

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 405 OF 2012**

Nagendra Uttam Pandagale	]	
age: 37 years, Indian inhabitant	]	
residing at Korba Mithagar,	]	... <u>Appellant.</u>
Zopada No.880	]	Original accused
1/2 Manuwadi, Wadala (E)	]	
Mumbai 400 037	]	
at present in Arther road prison	]	

V/s.

The State of Maharashtra	]	
at the instant of Wadala Police	]	.. Respondent
Station, Mumbai.	]	
at present in Arther road Jail	]	

Mr. Prashant G. Sawant, for the appellant.
Mr. H. J. Dedhia, for the APP, for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th NOVEMBER, 2015.

ORAL JUDGMENT : [Per : Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by the original accused challenging the judgment and order dated 9th March, 2012, passed by Additional Sessions Judge Greater Mumbai, at Sewree, in Sessions Case No.644 of 2011, thereby convicting the

appellant for the offence punishable under Section 304 part II of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for three years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for two months.

2. Brief facts of the appeal can be stated as follows :-

The marriage of deceased Shaila with appellant had taken place about 16 years prior to the incident. She had three sons out of wedlock. The appellant was addicted to liquor and not doing any work and on that count there used to be frequent quarrels between deceased Shaila and the appellant. On the date of incident i.e. 23rd May, 2011 also, when appellant returned to the house at about 2.30 p.m., quarrel ensued between the appellant and the deceased as usual. In the said quarrel, appellant assaulted deceased with wooden bat. Hence in a fit of anger, deceased poured kerosene on herself, the appellant then lighted the match stick and threw it on her, as a result deceased Shaila caught fire and became injured. In burnt condition, she was initially taken to Bhabha hospital and then to Sion Hospital.

On the same day her complaint came to be recorded by P.W.3 PSI Gokul Patil. On her complaint Exh.16, C.R.No.84 of 2011 came to be registered. On the next date, her dying declaration came to be recorded by P.W.1 SEO Shilpa Rane at exh.13.

3. During the course of investigation, the statements of witnesses were recorded, spot panchanama was made vide Exh.8 and the appellant was arrested. Meanwhile, on 15.6.2011 deceased Shaila succumbed to burn injuries. After inquest panchanama, her dead body was sent for postmortem and on the receipt of postmortem Exh.9, chargesheet came to be filed in the Court against appellant.

4. On Committal of the case to the Sessions Court, the trial Court framed charge against appellant vide Exh.5. The appellant pleaded not guilty and claimed trial.

5. In support of its case, prosecution examined only three witness viz P.W.1 S.E.O. Shilpa Khare, who recorded dying declaration of the deceased vide Exh.13, P.W.2 Deepak Mirpagar

the brother of the deceased and P.W.3 PSI Patil, who recorded complaint of deceased Exh.16. All other documents in the case like spot panchanama Exh.8, postmortem report at Exh.9 were admitted in defence and hence they are admitted in evidence dispensing their formal proof. The Chemical Analyzer's Reports are produced at Exh.10 and 11.

6. The trial Court, then recorded statement of appellant under Section 313 of the Code of Criminal Procedure in which the appellant admitted entire incident except for the fact that he threw lighted match stick on the deceased. According to him, deceased has herself lighted the match stick and set herself on fire.

7. On appreciation of this evidence, the trial Court was pleased to hold that though appellant can be attributed with the knowledge of causing death of the deceased, he cannot be attributed the intention of causing her death and hence the trial Court acquitted him for the offence punishable under Section 302 of the Indian Penal Code, and convicted for the offence

punishable under Section 304 part II of the IPC.

8. This judgment of the trial Court is challenged in this appeal by learned counsel for appellant Shri. Prashant Sawant, whereas supported by learned APP Shri. H.J. Dedia.

9. At this stage it may be stated that the prosecution has not preferred any appeal against acquittal of the appellant for offence punishable under section 302 of the IPC.

10. In this case most of the facts are admitted. The marriage of deceased Shaila and the appellant had taken place about 16 years back. There used to be frequent quarrels between them and in one of such quarrel, as per prosecution case, Shaila poured kerosene on herself in a fit of anger and appellant set her on fire by throwing lighted match stick on her. In his statement recorded under Section 313 of the Code of Criminal Procedure, the appellant has admitted all the details of the incident except for the allegation that he has set her on fire by throwing lighted match stick on her.

11. The postmortem report in this case is admitted on record and it is marked Exh.9. It proves that Shaila has sustained 52% superficial to deep burns all over her body and she has succumbed to those injuries on 15.6.2011 i.e. 20 days after the incident. The cause of death, given in postmortem notes, is “septicemic shock following 52% superficial to deep infected burns”.

12. The prosecution case against appellant stands on two written dying declarations and one oral dying declaration of deceased Shaila. As to oral dying declaration, there is evidence of P.W.2 Dipak, the brother of the deceased, who has deposed that on that day when he came to know that his sister Shaila had got burn injuries, he went to meet her in the hospital. She told him that she had quarrel with her husband and her husband set her on fire.

13. This oral dying declaration gets complete and full corroboration from the written dying declaration of deceased, as

recorded by P.W.1 Special Executive Officer Shilpa Khare. She has recorded said dying declaration on the next day in Sion Hospital. As per said dying declaration Exh.13, Shaila has stated that there was quarrel between her and her husband. In that quarrel, she got angry and poured kerosene on herself. She was wearing silk Punjabi Dress. Then her husband lighted match stick and set her on fire.

14. P.W.3 PSI Patil has recorded complaint of deceased on the same date in which she has reiterated the same fact that during quarrel in a fit of anger she poured kerosene on herself and her husband lighted match stick and set her on fire. She further told that her husband took her to Bhabha Hospital and thereafter she was transferred to Sion hospital. This statement of deceased vide exh.16, thus, also corroborates oral dying declaration made before P.W.2 Dipak and written dying declaration made before P.W.1 SEO Shilpa Khare.

15. Thus, in this case all the three dying declarations are consistent with one another. They are to the effect that it was

the appellant, who has set his wife Shaila on fire after she poured kerosene on herself. Shaila has succumbed to these burns on 15.6.2011 i.e. 20 days after the incident.

16. Law is well settled that conviction can stand on the sole basis of dying declaration. However, when there are multiple dying declarations, they should be consistent with one another. In the instant case, even if prosecution has not examined the Doctor to prove physical and mental condition of the deceased at the time of making dying declaration, considering the fact that she has succumbed to injuries 20 days after the incident and the injuries were superficial to deep infected burns to the extent of 52% only and her mental and physical condition to make such dying declaration being not challenged in the cross-examination of these witnesses, the trial Court has rightly placed reliance on these dying declarations to prove involvement of the appellant in the incident of her death.

17. As the prosecution has not challenged the acquittal of the appellant for the offence under Section 302 IPC, this Court

need not enter into the question whether the act of accused comes within the purview of offence of culpable homicide amounting to murder. Hence the judgment and order recorded by the trial Court being based on evidence on record and on its proper appreciation does not call for any interference.

18. The learned counsel for the appellant also submits at bar that as appellant was in custody through-out the trial and also in the course of this appeal, he has already undergone the entire sentence of three years and is released from jail. In view thereof no further order is necessary. The appeal, thus, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original signed judgment.