

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.707 of 2013

Mr.Datta Kamanna Nikode,
Hindu, Indian inhabitant,
Age 27 years, R/at.Shanti
Nagar, Khopoli, Tal.Khalapur,
Dist.Raigad

... **Appellant**

V/s.

The State of Maharashtra,
(Through Khopoli Police
Station in Cr.No.133 of 2009)

... **Respondent**

.....

Ms.Rohini M.Dandekar, Advocate appointed for the Appellant.
Mr.Arfa Sait, APP for the Respondent/State.

....

**CORAM : SMT.V.K.TAHILRAMANI &
A. M. BADAR JJ.**

DATED : 1ST DECEMBER 2016.

ORAL JUDGMENT : (Per SMT.V.K.TAHILRAMANI J)

1 The appellant has preferred this appeal against the Judgment and Order dated 30/03/2011 passed by the learned Additional Sessions Judge, Raigad, Alibag in Sessions Case No.32 of 2010. By this Judgment and Order, the learned

Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code (For short, "the IPC") and sentenced him to life imprisonment and fine of Rs.1,000/- in default to suffer rigorous imprisonment for six months.

2 The prosecution case, briefly stated, is as under :

Deceased Manisha was the daughter of P.W.No.5 Meera. Deceased Manisha was married to the appellant about one year prior to the incident. It was a love marriage. After the marriage, the appellant and Manisha started residing at village Dheku. They resided happily for a period of three-four months. Thereafter, the appellant got addicted to drinking liquor. In the year 2009, during Navratri period Manisha went to her mother's house and told her that the appellant used to frequently assault her when he was intoxicated. The incident occurred on 14/10/2009 at about 9.00 p.m. P.W.No.2 Gajanan and P.W.No.4 Vimal heard a female voice shouting “वाचवा वाचवा” (save, save). Hence, they rushed to the spot. They saw Manisha had sustained burn injuries. P.W.No.2 Gajanan and P.W.No.4 Vimal asked Manisha what had happened. Manisha told them that

her husband had poured kerosene on her and set her on fire. P.W.No.2 Gajanan requested P.W.No.1 Ramesh Patil to take Manisha to the hospital. Ramesh Patil then took Manisha in his vehicle to Primary Health Center, Khopoli. While Manisha was in his vehicle, Manisha told P.W.No.1 that she refused to give money to her husband for drinking liquor, therefore, her husband set her on fire. Ramesh Patil admitted Manisha in Khopoli Municipal Hospital. Meanwhile, P.W.No.5 Meera - mother of Manisha received information about the incident, hence, she rushed to the Primary Health Center at Khopoli. Manisha told her that her husband was demanding money for drinking liquor. She did not pay the said amount, therefore, her husband assaulted her and told her to go out of the house, as he wants to perform second marriage. Her husband then poured kerosene on her and set her on fire.

Meanwhile, P.W.No.9 Police Head Constable Giri, who was attached to Khopoli Police Station, received phone call from Khopoli Hospital that a patient - Manisha was admitted in the Hospital for treatment, as she has sustained burn injury. Therefore, Mr.Giri immediately rushed to the hospital. He met the Doctor on duty and made inquiry with

the Doctor about the patient as to whether the patient was in a condition to give a statement or not. The Doctor (P.W.No.8 Minakshi Kavalgir) examined the patient and gave endorsement (Exh.24) that Manisha was in a fit condition to give statement. P.W.No.9 Giri recorded the statement of Manisha. Manisha informed him that her husband came home under influence of liquor. He demanded money for drinking liquor. She refused to give him money. Therefore, he started abusing her and asked to go out of house and stated that he will perform second marriage. Her husband then poured kerosene on her and set her on fire. Thereafter, her husband ran away. Neighbours extinguished the fire and admitted her in the hospital. This dying declaration is at Exh.28. This dying declaration is treated as 'FIR'. After registration of FIR, investigation commenced. On 16/10/2009, P.W.No.11 API Jagtap visited the hospital. He gave a letter to the Medical Officer (P.W.No.10 Dr.Vaze) regarding recording the statement of the patient. The Doctor opined that the patient was in a position to speak and give permission for recording the statement of the patient. The Doctor made an endorsement to that effect, which is at Exh.30. Thereafter, P.W.No.11

recorded the dying declaration of Manisha. Manisha informed him that her husband poured kerosene on her and at that time her husband was smoking cigarette. Her husband threw burning matchstick on her and set her on fire. This dying declaration is at Exh.33. Manisha expired on 17/10/2009 on account of septicemia due to 69 per cent burns. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant under Section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above, hence this appeal.

4 We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State. We have carefully considered their submissions, the Judgment and Order passed by the Sessions Judge and the

evidence in this case. After carefully considering the matter for the below mentioned reasons, we are of the opinion that there is no merit in the appeal.

5 The conviction of the appellant is mainly founded on two dying declarations i.e. Exh.28 and 33. Exh.28 was recorded by P.W.No.9 Police Head Constable Giri. Giri has stated that on 14/10/2009 he was on duty as PSO at Khopoli Police Station. He received phone call from Khopoli Municipal Hospital that Manisha Naikode was admitted in the hospital with burn injury. He immediately rushed to the hospital and met Doctor on duty. He made inquiry with the Doctor about the patient. The Doctor (P.W.No.8 Dr.Minakshi Kavalgir) examined the patient and made an endorsement (Exh.27) that she is in fit condition to give statement. P.W.No.9 then recorded the dying declaration (Exh.28) of Manisha. Manisha told him that her husband came home under the influence of liquor. He demanded money for consumption of liquor. She refused to give money. He, therefore, started abusing her and asked her to go out of the house and stated that he will perform second marriage. Her husband then poured kerosene

on her from a bottle. At that time, her husband lit a cigarette and threw a burning matchstick on her, due to which she caught fire. Her husband then ran away. Neighbours extinguished the fire and admitted her in the hospital.

6 The evidence of P.W.No.9 Police Head Constable Giri is supported by the evidence of P.W.No.8 Dr.Minakshi Kavalgir. Dr.Minakshi has stated that on 14/10/2009, Manisha Naikode was admitted in the hospital i.e. Khopoli Municipal Hospital. She was brought by neighbours. The hospital informed Khopoli Police Station about the admission of a patient, who has received burn injuries. Police Head Constable Giri (P.W.No.9) came from Khopoli Police Station. He made a query about health condition of the patient as to whether she is in a position to talk and is in a fit condition or not. She then took the Police Constable to the bed of the patient. She examined her. She also put some questions to the patient. Thereafter, she informed the Police Constable that the patient is in a fit condition to give a statement. Therefore, the constable started recording her statement. Dr.Minakshi has stated that the statement of

Manisha was recorded in her presence. Thumb impression of the patient was taken at the foot of her statement. Dr.Minakshi has stated that she made an endorsement to the effect that the patient is conscious, oriented and can answer questions. This endorsement is at Exh.24.

7 The second dying declaration of Manisha is at Exh.33. This dying declaration was recorded by P.W.No.11 API Jagtap. API Jagtap has stated that at the relevant time he was attached to Khopoli Police Station. On the basis of statement recorded on 14/10/2009 by Police Head Constable Giri (P.W.No.9), Crime Registration No.133 of 2009 was registered for the offence under Section 302 of the Indian Penal Code. On the same day, API Jagtap visited the hospital, i.e. Nagarpalika Hospital, Khopoli. By that time, the patient was transferred to Sasoon Hospital, Pune. On 16/10/2009, API Jagtap visited Sasoon Hospital, Pune. He gave a letter to the Medical Officer for recording the statement of the patient. The Doctor (P.W.No.10 Dr.Vaze) opined that the patient is in a position to speak and gave permission for recording the statement of the patient. The endorsement of the Doctor to

that effect is at Exh.30. API Jagtap has further stated that thereafter, he recorded the statement of the patient, which is at Exh.33. In this dying declaration Manisha has stated that her husband demanded money for liquor. He then poured kerosene on her. At that time, her husband was smoking a cigarette and he threw burning matchstick on her and set her on fire. Thereafter, he ran away.

8 P.W.No.11 Jagtap has stated that on 16/10/2009, he recorded the dying declaration of Manisha in Sasoon hospital, Pune. The Doctor had opined that the patient was in a position to speak and had given permission for recording the statement of patient. The evidence of API Jagtap on this point is supported by P.W.No.10 Dr.Sharad Vaze. Dr.Vaze has stated that he was on duty at Sasoon Hospital on 16/10/2009. At about 8.00 a.m. Manisha Naikode was admitted in the burn ward. On that day, at about 5.45 p.m. police came to the burn ward for recording statement of Manisha. The policeman stated that he wants to record the statement of Manisha, hence Dr.Vaze along with policeman went to the patient. Dr.Vaze has stated that then he examined the patient and told

to the police that the patient is in sound state of mind to give statement. He also put his endorsement to that effect, which is at Exh.30. Police recorded the statement of the patient in his presence. It is pertinent to note that the dying declaration Exh.33 shows the time of 5.55 p.m., which further corroborates the case of Dr.Vaze that policeman came on 16/10/2009 at about 5.45 p.m. to record the statement of Manisha.

9 The two dying declarations recorded by P.W.No.9 and P.W.No.11 are consistent. They pass the test of credibility and reliability and there is overwhelming corroboration to the same.

10 In the dying declarations (Exh.28 and 33) Manisha has stated that her husband set her on fire. He had lighted cigarette in his hand. This is further corroborated by the fact that the spot panchanama shows half burnt pieces of cigarette. P.W.No.6 Anant Surve, who is panch to the spot panchanama, has stated about finding of half burnt pieces of cigarette on the spot. This is also borne out by the spot panchanama.

11 In addition, on the spot matchstick, kerosene bottle and half burnt clothes were also found. Both the dying declarations bear left hand thumb impression of Manisha. P.W.No.8 Dr.Minakshi has stated that thumb impression of patient was taken at the foot of her statement. This is borne out by the evidence of P.W.No.7 Doctor Shinde, who conducted the postmortem on the dead body of Manisha. He has stated that there was ink mark over left thumb. The postmortem notes (Exh.20) at Column No.9 show that there was ink mark on the left hand thumb of Manisha. All these facts corroborate the two dying declarations moreover, there is nothing to suggest that the dying declarations are result of tutoring.

12 In addition to two dying declarations (Exh.28 and 33), there are four oral dying declarations. P.W.No.1 Ramesh Patil, P.W.No.2 Gajanan, P.W.No.4 Vimal and P.W.No.5 Meera have stated about these oral dying declarations. Gajanan has stated that on 14/10/2009 at about 9.00 p.m. he heard female voice shouting “वाचवा वाचवा” (save, save). He saw that a lady had sustained burn injuries. He asked her what had

happened, whereupon the lady told that her husband poured kerosene on her and set her on fire. He telephoned Khopoli Police Station. They informed him that there was no vehicle and they asked him to make arrangement to take her to the hospital for treatment. At that time, Ramesh Patil (P.W.No.1) came there in a car. He requested Ramesh Patil to take the lady to the hospital. P.W.No.1 Ramesh Patil then took the lady to the hospital in his vehicle. On the way, the lady told him that she refused to make payment to her husband for liquor, therefore, her husband set her on fire. P.W.No.1 and 2 are totally independent witnesses. They did not know the accused or the deceased or any of the family members of the deceased.

13 P.W.No.4 Vimal has stated that the appellant was residing in a *chawl*. This *chawl* was situated at the backside of her house. On 14/10/2009 at about 9.00 p.m. Manisha came out from the house engulfed in the flames. Manisha, at that time, was shouting “वाचवा वाचवा” (save, save). Manisha told her that her husband set her on fire.

14 The last dying declaration was made to P.W.No.5-Meera. Meera was the mother of Manisha. Meera has stated that Manisha got married with appellant one year prior to the incident. It was a love marriage. For three-four months after the marriage, they resided happily together. In 2009 during Navratri period, her daughter came to her house and told that her husband used to assault her frequently when he was intoxicated. Meera has further stated that on 14/10/2009 at about 9.30 p.m. she received phone call informing her that Manisha's husband had poured kerosene on her and set her on fire. She then visited Manisha in the Hospital. Manisha told her that her husband demanded money for liquor and as she did not pay the amount, he assaulted her and asked her to go out of house as he wanted to perform second marriage, then he poured kerosene on her and set her on fire.

15 All the dying declarations are consistent. Nothing has been elicited in the cross-examination of P.W.Nos.1,2,4 and 5 to cause us to disbelieve their evidence. We are of the opinion that their evidence inspires implicit confidence, hence, we rely on the same.

16 It is the prosecution case that the appellant poured kerosene on his wife Manisha and set her on fire. This is supported by the Chemical Analysis Report (Exh.44), which shows that kerosene residue was detected on the half burnt clothes of Manisha.

17 On going through the entire evidence, we are of the opinion that there is sufficient evidence on record to prove beyond reasonable doubt that the appellant poured kerosene on his wife Manisha and set her on fire, hence we find no merit in the appeal.

18 The appeal is dismissed.

19 The fees to be paid to the appointed Advocate are quantified at Rs.5,000/-.

20 Office to communicate this order to the appellant, who is in Nashik Road Central Prison.

(A. M. BADAR J.) (SMT. V. K. TAHILRAMANI J.)