

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

CRIMINAL APPEAL NO. 131 OF 2013

Dinkar s/o Abarao Gaikwad,
Age : 42 years, Occu. Labour,
R/o. Rui Dharur, Tq. Dharur,
District : Beed,
At present resident of
Chinchpur, Tq. Dharur,
District : Beed.

.. Appellant

Versus

The State of Maharashtra
Through Police Station
Yusuf Wadgaon, Tq. Kaij,
District : Beed.

.. Respondent

.....
Mr N. R. Thorat, Advocate for the appellant
Mr R. B. Bagul, APP for respondent/State
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**CORAM : A.V.NIRGUDE &
V.L. ACHLIYA, JJ.
DATED : 19.07.2016.**

ORAL JUDGMENT (PER A. V. NIRGUDE, J.) :-

1. This appeal challenges Judgment and Order dated 16.02.2013 passed by the Additional Sessions Judge, Ambajogai, Dist. Beed in Sessions Case No. 5/2012, convicting the appellant/accused for offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer life imprisonment and to pay fine of Rs. 1,000/- with a default clause.

2. The prosecution case in nutshell alleged that the appellant/accused set his wife on fire at about 9.30 p.m. on 11.10.2011 at village Chinchpur, Tq. Dharur, Dist. Beed.

3. The prosecution placed reliance on the depositions of 7 witnesses. Out of which, witness Nos. 1 and 2 are eye-witnesses. Witness No.1 Bapurao stated that, victim Usha was his daughter and was residing with the accused in a tin shed room next to his room. On 11.10.2011, in the evening hearing alarm he rushed to the room where Usha was staying. He saw smoke coming from her room. Others also followed him to see what had happened. The door of the room was bolted from inside. He knocked at the door but the accused did not open it so he kicked at the door of the room. Soon the accused opened the door, he came out of the room and ran away. He saw Usha in burning condition inside the room. All of them then tried to extinguish the fire. Thereafter, they took victim Usha to S.R.T.R. Hospital, Ambajogai. During the journey, he asked Usha as to how she got burnt. To this, Usha told him that it was the accused who came under influence of liquor, abused her. She ignored him. She kept sleeping despite his abuses. The accused then poured kerosene on her person and set her ablaze. During the

treatment, Usha died on 14.10.2011. Prosecution witness No. 2 is a grown up daughter of Usha who was present at the time of incident. She said that, on that day, in the evening she was in her grand-father's house and after having dinner, she went to sleep. At 9.30 p.m. she heard loud cries of her mother Usha. She and others rushed to room where her mother was staying. She noticed smoke coming out of the room. She found that, the door was locked from the inside. Her grand-father Bapurao called accused Dinkar and asked him to open the door. Since the door was not opened, her grand-father kicked at the door and thereafter the accused opened the door and came out. He left. She saw her mother in burning condition. Thereafter, her mother was taken to Hospital. Both the witnesses were cross-examined.

4. During cross-examination, it came on record that, the accused opened the door of the room and came out unhurt. This admission on the part of the accused clearly established the fact that, at the time of the incident, he was the only person present in the room where the incident took place. The accused did not try to explain as to what happened inside the room when he was alone with the victim.

5. When victim Usha was taken to Hospital her dying declaration was recorded by Police Constable - Ramakant Thorat, who deposed that he recorded such dying declaration. He said, Usha told him that, it was the accused who set her on fire. Usha made similar statement to prosecution witness No. 4 - Balaji Chitale, who was Naib Tahsildar and who came to the Hospital on 12.10.2011 for recording Usha's statement. He stated that, he asked Usha some questions and recorded her answers in questions and answer form. He obtained signature and then he produced such dying declaration on record. In both the dying declarations, Usha clearly stated that, it was the accused who had set her on fire.

6. In view of this evidence, it was necessary for the accused to disclose his defence as to how Usha sustained burn injuries. During the cross-examination, he indicated that it could be a case of suicide. However, he did not make any positive statement that he saw Usha pouring kerosene on her own person and setting herself on fire or any other story as to how Usha sustained burn injuries. In absence of explanation coming from the accused, the case of prosecution is established beyond reasonable doubt. The dying declaration got credibility mainly because of the silence of the accused on the point discussed above.

7. The Criminal Appeal should therefore fail and same stands dismissed.

[V. L. ACHLIYA]
JUDGE

[A. V. NIRGUDE]
JUDGE

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