

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

CRIMINAL APPEAL NO. 165 OF 2014

1. Gangadhar @ Baburao Nagorao Ambhore
Age: 36 years, Occu.: Nil,
R/o Mali Galli, Javla Bazar,
Tq. Aundha, Dist. Hingoli.
(At present in Central Prison Harsool, Aurangabad)

2. Sow. Chhaya w/o Kashinath Ambhore
Age: 26 years, Occu.: Household,
R/o Mali Galli, Javla Bazar,
Tq. Aundha, Dist. Hingoli.
(At present in Central Prison Harsool, Aurangabad) ..APPELLANTS

VERSUS

The State of Maharashtra
Through Chief Secretary,
Home Department, Mantralaya, Mumbai-32. ..RESPONDENT

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Mr. R.S. Deshmukh a/w Mr. B.A. Dhengle, Advocates for appellants.
Mr. A.R. Borulkar, A.P.P. for respondent.

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**CORAM : A.V. NIRGUDE AND
A.I.S. CHEEMA, JJ.
DATED : 13th JUNE, 2016**

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

1. This appeal challenges judgment and order dated 04.02.2014, passed by the learned Additional Sessions Judge, Basmath, in Sessions Case No. 30 of 2013. The learned Additional Sessions Judge, Basmath

convicted the appellants for offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer life imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand Only) each with a default clause. Learned Additional Sessions Judge, Basmath also convicted both the appellants for offence punishable under Section 498-A read with Section 34 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/- (Rupees One Thousand Only) each with a default clause.

2. The facts leading to the prosecution of the appellants in short can be stated as under:

On 11.02.2013, at about 7 a.m., Kavita, the victim, sustained 100% burn injuries while she was in her home at village Javla Bazar, Tq. Basmath. She was brought to Civil Hospital, Parbhani. Despite the treatment, she succumbed to injuries by 5.50 p.m. Before her death, her dying declaration was recorded at 3.10 p.m., in which she implicated the appellants. At the trial stage the prosecution placed reliance on ten witnesses, out of which Prosecution Witness Nos.2, 3, 4 and 5 are important whereas Prosecution Witness No.8, the Investigation Officer, has deposed as to how he investigated the case.

3. Prosecution Witness No.1 – Datta, who was subsequently declared as hostile by the prosecution, stated that on 11.02.2013, at about 8 a.m., while he was sitting in front of his house, he heard shouts from the house of Accused No.1. He went there and saw smoke coming from inside. He and others entered the house by breaking open the door and found the victim in burning condition. He said, he poured water and extinguished the fire. The victim was then taken to the Civil Hospital, Parbhani. What happened between him and victim at the relevant time is avoided by this witness, and therefore, he was declared hostile. But, his deposition is relevant to indicate that the incident took place on 11.02.2013 and that it occurred inside the house of Accused No.1.

4. Prosecution Witness No.2 is the Police Head Constable – Kurundkar who stated that he was on duty at Civil Hospital, Parbhani on 11.02.2013. He learned about admission of the victim in the hospital in Burn Ward. At about 01.50 p.m. he went to Burn Ward and found that the victim was in a position to talk. He then sent a letter to the Special Executive Magistrate for recording Dying Declaration of the victim. Prosecution Witness No.5 – Mohanlal Harne, Nayab Tahasildar stated in his deposition that on 11.02.2013 while he was at Tahasil Office, Parbhani, he received a letter from police, and therefore, went for

recording statement of the victim Kavita in the hospital at about 2.45 p.m.. He contacted a lady doctor and he visited the victim who was admitted in Burn Ward. He then ascertained from the lady Doctor that Kavita was conscious and was able to give her statement. He stated that Kavita told him that Accused Nos.1 and 2 used to harass her. On that day also they quarreled with her and then poured kerosene on her person and set her on fire. She further stated that she was brought to Civil Hospital, Parbhani by Accused No.1's cousin.

5. The next important witness is victim Kavita's father, Prosecution Witness No.3 – Bhagwat Kshirsagar. He stated that on 11.02.2013, Accused No.1 made a phone call to him and told him about the incident. So, he and his wife rushed to Parbhani and reached the Civil Hospital at about 9.00 p.m. By that time, Kavita had died. He also stated that his daughter Kavita had informed him earlier that her husband harassed and illtreated her. He stated that he tried to pacify his son-in-law - Accused No.1. He added that the matrimonial discord was then sought to be resolved through the 'Dispute Free Village Committee'.

6. Prosecution Witness No.4 is a lady Medical Officer – Dr. Rubina. She stated that on 11.02.2013 while she was on duty at Civil

Hospital, Parbhani between 3.00 p.m. to 9.00 p.m she visited burn ward for ascertaining the well being of the victim – Kavita. She certified that Kavita was able to make statement and was conscious and well oriented before and after her Dying Declaration was recorded.

7. The Prosecution Witness No.8 – Investigation Officer stated that on the day of incident at 11.00 p.m. he caused arrest of Accused No.1 and immediately seized his clothes. His shirt was smelling of kerosene and Chemical Analyser's report confirmed presence of kerosene on the shirt of Accused No.1.

8. As stated above, the learned Additional Sessions Judge, Basmath accepted the prosecution case and convicted both the accused.

9. The learned Counsel for the appellant tried to argue that the material against both the accused-appellants is in the form of solitary Dying Declaration, which according to him was thin piece of evidence. No other circumstances according to him were brought on record to strengthen the prosecution case. He therefore suggested that both the accused should be acquitted.

10. There are several reasons why we are not inclined to accept this argument. The time and place of the incident is not in dispute. The incident occurred inside the house of Accused No.1 in morning hours. It has come on record that the cousin of Accused No.1 brought vehicle and took Kavita to Civil Hospital, Parbhani. The Dying Declaration was recorded soon after the victim was admitted to the hospital and a couple of hours before her death. Admittedly, her parents and other close relatives were not present with her at that time. We have therefore reason to believe that the victim was not tutored to make a particular statement to the Nayab Tahasildar. She was brought to the hospital by relatives of the Accused No.1. Therefore, whatever Kavita stated at that crucial moment, could not have been a lie.

11. The case as against Accused No.1 is further strengthened because his shirt was found stained with kerosene. He did not explain as to how his clothes got stained with kerosene. On the contrary, he took a defence that he was not present near the victim at all.

12. Accused No.2 is the wife of Accused No.1's brother. It has come in evidence that Accused No.2 and her husband were staying separately in the same village. Despite this, victim Kavita named her as

one of her tormentors. Victim Kavita could have implicated anyone, but she restricted her allegations to the extent of her husband and her sister-in-law – Accused No.2. There could not be any reason why Kavita would falsely implicate Accused No.2. Besides during the cross-examination, Accused No.2 did not bring on record through admissions in prosecution witnesses' deposition as to why victim Kavita had a specific grudge against Accused No.2. So, eventhough the case against Accused No.2 depended solely on Dying Delcaration, we find this piece of evidence quite formidable and we cannot ignore it. In view of this Appeal fails. In view of the above, Appeal stands dismissed.

SSD (A.I.S. CHEEMA, J.) (A.V. NIRGUDE, J.)