

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 19 OF 2013

Kalyan s/o Arjun Shewale,
Age : 40 years, Occu. Labourer,
R/o. Akola, Tq. Ambajogai,
Dist. Beed, Now convict No. C/7439,
Central Jail, at Aurangabad.

.. Appellant

Versus

The State of Maharashtra,
Through Police Inspector,
Police Station Ambajogai (Rural),
Tq. Ambajogai, Dist. Jalna.

.. Respondent

.....
Mrs Manjusha S. Jagtap, Advocate (appointed) for the appellant
Mr P. N. Kutti, APP for respondent/State
.....

**CORAM : A.V.NIRGUDE &
V.L. ACHLIYA, JJ.**

DATED : 09.06.2016.

ORAL JUDGMENT : (Per A. V. Nirgude, J.)

1. Heard learned counsel for the respective parties.
2. This appeal challenges the judgment and order dt. 26.11.2012 passed by Id. Additional Judge-I, Ambajogai in Sessions Case No. 105 of 2011 convicting the appellant for offence punishable u/s 302 of the Indian Penal

Code and sentenced him to suffer life imprisonment and to pay fine of Rs. 1,000/-, with a default clause. The appellant was the husband of the victim. It is alleged by the prosecution that, the appellant murdered his wife by setting her on fire on 30.08.2011.

3. The prosecution depended on deposition of eight witnesses. Out of which, three witnesses are most important. Witness No. 1 Police Constable – Ramakant and Witness No. 5 is Naib Tahsildar – Balaji, both deposed that, they recorded dying declarations of the victim on 31.08.2011, in which the victim narrated the incident. Witness No. 2 is the mother of deceased Keshar, who stated, when she learnt about the incident she came to the hospital and heard from the victim as to how she suffered burn injuries. In other words, this witness tried to prove oral dying declarations of the victim. Other witnesses are formal and are not required to discuss at length. The Id. Judge of the trial Court believed the prosecution case, which is recorded through the above mentioned three depositions of the three witnesses.

4. The Id. Counsel for the appellant, who is '*Amicus Curiae*' and appointed by us to prosecute the appeal, asserted that, the Court should not convict the appellant mainly on the basis of the dying declarations.

5. Indeed, there is no other evidence against the appellant other than dying declarations narrated to witness Nos. 1, 2 and 5. However, on perusal of these depositions along with their cross-examinations, we are of the view that, these dying declarations are truthful and believable piece of evidence. We are aware that, dying declaration as such is not a strong evidence and the Court should be circumspect while placing reliance on such solitary piece of evidence. However, in this case, the dying declarations are proved through unimpeachable witnesses nos. 1 and 5.

6. Prosecution witness No. 1 stated that, at about 12.00 to 1.00 pm while he was on Hospital duty, he received MLC papers from the Hospital and then he went to Burn Ward for recording dying declaration of the victim. He obtained certificate of the treating Doctor that the patient was conscious, coherent and fit to give statement. Victim narrated him the entire incident and he recorded the same verbatim. The victim told him that, on the previous day at about 6.00 p.m., the appellant -her husband- demanded money from her for drinking liquor and then assaulted her. At that time, the victim's parents-in-laws came to her rescue. The appellant even abused them. Thereafter, she stated that the appellant took kerosene can and poured some kerosene on her person and set her close on fire. Again her parents-in-laws and other relatives came to extinguish the fire. She even admitted that, the

appellant also came in her rescue. Immediately thereafter, she was taken to Hospital. Similar statement was made to prosecution witness No. 5, who as said above, was Naib Tahsildar and recorded victim's dying declaration in her own words. PW-5 has recorded the dying declaration as per requisition received from the concerned Police Station. The dying declarations recorded by Ramakant Thorat (PW-1) and by Tanaji Chitale (PW-5) are at Exh. 24 and 46, respectively. PW-7 Dr. Amit Aiwale, the Medical Officer attached to S.R.T.R. Hospital, Ambajogai has deposed before the Court that, on 31.08.2011 while he was on duty and present in the Hospital, Police had recorded the dying declaration of deceased-Asha. Before recording the dying declaration, he had examined the deceased-Asha and found her in a fit state of mind to give statement. Accordingly, he made endorsement in his handwriting and signature over Exh. 24. He has further deposed that, on completion of the recording of statement of the deceased, he again examined deceased Asha and found her to be in a fit statement of mind and able to give statement and accordingly he made endorsement with his signature on dying declaration – Exh. 24. He has further deposed that, at about 4.00 p.m. on the request of Tahsildar of Ambajogai, he again examined deceased-Asha and found her in a fit statement of mind to give statement. He has identified his endorsement as well as signature on dying declaration at Exh. 24. He has further deposed after conclusion of the recording of dying declaration that, he gain examined

her and recorded his endorsement on dying declaration at Exh. 24. All these three witnesses were cross-examined at length. Nothing has been elicited in their cross-examination to raise any doubt as to the truthfulness of dying declarations recorded by PW-1 & PW-5. Besides written as well as oral dying declarations made by the deceased are found to be truthful, there is corroboration to these dying declarations. There is no evidence brought on record to accept the contention that deceased was tutored to make such statement. So also, there is no evidence brought on record to establish that deceased was not in a fit state of mind to make such statement. It is pertinent to note that, the deceased has stated in her dying declaration that, after she was set on fire by the accused, her in-laws, son and the accused put off the flames and brought to the Hospital. She has further stated that, while extinguishing fire on her person, the accused had also sustained some burn injuries. The fact relating to incident stated by deceased find due corroboration from the evidence on record. The accused had sustained burn injuries on his palm. It is further pertinent to note that, the deceased had not made any attempt to falsely implicate other family members.

7. The accused had taken the defence that, the deceased had sustained the burn injuries due to explosion of stove. However, the spot panchanama rules out the case of accidental fire due to explosion of stove. On the contrary, the spot panchanama depicts that, no stove was found on the

spot. The seizure of the burn pieces of clothes and other material seized from the spot establishes that the residues of kerosene detected on half burnt pieces of clothes of the deceased as well as the kerosene can and matchstick box found on the spot. Thus, there is absolutely nothing on record to doubt the truthfulness of the dying declaration made by the deceased to PW-1 & PW-5 as well her mother PW-2.

8. It is well settled that, dying declaration shall have to be dealt with due care and upon proper circumspection. The Court is expected to scrutinize the dying declaration carefully and must ensure that declaration is not the result of tutoring, prompting or imagination. It is always open to act upon the dying declaration even without getting it corroborated when the Court is satisfied that such an evidence is quite truthful and could be relied upon without corroboration. It is also settled position in law that, if after careful scrutiny of dying declaration the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, then same can basis to convict the person even if there is no corroboration. As discussed in the foregoing paras, both the dying declarations are found to be truthful and reliable. So also, written as well as oral dying declarations are found to be consistent and no discrepancies as such noticed in the written as well as the oral dying declarations. The fact that, accused had sustained burn injuries to his palm and conduct of the

deceased not to implicate the members of the family also guarantees the truthfulness of the dying declarations recorded by PW-1 & PW-5. There is no evidence to establish that, the dying declaration made by the deceased was outcome of tutoring made by her relatives. The testimony of Dr. Amit Aiwale establishes that the deceased was in a fit state of mind to give statement. Thus, considering the over all evidence in the matter, we are of the view that, the reasonings and findings recorded by the trial Court are consistent with the evidence on record. There is absolutely no perversity in the reasons and findings recorded by the trial Court. In view of this, no case has been made out to interfere with the judgment and order passed by the trial Court in exercise of appellate jurisdiction.

9. The learned counsel for the appellant invited our attention to the copies of the medical case record maintained with the S.R.T.R. Medical College & Hospital, Ambajogai, where the deceased was admitted and treated. The medical case record in respect of the evidence is produced at Exh. 53. The learned Counsel has invited our attention to the case papers wherein one noting in respect of clinical history was noted by Doctor. In the noting, the history was given as "Accidental Burn while cooking 1 Hr back". By referring this endorsement, the learned counsel has tried to argue that deceased has sustained the burn injuries accidentally and subsequent dying declarations are an improved version to implicate the appellant. We are not inclined to

accept this contention for the sole reason that, mere production of the medical case papers is not sufficient to prove the said noting made in the medical case papers. Although the prosecution has examined Dr. Amit Aiwale (PW-7) and produced the medical case record at Exh. 53, no attempt is made to establish that such statement was made by the deceased-Asha. It is pertinent to note that, the deceased was admitted in hospital by her in-laws and brother-in-law. Generally, the history is taken from the person who brings such patient for admission in hospital. Naturally, in order to hide the real fact, such history might have been given by the parents of accused or the accused. There is no evidence brought on record that such history was given by the deceased-Asha. In absence of any evidence that the alleged history was given by the deceased, the contention of the learned counsel that the deceased had improved her version while recording the dying declaration by PW-5, cannot be accepted.

10. In view of above, we find no merit in the appeal. In the result, the Appeal should fail. Accordingly, the Criminal Appeal is dismissed.

11. The learned counsel appointed to represent the appellant shall be paid fees according to the rules.

[V.L.ACHLIYA, J.]

[A.V. NIRGUDE, J.]