

JPP

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

CRIMINAL APPEAL NO. 877 OF 2007

Suresh Sawala Chavan,
Age about 30 years,
Occupation : Mason,
R/o. Wadar Colony, Amarai,
Baramati, Taluka : Baramati,
District : Pune.
(At present Yerwada Central
Prison, Pune).

... Appellant.

V/s.

The State of Maharashtra
At the instance of Baramati City
Police Station, Baramati,
District : Pune. .

... Respondent.

Mrs. Sonia Miskin, appointed Advocate for the Appellant.
Smt. V.R. Bhosale, APP for the State.

**CORAM : P.V. HARDAS &
A.S. GADKARI, JJ.**

JUNE 24, 2015.

ORAL JUDGMENT (PER P.V. HARDAS,J.) :-

The Appellant, who stands convicted for offence punishable under Section 302 of the Indian Penal Code and

sentenced to imprisonment for life and to pay fine of Rs.5,000/- in default of which to undergo R.I. for one month, by the Ad-hoc Additional Sessions Judge - 2, Baramati, by Judgment dated 17.8.2007, in Sessions Case No. 9 of 2007, by this Appeal questions the correctness of his conviction and sentence.

2. Facts in brief as are necessary for the decision of this Appeal may be stated thus.

PW-2 ASI Dnyandeo Phalke, who was attached to Baramati City Police Station was directed by the PSO to go to the Silver Jubilee Hospital at Baramati for recording the statement of one injured lady Bayadabai. Accordingly, PW-2 ASI Phalke proceeded to the hospital and contacted PW-5 Dr. Bhoi, a Medical Officer and requested him to ascertain if injured Bayadabai was in a fit condition to give her statement. On examining the injured, the Medical Officer opined that Bayadabai was in a fit condition to give her statement. PW-2 ASI Phalke recorded the statement of injured Bayadabai who stated before him that the Appellant had poured kerosene on

her and had set her ablaze. Statement of injured Bayadabai was recorded by PW-2 ASI Phalke at Exhibit 17. After recording the statement, PW-2 ASI Phalke returned to the Police Station and handed over the statement to the PSO who registered an offence on the basis of the statement of Bayadabai at Exhibit 17. PW-6 PSI Chedke, who was also attached to Baramati Police Station was entrusted with the investigation of Crime No. 126 of 2006. Accordingly, a scene of the incident panchnama was drawn in the presence of panchas at Exhibit 15. The Appellant was arrested and statements of witnesses were recorded. On death of Bayadabai, an inquest panchnama at Exhibit 22 was recorded and the dead body was referred for postmortem examination. As per the postmortem report at Exhibit 23, which is admitted by the accused under Section 294, the Medical Officer opined that the deceased had died due to shock due to septicemia due to extensive burns. The postmortem report is at Exhibit 23. The seized property was referred to the Chemical Analyzer and further to the completion of investigation, a charge-sheet against the Appellant was filed.

3. On the case being committed to Court of Sessions, Trial Court vide Exhibit 4 framed charge against the Appellant for offence punishable under Section 302 of the Indian Penal Code. The Appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined 6 witnesses. The defence of the Appellant is of denial. The Trial Court on appreciation of the evidence convicted and sentenced the Appellant as aforestated.

4. PW-4 Kalavati, mother of deceased Bayadabai and PW-3 Laxmi, aunt of deceased Bayadabai did not support the prosecution and were declared hostile. The conviction of the Appellant therefore rests on the dying declaration at Exhibit 17 recorded by PW-2 ASI Phalke. PW-2 ASI Phalke has deposed about proceeding to the Silver Jubilee Hospital and recording the statement of injured Bayadabai at Exhibit 17. He further deposes that the statement was read over to Bayadabai and thereafter, her thumb impression was obtained. PW-2 ASI Phalke has been extensively cross-examined. However, in the cross-examination nothing of substance has been elicited to disbelieve the recording of the

dying declaration. The dying declaration cannot be faulted and as per the dying declaration, the Appellant suspected the character of Bayadabai and questioned her as to why she was talking to several persons and therefore, had set her ablaze. There is no reason whatsoever to disbelieve the recitals of the dying declaration and in our opinion therefore, the Trial Court has not committed any error in placing the implicit reliance on the dying declaration at Exhibit 17 and convicting the Appellant.

5. We have heard the learned Counsel appointed for the Appellant and the learned APP with whose assistance we have perused the evidence of the prosecution witnesses. As pointed out by us above, there are no grounds whatsoever for discarding the dying declaration at Exhibit 17. The dying declaration which is a truthful account of the circumstances leading to the death of deceased Bayadabai can be implicitly relied upon. The Appellant, in our opinion, has been rightly convicted by the Trial Court. The present Appeal therefore being sans merit deserves to be dismissed.

6. Accordingly, Criminal Appeal No. 877 of 2007 is dismissed confirming the conviction and sentence of the Appellant.

7. Fees payable to Advocate Mrs. Sonia Miskin, learned Counsel appointed for the Appellant is quantified at Rs.5,000/-.

(A.S. GADKARI, J.)

(P.V. HARDAS, J.)