place between the appellant

and his wife Laxmi, hence, he had gone to their house and tried to convince them. Other relatives also tried to convince them. Bhimrao has further stated that on 17.1.2012 at about 9.00 a.m. Dhiraj the son of Laxmi, had come to his house. Dhiraj was under tension. Dhiraj told him that a quarrel was taking place between his mother and his father and Dhiraj requested Bhimrao to come to his house immediately. Then Dhiraj returned back to his house. Bhimrao followed Dhiraj. When Bhimrao reached the house of the appellant, he saw that the appellant and Laxmi had sustained burn injuries. Meanwhile ambulance came to the house of the appellant and the appellant and Laxmi were taken to the hospital. Though according to the prosecution, oral dying declaration was made by Laxmi to Bhimrao, Bhimrao has turned hostile and has not supported the prosecution on this aspect, however, though Bhimrao was declared hostile, the evidence reproduced above which he has deposed in his examination-in-chief, corroborates the testimony of P.W.8 Dhiraj to a large extent.

9 As stated earlier, according to the prosecution, while Laxmi, Meenakshi and Dhiraj were in the ambulance, Laxmi

made oral dying declaration to her sister P.W.7 Meenakshi. However, according to the defence, Laxmi did not make any such dying declaration to any one in the ambulance. To support this contention, the defence has examined two defence witnesses i.e. DW 1 Yashwant Dinde and DW 2 Yashoda Dinde. Both these defence witnesses have stated that they traveled in the ambulance along with Laxmi and though Laxmi was in a position to speak, she did not make any oral dying declaration to anyone during the journey in the ambulance to the hospital. Both these witnesses have stated that they did not ask Laxmi how she sustained burn injuries? However, the evidence of DW 2 Yashoda Dinde shows that Laxmi's sister Meenakshi (P.W.7) was also in the ambulance. This witness has stated that she did not know whether there was dispute between the appellant and his wife Laxmi. She also did not know whether the appellant was addicted to liquor. The learned counsel for the appellant relied on the evidence of both these defence witnesses to show that Laxmi did not make any oral dying declaration to anyone in the ambulance. However, as stated earlier, P.W. 7 Meenakshi and P.W. 8 Dhiraj have clearly stated that Laxmi made oral dying declaration to

them that the appellant had set her on fire. We see no reason to discard the testimony of P.W. 8 Dhiraj who is the son of the appellant and Laxmi. Moreover, he has not been shaken in the cross-examination, hence, we are of the opinion that we can safely rely on his testimony.

10 In addition to the above, we have the evidence of P.W.5 ASI Sutar who recorded the dying declaration of Laxmi which clearly shows that the appellant set his wife Laxmi on fire. His evidence is supported by the evidence of P.W. 6 Dr. Sushil Bhogawar. Dr. Sushil Bhogawar has stated that on 17.1.2012 at 2.00 p.m. ASI of Vishrambaug Police Station told him that he wanted to record the statement of Laxmi. Thereupon Dr. Bhogawar examined Laxmi and found that she was in a position to give her statement. He then made an endorsement to that effect. Then A.S.I. recorded the statement of Laxmi. Thereafter Dr. Bhogawar again on request of ASI, examined Laxmi & gave endorsement on the dying declaration recorded by the A.S.I. In the endorsement, it is stated that patient is conscious, oriented and has given statement.

11 The learned counsel for the appellant submitted that the appellant has been falsely implicated and it is actually a

case of accidental death due to Laxmi catching fire while cooking food. To support this contention, the learned counsel has placed reliance on Discharge Card (Exh. 27) relating to the appellant. This Discharge Card shows that the patient (appellant) received burns when his wife caught fire by accident while cooking food and he tried to save his wife, hence, he sustained burn injuries. This Discharge Card pertains to the appellant and the history given in the case paper has been given by the appellant. Obviously the appellant tried to shield himself and would give history of accidental death and he would not say that he sustained burn injuries as he tried to set his wife on fire and she after catching fire, embraced him, due to which, he sustained burn injuries.

12 The learned counsel for the appellant also placed reliance on the case paper (Exh. 30) which shows that Laxmi had sustained accidental burns all over body. As far as this history which appears in the medical papers is concerned, it is to be noted that Laxmi and the appellant were both taken together in an ambulance to the hospital, hence, the Doctor asked the history and the appellant in order to save himself, has given this history to the Doctor which appears in the

medical case papers. Looking to this fact, we are not inclined to place any reliance on the history given in the medical case papers.

13 It is the prosecution case that the appellant poured kerosene on his wife Laxmi and set her on fire. This is borne out by the post-mortem notes which show that the cause of death was "due to 94% mixed burns". Partially burnt clothes of Laxmi were sent to the C.A. As per the C.A. report Exh. 36 the clothes tested positive for kerosene residues. This further supports the case of the prosecution.

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

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

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]