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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1205 OF 2008**

Smt. Chhabubai Trimbak Gosavi	]	
Age 44 years, residing of	]	
Ganesh Nagar, Lasalgaon,	]	
Taluka Niphad, Dist. Nashik	]	
(At present in Nashik Central Jail)	]	
	]	Appellant
		[Ori.Accused No.2]

Vs.

The State of Maharashtra	]	
Through Lasalgaon Police Station	]	
Taluka Niphad, Dist. Nashik	]	Respondent

....
Mr. M.S. Karnik Advocate for the Appellant
Mrs. G.P. Mulekar, A.P.P. for the State
....

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

DATED : MARCH 31, 2015

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :-

1 This appeal is preferred by the appellant-original accused no.2 against the judgment and order dated 21.10.2008 passed by the learned Ad-hoc Additional Sessions Judge-2, Niphad, Dist. Nashik in Sessions Case No. 30 of 2004. By the said judgment and order, the learned Sessions Judge

convicted the appellant under Section 302 of IPC and sentenced her to RI for life and to pay a fine of Rs. 500/- in default RI for six months.

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

Deceased Savita was the daughter of P.W. 1 Dagadugir. Savita was married to the son of the appellant on 2.12.2003. Thereafter Savita went for cohabitation at Lasalgaon. She was residing in her matrimonial home along with her husband, mother-in-law (appellant), father-in-law, sister-in-law and brother-in-law. The house of the appellant consisted of two storeys. Thereafter Savita and her husband started residing on the first floor. For some period of time, Savita was treated nicely. Thereafter the appellant and others started ill-treating Savita.

The incident took place on 28.2.2004. On that day at about 10 a.m. to 11 a.m. the appellant quarreled with Savita. In the evening at about 5 p.m. Savita went to fill water. She came home with a pot filled with water. Thereafter, she again went down to fill water, at that time, she was assaulted. Savita went running upto her house. The appellant also came running

behind Savita and entered her room. The appellant then poured kerosene on Savita and set her on fire. Thereafter Savita's father-in-law and neighbours extinguished the fire and she was taken to the hospital. In the hospital, P.W. 3 Special Judicial Magistrate Shri. Sonawane recorded the dying declaration of Savita. In the dying declaration, Savita stated that at about 10 a.m. to 11 a.m. a quarrel took place between her and her mother-in-law and in the evening at 5 p.m. when she went down to fill water, at that time, she was assaulted. Savita went running upstairs. The appellant also came behind Savita. The appellant poured kerosene on Savita and set her on fire and the appellant ran away. At that time, Savita's husband had gone for work, hence, he was not in the house. Her father-in-law and the neighbouring ladies extinguished the fire and took her to the hospital. This dying declaration Exh. 28 was treated as F.I.R. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed against the appellant. In due course, the case was committed to the Court of Sessions for trial.

3 Charge came to be framed against the appellant-original accused no.2 as well as co-accused original accused

no.1 Trimbak Gosavi under sections 302 and 323 read with Section 34 of IPC. They 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 this case, the learned Sessions Judge acquitted original accused no.1, however, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned Advocate 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 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 the appellant poured kerosene on her daughter-in-law Savita and set her on fire which led to the death of Savita.

5 The conviction is mainly based on the dying declaration Exh. 28 given by Savita to P.W. 3 Special Judicial Magistrate Shri. Sonawane. Shri. Sonawane has stated that on

29.2.2004, he received letter from Bhadrakali Police Station wherein police requested him to record dying declaration of burn patient Savita Gosavi. Accordingly, he went to the civil hospital at Nashik. First he met Dr. Barve (P.W. 7) and requested Dr. Barve to examine Savita and to give an opinion whether Savita was in a fit condition to give a statement. Accordingly, Dr. Barve went to the burn ward and examined the patient. Dr. Barve examined Savita and gave an endorsement that the patient is conscious and fit to give a statement. The Doctor put her signature and stamp below the said endorsement. Thereafter Shri. Sonawane asked all the persons present in the burn ward to go outside the ward. Accordingly, those persons went outside. Shri. Sonawane then informed patient Savita that he is Special Judicial Magistrate and he had come to record her statement. Shri. Sonawane also himself ascertained that the patient was in a fit condition to speak. He then asked her whether she understands Marathi, to which Savita replied in the affirmative. Shri. Sonawane then recorded her statement. Shri. Sonawane asked preliminary questions to Savita which she replied. Thereafter Shri. Sonawane asked her how she had sustained burn injuries. Shri. Sonawane has stated that Savita told him that her

marriage took place in the year 2003. On Saturday at 10 a.m. to 11 a.m. there was a quarrel between her and her mother-in-law. On the same day in the evening at 5 p.m. Savita had gone to fetch water from the tap. She brought pot filled with water and kept it on the upper floor of the house. She then went to bring another pot of water. When she went down, her mother-in-law and others assaulted her down-stairs. Therefore, she went running to the upper floor. Her mother-in-law (appellant) came running behind her. Her mother-in-law then poured kerosene on her and set her on fire with match stick. Her mother-in-law then went away. Thereafter her father-in-law and neighbouring ladies extinguished the fire and took her to the hospital. After recording the dying declaration, Shri. Sonawane read over the dying declaration to Savita. She admitted the contents of her statement to be correct. Shri. Sonawane then obtained thumb impression of Savita on the said statement. He then put his signature on the dying declaration. After completion of the dying declaration, Shri. Sonawane again requested Dr. Barve to examine the patient. Accordingly, Dr. Barve examined the patient and gave opinion that the patient is fully conscious and able to give her statement. The Doctor then gave an endorsement and put her

signature below it.

6 That Savita was conscious and in a fit condition to give statement, is also borne out by the evidence of P.W. 7 Dr. Barve. Dr. Barve has stated that on 29.2.2004 she was attached to the civil hospital Nashik as Medical Officer. Dr. Barve has stated that on that day the Special Judicial Magistrate Shri. Sonawane met her. He had come to record dying declaration of Savita who was admitted in the burn ward. Dr. Barve has stated that Shri. Sonawane asked her to check the patient and give her opinion whether the patient was in a fit condition to give a statement. Dr. Barve then examined the patient at about 6.00 p.m. Then she gave her opinion that the patient was conscious and able to speak. Accordingly, she put her endorsement on the paper. Dr. Barve identified her endorsement and her signature on the dying declaration Exh. 28. Dr. Barve has stated that she again examined the patient at 6.25 p.m. and found that the patient was at that time fully conscious and able to give her statement. Accordingly she gave her endorsement below the said statement. She has again identified her signature and endorsement on the dying declaration Exh. 28.

7 Nothing has been elicited in the cross-examination of P.W. 3 Special Judicial Magistrate Shri. Sonawane as well as P.W. 7 Dr. Barve which would discredit their testimony. We find their evidence to be trustworthy and cogent, hence, we have no hesitation in relying on the same. The dying declaration clearly shows that it was the appellant who poured kerosene on Savita and set her on fire.

8 It is well settled that a dying declaration can be the sole basis for conviction. The situation when a person is on death bed is solemn and serene. When he is dying the situation is grave and solemn, given the situation in which he is placed, he is expected to state the true facts. This is the reason in law to accept the veracity of his statement. It is for this reason, the requirement of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded from consideration, it will result in miscarriage of justice because the victim being generally the only eye witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence. It is worthwhile to note that the accused has no

power of cross examination, therefore, this is a reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court. The Court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind to state the facts and had a clear opportunity to observe and identify the assailants. When the Court is satisfied that the dying declaration was voluntary and truthful it can base its conviction on it without any further corroboration. Therefore it is clear that a dying declaration can form the sole basis of conviction. In the present case, in our opinion, looking to the evidence on record, we find that the dying declaration made by Savita was voluntary and truthful and we can safely rely on the same.

9 Shri. Karnik, the learned counsel for the appellant submitted that the appellant was 40 years old and she had only one eye, whereas on the other hand, the age of Savita was just about 24 years. He pointed out that Savita was an able bodied woman which is seen from the fact that Savita used to carry

pots of water from the tap to her house on the first floor. Shri. Karnik submitted that in such case, looking to the age of the appellant and her physical disability, it would not be possible for the appellant to overpower Savita and set her on fire. Looking to the age of the appellant and the other facts, it does not at all seem to be improbable that the appellant could have poured kerosene on Savita and set her on fire. Thereafter Shri. Karnik submitted that if really the appellant had set Savita on fire, Savita would have resisted and some signs of struggle would be noticed at the spot. As far as this contention is concerned, it is seen that the 'Mangalsutra' of Savita was broken and pieces of the said 'Mangalsutra' were found lying on the spot. This clearly shows that some struggle took place between Savita and the appellant. Thus, we find no merit in this submission.

10 Thereafter Shri. Karnik submitted that the appellant has been falsely implicated in this case by Savita. If Savita wanted to falsely implicate her in laws, she would not have stated that her husband was not present in the house when the incident occurred. Moreover, she would have attributed role to her father-in-law as well as brother-in-law and sister-in-law that

they had caught hold of her when appellant poured kerosene on her and set her on fire or in some way implicated them to show that they also took part in the incident in which she sustained burn injuries. The fact that Savita has not implicated any of the other family members in the incident of burning in fact makes the dying declaration more credible.

11 While appreciating the evidence, one disturbing fact which has come to light is that though the father of Savita i.e. P.W. 1 Dagadugir went to the police soon after the incident, his statement was not recorded by the police. The police used to tell him that they will record his statement later on. Finally P.W. 1 Dagadugir made a complaint to the Lasalgaon police station as well as Deputy Superintendent of Police and thereafter he was called for recording his statement. The evidence of Dagadugir shows that the next day when he met his daughter in the hospital, his daughter informed him that at 5 p.m. when she went to fill water she was followed by her mother-in-law, her mother-in-law entered in the house and poured kerosene on her person and set her on fire. Thereafter her mother-in-law went outside. This evidence of P.W. 1 Dagadugir shows that an oral dying declaration was made by

Savita to him wherein she has implicated the appellant.

12 It is the prosecution case that the appellant poured kerosene on Savita and set her on fire. This is borne out by the medical evidence. P.W. 2 Dr. Patil conducted the post-mortem on the dead body of Savita. He found that Savita had sustained 90% burns and the death was due to shock due to 90% burns. The evidence of Dr. Patil shows that injuries sustained by Savita are possible if kerosene is poured on the person and the person is set on fire. The C.A. report Exh. 53 also shows that the clothes of Savita i.e. sari and petticoat tested positive for kerosene residue. This further corroborates the prosecution case.

13 On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the appellant poured kerosene on Savita and set her on fire which led to Savita's death. Thus, we find no merit in the appeal. Appeal is dismissed.

[SHRI.B.P.COLABAWALLA, J.] [SMT.V.K.TAHILRAMANI, J.]