

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 483 OF 2013

Manik S/o. Lakhaji @ Lakha Aade, Aged 67
Years, Occupation Labour, Resident of Radi
Tanda, Taluka Ambajogai, District Beed

APPELLANT

V E R S U S

The State of Maharashtra, Through Police
Station Officer, Police Station Ambajogai
Gramin, Taluka Ambajogai, District Beed

RESPONDENT

Mr. B.R. Waramaa, Advocate for the Appellant
Mr. K.S. Patil, A.P.P. for the Respondent - State

**CORAM : A.V. NIRGUDE &
INDIRA K. JAIN, JJ.**

DATE : 21st March, 2016

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

1. This Appeal challenges judgment and order dated 30th November, 2013, passed by the learned Additional Sessions Judge, Ambajogai, in sessions Case No. 13 of 2011, convicting the appellant for

committing offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment with fine of Rs.2,000/- (Rupees Two Thousand) with a default clause.

2. According to the prosecution case, appellant / accused set victim Kavita on fire on 16th October, 2010, in between 07.00 to 07.30 a.m. Kavita sustained 77% of burn injuries. Her husband Subhash and his cousin Dnyaneshwar brought Kavita at Hospital at about 09.00 a.m. At about 06.00 p.m., A.S.I. recorded Kavita's statement, in which she stated that it was the accused who had set her on fire. Another Dying Declaration was recorded by the Executive Magistrate. Upon statement made by Kavita, the police registered offence against the appellant. Upon investigation, charge-sheet was filed.

3. The prosecution recorded depositions of 10 witnesses, but mostly placed reliance on deposition of prosecution witness no. 8 - Dinkar Akal, A.S.I. who recorded Kavita's first Dying Declaration at about 06.00 p.m. and prosecution witness no. 9 - Dagdu Kasbe, Nayab Tahsildar, who recorded second Dying Declaration at about 06.35 p.m. Both these witnesses coherently stated that they heard Kavita saying that she was set

on fire by the appellant / accused. They recorded her statement as per her narration. Both these Dying Declarations thus went on record proved. The learned Judge of the trial Court placed reliance on these Dying Declarations and believed the prosecution case that it was the accused who had committed homicidal death of Kavita.

4. Learned counsel for the appellant asserted that besides the Dying Declarations, there are number of other circumstances on record which would indicate that Kavita's Dying Declarations were utterly false and should be discarded altogether. Besides he also pointed out that there is no eye witness account for the incident brought on record.

5. According to the Dying Declarations and First Information Report, Kavita stated that on 16th October, 2010, at about 07.00 to 07.30 a.m., she started cooking. She stated that on earlier date, her husband had brought a Gold ornament for her. The accused is brother of Kavita's mother-in-law. He learnt about this new acquisition. He came to Kavita's house where her husband Subhash, her husband's cousin Dnyaneshwar, her mother-in-law Nilabai were present. In their presence, the accused abused her because she had acquired Gold ornaments. The accused

suggested that Kavita should not have bought Gold ornament. Kavita further stated that the accused got so angry with her and that he poured kerosene on her person and set her on fire utilizing fire of burning wood in the country-stove. As said above, Kavita sustained 77% burns and then she was brought to the hospital.

6. The main question before us is, whether Kavita's narration is believable. The answer is in negative. The Medical Officer (prosecution witness no.7) admitted in his cross-examination that at about 09.30 a.m., when Kavita was brought to the hospital, he got her admitted. He prepared case-papers. He noted down history of the incident as accident. He further noted that the accident had taken place at about 04.00 a.m. (Most probably the history of the incident was narrated by Kavita's husband Subhash and his cousin Dnyaneshwar, when they brought Kavita in injured condition to the hospital.) This witness did not state that he had any occasion after Kavita's admission in hospital till 06.00 p.m. about asking Kavita as to how she suffered burns.

7. Kavita's mother-in-law Nilabai is P.W. 1, who did not support the prosecution case at all. She stated that Kavita sustained burn injuries

due to the accident. She said that incident took place while Kavita was trying to ignite country-stove for cooking purpose.

8. As per the Kavita's narration, the incident occurred in presence of her husband and her husband's cousin Dnyaneshwar. Despite their presence, she wanted us to believe that the accused could pour kerosene on her person, so-much-so that her clothes got soaked with it. She also wanted us to believe that thereafter the accused utilizing fire from the country-stove, set herself on fire. She is thereby suggesting that while the accused was assaulting her in such a ghastly manner, neither she nor the persons present near her tried to stop such assault. If Kavita's husband and another person were present on the scene of occurrence, they could have easily over powered the accused. They could have stopped him from causing any harm to the victim. The narration of Kavita thus is not trustworthy at all.

9. The history of accident mentioned by the Medical Officer on case-papers also does not appear trustworthy. The Medical Officer did not depose that he wrote down the history as per the narration of the victim herself. As said above, she did not verify correctness of this history

from the victim. In any case 77% burns due to the accident in presence of persons around the victim, is rather unbelievable. The prosecution thus did not bring on record truth about how Kavita sustained burn injuries. We have no doubt that it failed to prove that it was the accused who set her on fire. The appeal should therefore succeed. We, therefore, proceed to pass the following order :-

O R D E R

1. The Criminal Appeal is allowed.
2. The judgment and order dated 30th November, 2013, passed by the learned Additional Sessions Judge - 2, Ambajogai, in Sessions Case No. 13 of 2011 stands set aside.
3. Appellant / Accused - Manik s/o Lakhaji @ Lakha Aade is acquitted from the offence punishable under Section 302 of the Indian Penal Code.
4. Appellant / Accused - Manik s/o Lakhaji @ Lakha Aade be released from the custody if not required in any other case.

5. Fine amount, if deposited by the Appellant /
Accused, be refunded to him.

(INDIRA K. JAIN, J.)

(A.V. NIRGUDE, J.)

srm/21/3/16