

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

**CRIMINAL APPEAL NO. 155 OF 2014**

Shri Mukesh Chattarsing Pawara

Age : 30 years, Occupation : Nil

Resident of At Khambale

Taluka Shirpur, District Dhule

presently in jail.

.. APPELLANT

**VERSUS**

The State of Maharashtra

Through the Shirpur Police Station

Shirpur, District Dhule.

.. RESPONDENT

....

Shri Mukul S.Kulkarni, Advocate for appellant

Shri K.S.Patil, APP for respondent State.

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**CORAM : A.V.NIRGUDE &  
INDIRA K. JAIN, JJ  
DATED : 8TH JANUARY, 2016**

**ORAL JUDGMENT [PER A.V.NIRGUDE,J.] :-**

This appeal challenges judgment and order dated 28/1/2014 passed by learned Additional Sessions Judge, Dhule convicting the appellant for offences punishable u/s 326, 302 of IPC and sentencing him to suffer imprisonment for life and to pay fine of Rs.5000/- with default clause and further sentencing him to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/- for offence

punishable u/s 326 of IPC. The prosecution case as it appeared before charge was framed could be narrated as under :

2] Accused Mukesh, deceased Sunil were sons of one Chattarsing who resided at village Khambala, Tq.Shirpur, Dist.Dhule. Sunil was working as Constable in SRPF, whereas Chattarsing and his elder son Mukesh- the appellant herein, were cultivating their land. The incident occurred on 3/9/2012. On that day, Sunil the deceased was present in the house as he had vacations. Appellant Mukesh removed crop of Moong even while it was raining and brought it home. His father Chattarsing got angry because according to him, the crop should not have been removed while it was still raining. He abused the appellant. In the evening at about 6 p.m. appellant came to him in intoxicated condition and started abusing his father Chattarsing who got angry and in the fit of anger, he announced that he would kill himself and would destroy the entire house by setting it on fire. So saying, he picked up a can of kerosene and started sprinkling kerosene inside the house. Seeing this, deceased Sunil tried to intervene but Chattarsing did not stop and during the scuffle between Sunil and Chattarsing, the clothes of both these persons got soaked with kerosene. When appellant Mukesh saw this, he said that he himself would set Chattarsing on fire. He therefore, started fire by striking a match stick, due to fire both Chattarsing and Sunil got burnt, both were taken to hospital. Sunil died after 15 days due to burn injuries whereas Chattarsing survived. It was Chattarsing who lodged complaint of the incident against the appellant. It is in this situation after offence was registered, investigation took place and charge sheet was filed against the appellant.

3] The evidence that came before the Court was rather scanty.

The most important witness the complainant Chattarsing did not support the prosecution case fully. He did not blame the appellant that it was he who set on fire. He instead stated that while he and deceased Sunil were having scuffle for taking control of the can of kerosene, accidentally a kerosene lamp fell down and the fire spread. Another eye witness prosecution witness No.13 who happened to be the wife of deceased Sunil, even did not support prosecution case. She did not name the appellant being the culprit. She admitted that fire took place but she said that she did not know as to how it happened. Because of the depositions of these two important eye witnesses, prosecution case became quite weak.

4] However, prosecution witness No.1 Executive Magistrate Madhukar Thosar, Awal Karkoon/Executive Magistrate, Dhule supported the prosecution case. He stated that on 3/9/2012, he received direction from police for recording dying declaration of deceased Sunil and complainant Chattarsing. He went to the civil hospital. The medical officer on duty endorsed that the patient Sunil was conscious and was able to make statement. Accordingly, he recorded dying declaration. He stated that Sunil told him that on the date of incident, appellant Mukesh and his father Chattarsing had a quarrel. Appellant Mukesh abused his father. Mukesh then told his father that he would kill him. Mukesh then poured kerosene on Sunil and his father and set them on fire. He even produced written dying declaration on record. The same was exhibited. Despite cross examination, his deposition did not get adversely affected. In addition to this dying declaration there is one more dying declaration of deceased Sunil. It was recorded by Khairnar, prosecution witness No.5 who at the relevant time was working as police head constable in City police station of Dhule. He stated that on 3/9/2012 while he was on duty, he received order that he should record statement of

injured Chattarsing and Sunil. Accordingly, he went to the hospital and after verifying that the patients were conscious, and capable of making statements, he recorded their statements. Statement of Sunil so recorded is produced on record and is also exhibited. The learned Sessions Judge, believed this part of the prosecution case and held that it was the appellant who had set on the fire due to which two persons were hurt. The appellant was convicted for offence punishable u/s 302 as well as 326 of IPC.

5] We heard submissions at bar. We also perused the entire record. The question that arose for our consideration is whether in the facts and circumstances of this case, we should rely on dying declaration rather than ocular evidence.

6] From the narration above, it becomes clear that the prosecution case since beginning depended on two types of evidence. One was ocular evidence which would be available through depositions of eye witnesses and the other hearsay evidence in the form of dying declaration. Unfortunately the eye witnesses did not support the prosecution. Yet they were examined by the prosecution. They wanted to place reliance on their deposition. The other part of the prosecution evidence is 'dying declaration'. The witnesses for this part supported them.

7] We think that we should not use the evidence of dying declarations which are brought on record for convicting the appellant mainly because the eye witnesses did not support prosecution case. We are inclined to hold that at least in the facts and circumstances of this case, solitary evidence of dying declaration should not be utilised for convicting the appellant. Taking over all view of the case, we have decided that we should acquit the appellant mainly because the eye

witnesses did not support the prosecution case.

8]           The appeal should succeed. The impugned judgment and order is set aside. The appellant is acquitted and should be released from prison forthwith, if not required in any other case. Fine amount be refunded to the appellant.

**[INDIRA K. JAIN,J]**

**(A.V.NIRGUDE,J.)**

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