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

CRIMINAL APPEAL NO. 1121 OF 2013

VIJAY SURESH WAIDANDE

Age - 29 Years, R/o. Malwadi,
Taluka Palus, Dist. Sangli.

At present lodged at Kolhapur Central
Prison, Kalamba.

.. Appellant
(Org. Accused)

Versus

THE STATE OF MAHARASHTRA

(Palus Police Station)

.. Respondent

Appearances:-

Mrs. Rupali Shinde	<i>Advocate (appointed) for the Appellant</i>
Mrs. V.R. Bhonsale	<i>APP for the State</i>

**CORAM : SMT. V.K. TAHILRAMANI &
SMT. I. K. JAIN, JJ**

DATE : JANUARY 9, 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 06.02.2013 passed by the learned Sessions Judge, Sangli in Sessions Case No. 96 of 2011. By the said judgment and order, the

learned Session Judge convicted the appellant for the offence punishable under Section 302 of IPC and sentenced him to suffer life imprisonment and fine of Rs. 10,000/-, in default rigorous imprisonment for two months.

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

- (a) The appellant was the husband of Jyoti (deceased). They were married about 10 years prior to the incident. They had three children. The appellant, his wife Jyoti and their children were residing at Malwadi-Bhilwadi in Sangli. Both the appellant and Jyoti used to work as labourers. The appellant was addicted to liquor and from time to time, he used to demand money from his wife Jyoti.
- (b) The incident occurred on 20.3.2011. At about 5 p.m., the appellant came home. He told Jyoti to give him money she had earned to bring liquor.

Jyoti refused to give her husband any money, hence, the appellant poured kerosene from a bottle on her and set her on fire. Jyoti came shouting outside the house. Neighbours including PW 1 Sagar came to the spot. Sagar extinguished the fire. Thereafter, Jyoti was taken to the hospital. In the hospital, three dying declarations of Jyoti came to be recorded i.e Exh. 29, 30 and 32. The dying declaration Exh. 30 was treated as FIR. In the dying declaration Exh. 29, Jyoti stated that her saree fell on burning stove and she caught fire, hence, she sustained burn injuries. However, in the dying declarations Exh. 30 and Exh. 32, Jyoti stated that what was told by her earlier which was recorded in dying declaration Exh. 29 was stated on account of fear of her husband and the actual facts were that her husband asked her to give him money she had earned to bring liquor. Jyoti refused to give her

husband any money, hence, he poured kerosene from a bottle on her and set her on fire. Jyoti expired on 3.4.2011 due to 64% burns. After completion of investigation, 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 Sections 498(A), 302 and 307 of IPC. The appellant/accused 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 in paragraph 1 above, hence, this appeal against.

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case,

arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that there is no merit in the appeal.

5. The conviction of the appellant is mainly based on ocular testimony of his son PW 2 Tushar. Tushar was about 8 years old at the time of the incident. He has stated that he was residing along with two younger brothers and parents at Malwadi-Bhilwadi in Sangli. Tushar has stated that on the day of the incident, his brothers, his mother and father were in the house. His father was asking money from his mother for liquor. His mother did not give his father money because she had kept aside the money for giving installment of Bachat Gat. As his mother did not give money, his father started beating his mother. Thereafter, his father poured kerosene on his mother and set her on fire. His mother came shouting outside the house. Then, Sagar uncle (PW 1)

and some other persons gathered at the spot. Sagar uncle extinguished the fire. His mother had sustained burn injuries. Then his mother was taken to Civil Hospital, Sangli. His father boarded the vehicle in which Jyoti was taken to the hospital, however, his father got down midway and did not come to the hospital. Nothing has been elicited in cross-examination of PW 2 Tushar to cause us to discard his testimony. We find that his testimony inspires confidence, hence, we have no hesitation in relying on the same.

6. Thereafter, the prosecution has placed reliance on two dying declarations i.e Exh. 30 and Exh. 32. Dying declaration Exh 30 was recorded by PW 5 Special Executive Magistrate (SEM) Smt. Malap and dying declaration Exh. 32 was recorded by PW 6 Police Sub-Inspector (PSI) Radha Mahamuni. Both PW 5 SEM Malap and PW 6 PSI Mahamuni got it confirmed from the doctor before recording the dying declaration that the patient was conscious and in a fit condition to give a dying declaration. PW 8 Dr. Dhanake was

the medical officer who had examined Jyoti before both the dying declarations Exh. 30 and 32 were recorded and gave an endorsement that she was conscious and in a position to give the statement. Thereafter, they recorded the dying declarations. In both the dying declarations, Jyoti has stated that her husband told her to give him money she had earned to bring liquor. She refused to give her husband any money, hence, her husband poured kerosene from a bottle on her and set her on fire.

7. Mrs. Rupali Shinde, learned Advocate for the appellant submitted that both the dying declarations Exh. 30 and Exh. 32 cannot be believed because there is another dying declaration Exh. 29 on record which falsifies the dying declarations Exh. 30 and Exh. 32. She pointed out that dying declaration Exh. 29 was recorded by PW 5 SEM Malap. In the said dying declaration, it is recorded that Jyoti stated that when she was cooking on stove, her saree caught fire due to which she sustained burn injuries. She came shouting out

of the house. Neighbours gathered at the spot. The neighbours extinguished the fire and took her to the hospital. No doubt, Jyoti has stated so in the dying declaration Exh. 29, however, it is pertinent to note that in the dying declarations Exh. 30 and 32, Jyoti has stated that she has earlier told the SEM that she caught fire on account of her saree falling on stove, due to fear of her husband. Jyoti has stated this fact to both PW 5 SEM Smt. Malap as well as PW 6 PSI Smt. Mahamuni. This fact is also recorded in the dying declarations. Thus, plausible explanation has been brought on record by the prosecution regarding why Jyoti had given statement stating that it is a case of accidental burns. It has also to be borne in mind that there is an eye witness in the present case who is the son of the appellant as well as the deceased who has stated that he saw his father pouring kerosene on his mother and setting her on fire.

8. In addition to the above evidence, the prosecution is relying on the evidence of PW 4 Suresh who is the brother of

Jyoti. Suresh has stated that Jyoti was his sister. She was married to the appellant about 12 years prior to the incident. Jyoti had three sons. One of them was Tushar (PW2) who was known as Pappu. Suresh has stated that the appellant was addicted to liquor. Suresh received a phone call that his sister had sustained burn injuries and was in Civil Hospital at Sangli, hence, he went to Civil Hospital. The husband of Jyoti was not in the hospital. Four days thereafter, Jyoti inquired from him whether her husband had come to the hospital and Suresh told her that her husband had not come to the hospital. Jyoti then told him that her husband had demanded money for liquor which she had kept aside for paying installment of Bachat Gat. As Jyoti did not give money to her husband, her husband poured kerosene on her and set her on fire. Jyoti told him that if she survives, she has to cohabit with her husband along with her three sons and hence, she gave statement that incident of burns occurred due to accident. PW 4 Suresh then went to Police Station and informed this fact to the police. Thereafter, one Executive

Magistrate and doctor came and recorded the statement of Jyoti.

9. It is the prosecution case that the appellant poured kerosene and set Jyoti on fire. This is borne out by medical evidence and forensic evidence. PW 7 Dr. Magare conducted the postmortem on the dead body of Jyoti. On examination, he found burn injuries on her face, right and left upper limb, right lower limb, left lower limb, ante trunk, post trunk and genital area. Dr. Magare observed that there was 64% burns. Burns were of mixed type. In the opinion of Dr. Magare, the cause of death was due to shock due to 64% burns associated with septicemia. According to Dr. Magare, all these injuries are possible if kerosene is poured and person is ignited.

10. The clothes of the appellant as well as the deceased were sent for Chemical Analysis (CA). The CA report Exh. 62 shows that on the saree of the deceased and the shirt and

pant of the appellant, kerosene residues were detected. This further corroborates the prosecution case.

11. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed the murder of his wife Jyoti by pouring kerosene on her and setting her on fire. There is no merit in the appeal. The appeal is dismissed.

12. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Mrs. Rupali Shinde at Rs. 5000/-.

[SMT. I. K. JAIN, J]

[SMT. V.K. TAHILRAMANI, J]

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