

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

CRIMINAL APPEAL NO.594/2012

- 1] Dilip Lacchiram Jadhav
Age 23 years, Occupation
Agriculturist, R/o Shivangar
Bendri, Tanda, Tq. Bhokar
Dist.Nanded.
- 2] Lacchiram Devji Jadhav
Age 50 years, Occupation
Agriculturist, R/o as above.

**... APPELLANTS
[ORIGINAL ACCUSED]**

VERSUS

The State of Maharashtra
Through Police Station,Umri
Tq.Umri, Dist.Nanded

[Copy to be served on Public
Prosecutor High Court Bench
at Aurangabad]

.. RESPONDENTS

...
Mr.Govind A.Kulkarni h/f Mr. R.S.Deshmukh,Advocate for appellants.
Mr. R.B.Bagul, APP for Respondent-State

...

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

DATED : 25TH JULY,2016

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

This Appeal challenges judgment and order dated 18/6/2012
passed by Additional Sessions Judge, Bhokar, Dist.Nanded in

Sessions Case No.40/2011 in which the appellants-accused were convicted for committing offence punishable under Section 302 read with Section 34 of Indian Penal Code. They were sentenced with rigorous imprisonment for life and also to pay fine of Rs.1000/- each in default R.I. for 3 months each.

2] It was alleged that the accused who are father and son set newly wedded wife of accused no.1 on fire on 26/6/2011 at about 4 a.m. at their house.

The prosecution case depended on deposition of 9 witnesses. The evidence that came on record through depositions of these witnesses in short can be stated as under :

3] Witnesses No.2 and 3 are parents of the victim. They stated that their daughter was married to accused no.1 about 1½ month prior to the incident. On one occasion their daughter had visited their house where she complained about ill treatment at the hands of the accused. She told them that the accused did not like her and therefore, they harassed her. Admittedly, there is no other member in this family. Witnesses no. 2 and 3 further disclosed that they received information in the morning on 26/6/2011 that their daughter sustained burn injuries and she was sent to hospital. They also mentioned that this information was supplied to them by accused no.2. They therefore, reached to Umri and learnt that their daughter was sent to civil hospital, Nanded. They came to civil hospital, Nanded and saw their daughter Babitai in burnt condition admitted to burn ward. They had a talk with their daughter who informed that the accused no.2 poured kerosene on her person and accused no.1 set her on fire. She also told them that the accused no.2 admitted her to hospital. In the cross examination of investigation officer, it was

brought on record that these witnesses also heard from their daughter that she was brought to Nanded hospital by accused by engaging a jeep like vehicle.

4] Prosecution witness no.4 is one Police Head Constable Subhash Chopade. He stated that on 27/6/2011, while he was on duty, at outpost of civil hospital as PHC to Vazirabad police station, Nanded at about 2 O'clock, he learnt that Babitai was admitted to hospital. He then went to the burn ward, made enquiry with the Medical Officer as to whether Babitai was able to make a statement and thereafter, he recorded her statement. He stated that Babitai told him that the accused did not like her and therefore, accused no.2 poured kerosene on her person and accused no.1 set her on fire. She also told him that later, the accused brought her to Government hospital at Umri and then to Government hospital, Nanded. Curiously this witness though was on duty, did not say as to what he did with the dying declaration. He then sent a requisition to Special Executive Magistrate for recording dying declaration.

5] P.W.7 Datta Navghare -who was Special Judicial Magistrate- stated that on 27/6/2011, police constable Chopade (P.W.4) delivered him a letter requisitioning his services for recording dying declaration. He then at about 8 p.m. went to burn ward, where he verified state of the victim and then recorded her statement. Even at this time, Babitai stated that she was set on fire by the accused.

6] It has also come on record that Babitai ultimately succumbed to burn injuries on 1/7/2011 at about 2.15 p.m. in the hospital. On the same day, at about 6.30 p.m. concerned police station i.e. Umri police station registered an offence punishable under Section 498-A, 307 r.w. 34 of IPC against the accused on the basis of dying

declaration that was recorded on 27/6/2011 by prosecution witness no.4.

7] Thereafter, investigation was started. Police went to the place of occurrence and recorded scene of occurrence panchanama, they also recorded inquest panchanama and sent the dead body for post mortem. They recovered some burnt pieces of saree and petticoat and one match box and kerosene can at the site.

8] The accused took a feeble defence that it was a case of accident. The victim was trying to ignite hearth early in the morning. Learned Judge of the trial Court placed reliance on dying declarations which are discussed above and came to conclusion that the accused had committed the murder of Babitai.

9] The learned counsel for the appellants-accused asserted that the prosecution could not prove the case of murder mainly because there was unexplained delay in registration of the offence and alleged dying declaration recorded by P.W.4 and P.W.4 cannot be treated as truthful so as to form the basis to convict the appellant.

10] Let us therefore, examine as to what would be the effect of delay in registration of the offence. Admittedly, the incident took place on 26/6/2011 in morning, the victim was admitted to hospital. Soon thereafter, the parents of the victim also met her on the same day where they heard allegedly her dying declaration orally. Despite this, they admittedly did not approach any police of either Umri or Vazirabad police station. They kept quiet even thereafter. On 27/6/2011 after about 2 p.m. the police constable P.W.4 visited the burn ward and recorded dying declaration. But this witness -despite a head constable did not apparently take any step to register the

offence. Even no entry was taken in the station diary in respect of statement of deceased recorded by P.W.4. He and his superior officer of Vazirabad police station ought to have registered the offence punishable u/s 307 etc. of IPC against the accused appellants on the same day as the commission of offence was disclosed in the statement of deceased recorded by P.W.4. Someone ought to have recorded statements of the parents of the victim who were available at the hospital. The investigating officer should have taken charge of the second dying declaration which was recorded by P.W.7. Both these dying declarations apparently remained with P.W.4. Thereafter, for 4 days nothing happened.

11] On 1st July, the victim succumbed to burn injuries at about 2 p.m. Thereafter so called dying declarations recorded by P.W.4 and P.W.7 reached the concerned police station viz. Umri police station. We are aware that Umri police station is not far away from Nanded city and yet apparently due to unexplained and unpredictable delay on the part of the police officer of Vazirabad police station including P.W.4 Chopade the offence was not registered. Because of this delay, the entire case became unbelievable. We cannot accept the prosecution case that the dying declarations were recorded on 27/6/2011. We cannot even accept the prosecution case that the victim made oral dying declarations to her parents on 26/6/2011. Both these circumstances on which the prosecution case depended are required to be discarded altogether. The delay has not been explained by any witnesses including the investigating officer who simply stated that he took over investigation on 2/7/2011 and completed it. He had audacity to allege that the accused destroyed the evidence by visiting the scene of occurrence and removing incriminating evidence. The police could have certainly visited the scene of occurrence on 27/6/2011 itself. They could have arrested

the accused on the first day when they were present at hospital at Nanded. Had they taken such steps, they could have prevented the accused from going to their house and allegedly removing the incriminating circumstances.

12] The learned APP persisted and asserted that this would be a case covered by Section 106 of Indian Evidence Act. He argued that the fact that the deceased sustained burn injuries while she was inside the house of the accused is not in dispute. The accused were the only two other members of this family residing in the said house. It is they who brought her to hospital. It is therefore, for them to explain as to how the victim sustained burn injuries. He also pointed out that the theory of accident is palpably false defence. This argument is attractive but is not sufficient to prove the prosecution case. The principle of res-ipsa-loquitur of Section 106 of Indian Evidence Act is no doubt applicable even in criminal cases. But the prosecution is first required to prove its case beyond reasonable doubt and prove such circumstances that would prompt the Court to draw its conclusion against the accused. At such juncture the onus is shifted to accused to explain as to why those circumstances should not be used against him. It is at this stage that the accused is expected to disclose the circumstances which were in his special knowledge. In this case, the prosecution has utterly failed to bring any circumstance against accused on record, therefore, we are sure that the onus never shifted to the accused to explain as to what had happened inside the house which caused injuries to the victim.

13] We noticed one more circumstance in favour of the accused. The dying declarations on careful perusal are found to be different and inconsistent. In first dying declaration made to P.W.4, the victim stated that accused no.2 poured kerosene and accused no.1 set her

on fire. In the second dying declaration recorded by P.W.7 she stated that accused no.1 poured kerosene and set her on fire and accused no.2 had only helped him doing so. This raises serious doubts as to truthfulness of dying declarations which have formed the basis to convict the appellants. As such the entire prosecution case -as it is- deserves to be discarded because of the inordinate and inexcusable delay.

14] Before we conclude our judgment, we record our dissatisfaction as to manner in which the investigation has been done in this case. The police of Vazirabad police station, Nanded though aware of the incident on 27/6/2016 and statement of deceased was recorded by P.W.4 yet they did not register an offence. Why this lapse had occurred is not at all explained by the prosecution. The offence was registered under Section 307 of IPC on 1/7/2011 i.e. after the deceased succumbed to burn injuries, non registration of offence for a period of more than 4 days is a serious lapse. This lapse was due to utter negligence on the part of the Senior Inspector and police station incharge of Vazirabad police station as well as P.W.4 Chopade. We direct the State of Maharashtra to initiate enquiry about this lapse. The second instance of negligence is on the shoulder of Public Prosecutor of this case who conducted the trial. He ought to have brought on record from the depositions of police witnesses as to why police of Vazirabad police station including P.W.4 did not take the case seriously and registered the offence. He ought to have recorded depositions of witnesses who could have explained as to what had happened to the two dying declarations that were recorded by two witnesses on 27/6/2011 and why they did not reach Umri police station in time. Learned Public Prosecutor ought to have taken explanation from the investigating officer who was examined as

P.W.8 to explain the delay in registration of offence. In our view, despite the fact that a young person died, her death had gone unsung apparently due to police ineptitude and callousness. We come across number of such cases of similar lapses on the part of investigating agency and public prosecutor while hearing criminal appeals. Most of the cases in our view failed mainly because of lethargy and negligence on the part of investigating agency and public prosecutor.

15] In this view, the Appeal stands allowed. The impugned judgment and order dated 18/6/2012 passed by Additional Sessions Judge, Bhokar, Dist.Nanded in Sessions Case No.40/2011 is set aside. Appellants-accused are acquitted of offence punishable under Section 302 read with Section 34 of Indian Penal Code. They be released from custody if not required in any other case. Fine amount if paid be refunded to them.

(V.L.ACHLIYA,J.)

(A.V.NIRGUDE,J.)

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