

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.98 OF 2010

Sanjay Shivaji Limbole
Age 21 years,
Adarsha Nagar, Plot No.27,
Old Kumbhari Naka,
Solapur.
(At present in District Prison,
Solapur)

... Appellant/
Orig. Accused

versus

The State of Maharashtra
(At the instance of
Vijapur Naka Police Station, Solapur)

... Respondent

.....

- Mr.Jaydeep D. Mane, Advocate for the Appellant.
- Mr.H.J. Dedhia, APP for the State/Respondent.

**CORAM : A.A. SAYED &
SARANG V. KOTWAL, JJ.**
RESERVED ON : 26th SEPTEMBER, 2017
PRONOUNCED ON : 12th OCTOBER, 2017

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. The present Appeal is preferred by the Appellant challenging the Judgment and Order dated 08/12/2009 passed by the Ad-Hoc Additional Sessions Judge, Solapur, in Sessions

Case No.40/08, whereby the Appellant was convicted for the offence punishable u/s 498-A of the Indian Penal Code and was sentenced to rigorous imprisonment three years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further simple imprisonment for nine months. The Appellant was also convicted for the offence punishable u/s 302 of IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for 3 and ½ years. Both the sentences were directed to run concurrently and the Appellant was given benefit of set off u/s 428 of Cr.P.C.

2. The prosecution case pertains to the incident dated 07/10/2007, at about 04.00 p.m., when the Appellant poured kerosene on his wife Sunita and set her ablaze in their house at Solapur. According to the prosecution case, the Appellant was subjecting her to cruelty and harassment on account of unlawful demand of gold and cash, which he was asking her to bring from her parents and on her refusal to comply with his demand, he committed her murder.

3. The FIR in the present case was lodged pursuant to the statement given by the deceased herself in the hospital to PI Suryakant Phadnis, which was registered vide C.R.No.229/07 of Vijapur Naka Police Station, Solapur, u/s 498-A of Cr.P.C. and 307 of IPC. After the death of the injured Sunita, the offence was converted to section 302 from 307 on 09/10/2007. The Appellant was arrested on 08/10/2007 at about 02.45 p.m. from his house. After registration of the FIR, the investigation was carried out, statements of various witnesses were recorded. While the injured Sunita was still alive on 07/10/2007, even before the FIR was registered, her Dying Declaration was recorded by Special Judicial Magistrate in the hospital. Various articles were sent to FSL for chemical analysis and after the investigation was completed, the charge-sheet was filed on 18/12/2007. Thereafter the case was committed to the Court of Sessions.

4. During the trial, the prosecution examined seven

witnesses and the defence examined three witnesses. The defence of the Appellant is that he was not at home when the incident had taken place and the defence witnesses have tried to show that the deceased had suffered burn injuries due to bursting of stove.

5. P.W.1 Nehru Hanmant Pawar was the Maternal Uncle of the deceased, who has deposed that Sunita was married with the Appellant on 20/06/2007. He has further stated that Sunita was also known as Sunanda. He has deposed that deceased was frequently used to inform him and his family members that the Appellant was demanding gold and cash and was persistently asking the deceased to bring the same from her parental house and as she did not comply with the demand, she was continuously being illtreated and assaulted. He has deposed that the Appellant was the son of Sunita @ Sunanda's paternal Aunt. He has deposed that on 07/10/2007, he came to know that Sunanda @ Sunita had suffered burn injuries and therefore they rushed to hospital at about 05.30 p.m., but met her only at

07.30 p.m. He further deposed that when he asked how she suffered burn injuries, she informed that the Appellant had set her on fire about 05.00 p.m. She had told this witness that since she could not comply with the demand of the Appellant, he had set her on fire and she had also informed that the Appellant had assaulted her on 06/10/2007. She further informed him that her mother-in-law and sister-in-law had brought her to hospital and that she expired on 08/10/2007. In the cross-examination he has denied that the marriage between the Appellant and the deceased was a love marriage, he has denied that they got married inspite of opposition from the family.

6. He has further admitted that his statement was not recorded by the police and he has denied the suggestion that the deceased had not made any Dying Declaration to him.

7. P.W.2 Manikbhau Kondiba Chougule was a Pancha for the spot panchanama dated 07/10/2007 and was the Pancha for inquest panchanama dated 08/10/2007. He has admitted that

there was stove at the spot and when the spot panchanama was conducted, it was not seized. P.W.7 Ayyub Shaikh was the Police Naik who had carried the Muddemal articles to the C.A. Office, Pune.

8. P.W.4 Dr.Ujwala Kshatriya had conducted post-mortem examination on 08/10/2007 at about 01.00 p.m. and she had noticed “Superficial to deep burns reddish black sooty, skin peeled off at places due to burn, singeing of scalp hair, eye brows, eye lashes, axillary hair present, smell of kerosene present to scalp hair and body. There were 96% burns in all.” In the cross-examination she has stated that “both upper limbs along with forearm and hands were also totally burnt. There were superficial to deep burns on the palm.”

9. Apart from this witness, the main evidence in this case is in the form of Dying Declarations by P.W.3 Dayanand Shravan Mane and P.W.6 Suryakant Phadnis. Before referring to their evidence it is advantageous to refer to the evidence of P.W.5

Dr.Sudhir Shinde, because he is the Medical Officer, who was treating the deceased when she was admitted in the hospital and who had given the endorsements on both these Dying Declarations. He has stated that he was a residential Doctor at the relevant time and on 07/10/2007 he was on duty. Sunita was admitted at 04.15 p.m. He has deposed that Dr.Karyakarte enquired with her regarding the cause of injuries and she had told him that her husband had poured kerosene on her and set her ablaze. Thereafter this witness Dr.Shinde had examined her. He had found that the patient was fully conscious and well oriented in time, place and name and her pulse, respiration were normal. She was admitted in the ward at 05.55 p.m. Thereafter he has deposed that the Magistrate visited the ward at 06.30 p.m. for recording her Dying Declaration. He has stated that in the room, only he himself and the Magistrate were present near the patient. He then examined the patient and found her to be conscious, well oriented in time, place and name. After that, this witness P.W.5 Dr.Sudhir Shinde gave his endorsement in writing on the Dying Declaration. The Magistrate asked questions to the

patient and replies were taken down in writing. After recording of the Dying Declaration was over, Dr.Shinde again examined her and found her to be in a position to give statement. The statement was read over to her. She had admitted that the contents were true and correct. Her left hand thumb impression was taken on the Dying Declaration in his presence.

10. P.W.5 Dr.Shinde has further deposed that at about 07.00 p.m. PSI came to make enquiries and again at that time, Dr.Shinde examined the patient in his presence and found that she was in a position to talk and she was conscious and well oriented in name, time and place and accordingly he made an endorsement at the top of the second Dying Declaration. PSI asked her about the incident and then again she stated that her husband poured kerosene on her and set her ablaze. This statement was also reduced in writing by PSI in his presence and the statement was read over to her. She had admitted that even this statement was proper and correct and then her left hand thumb impression was obtained on the said Dying Declaration.

He then again examined patient and found her to be conscious with time, place and date and was in a position to give her statement and thereafter again the endorsement was made by him to that effect on the second Dying Declaration.

11. Thus, this witness has examined the patient on four occasions, when her two Dying Declarations were recorded. According to him the patient was fully conscious and well-oriented and was in a position to give a statement which was recorded as a Dying Declaration. Dr.Shinde has proved the endorsements on both Dying Declarations. His examination was directed mainly towards the burns on the arms and limbs to throw doubt on the thumb impression. The cross-examination was only in respect of the nature of burn injuries. There was no serious challenge to her ability to give statement, when her Dying Declaration was recorded.

12. In this background, two Dying Declarations recorded by the Special Judicial Magistrate and PSI, have to be examined.

The first of these Dying Declarations was recorded by P.W.3 Dayanand Mane, Special Judicial Magistrate in between 06.30 – 06.45 p.m. He has stated that he was requested by the police officers of Vijapur Naka police station for recording Dying Declaration of the patient Sunita. He has stated that when he reached the hospital, he enquired from the Doctor whether the patient was in a conscious condition. He further deposed that the Doctor examined her and stated that she was in a condition to speak and was in a conscious condition and doctor made an endorsement on the paper, on which the Dying Declaration was to be recorded. This witness has deposed that he himself ascertained whether she was in a conscious condition, whether she was in a position to talk and made enquiries with her. He has deposed that he himself found that she was in a position to talk and was conscious. She gave proper answers to the initial introductory questions. Thereafter she narrated the incident. She has stated in her Dying Declaration that on 06/10/2007 the Appellant had quarreled with her. On 07/10/2007 at about 08.00 a.m. the Appellant had spoken about her mother in

abusive language and had demanded cash and gold. He quarreled with her on that count. At about 04.00 to 04.30 p.m. he poured kerosene on her and set her ablaze by lighting a match stick. Her narration was reduced into writing. Again medical officer gave his endorsement about her condition. The said Dying Declaration was exhibited vide Ex.21.

13. The other Dying Declaration was recorded by PI Phadnis. He has deposed that first he went to the hospital on receiving information about the incident. Then he requested the Special Judicial Magistrate to record her statement, which was duly recorded and after that he enquired with Dr.Shinde whether she was in a position to give her statement. Thereafter Dr.Shinde examined her and gave his endorsement, being satisfied that she was in a position to give such statement and gave his endorsement to that effect after examining her. Thereafter deceased Sunita narrated that the Appellant was addicted to liquor and was demanding money and gold from her parents. On 06/10/2007 she was assaulted by the Appellant. On

07/10/2007 also at about 08.00 a.m. she was assaulted by him and at 04.00 p.m. on that day he picked up quarrel, repeated his demands and on her refusal to comply with the demands, he poured kerosene on her and lighted a match stick and threw it on her and she caught fire. She ran towards the door. The Appellant ran away. The mother-in-law and sister-in-law of deceased Sunita, took her to the hospital. After recording of her Dying Declaration it was read over and was found to be true and correct. Again the endorsement of the doctor about her mental condition was sought and obtained. Thereafter, thumb impression was obtained on the Dying Declaration. The said Dying Declaration was exhibited vide Ex.33 during trial.

14. As against these two Dying Declarations, the defence has examined three defence witnesses to prove that the deceased suffered burn injuries because of bursting of stove and the Appellant has not committed any offence. D.W.1 Vidya Robert Jodhpurkar used to reside near the house of the Appellant. She was a married lady and used to visit her parental

house, which was near the house of the Appellant. According to her, at the time of incident, she heard shouts and cries and when she reached there, she saw Sunita was lying there in a burnt condition. This witness has further stated that injured Sunita told her that when she was preparing tea, there was sudden burst of flame of the stove and she caught fire.

15. D.W.2 Parvati Shankar Mane was another neighbour and she has stated that the Appellant was having cordial relations with the deceased and on the day of incident, at about 04.00 p.m., she heard commotion and she came out of her house and saw that Sunita was lying in the open space in front of her door, she had caught fire and was burnt. This witness has not spoken about any oral Dying Declaration made by the deceased Sunita.

16. D.W.3 Jaya Hiralal Nimbole is the sister-in-law of the Appellant. She has stated that the Appellant was at Pune on the date of incident. On 07/10/2007, at about 04.00 p.m., she

heard burst of flame of the stove. When she went inside the Appellant's house to see what had happened, she saw that the burner of the stove had burst and Sunita had caught fire. Thereafter she was removed to the hospital by this witness. She has stated that the neighbour Parvati, Vidya helped Sunita in extinguishing the fire. She has further deposed that Sunita's mother reached in the hospital and had told Sunita to blame the Appellant for her injuries and that she should tell the police that the Appellant had set her on fire. This witness had requested Sunita to speak the truth and not to implicate the Appellant falsely.

17. We have heard learned counsel Mr.Jaydeep Mane, Advocate for the Appellant and Mr.H.J. Dedhia, learned APP for the State.

18. The learned counsel Mr.Jaydeep Mane for the Appellant submitted that the evidence of prosecution is very doubtful and has not proved the case against the Appellant. As

against this, the evidence of the defence witness was more truthful and therefore the benefit of doubt should be given to the Appellant. He has further submitted that the deceased had suffered 96% burns and her limbs were totally burnt, it was not possible that the Dying Declaration would show clear ridges of her thumb impression. He has further submitted that as per the defence witness No.3, the Appellant was not even in Solapur when the incident had taken place and he was at Pune. He has further submitted that the endorsements given by Dr.Shinde are very doubtful and should not be relied on. It is submitted that the Dying Declaration recorded by the P.W.6 Suryakant Phadnis, is doubtful, as a person who had 96% burn injuries, could not have given such a long statement. As against that, Mr.Dedhia, the learned APP submitted that the prosecution has sufficiently proved the case against the Appellant. There is no reason as to why two Dying Declarations recorded by the Appellants by P.W.3 and P.W.6 should not be relied on.

19. We gave our thoughtful consideration to the above

submissions. We find that the evidence of P.W.3 Dayanand Mane, SJM and his recording of Dying Declaration at Ex.21 is, reliable. This witness was an experienced officer and had recorded about more than 200 Dying Declarations. He has taken all the necessary precautions before recording the Dying Declaration. He had enquired with the Medical Officer, who was treating the patient. He himself asked questions to find out whether she was in a position to give proper statement and only after he was satisfied, he recorded the Dying Declaration. He had asked preliminary questions to find out whether she was in a position to give her statement. There is hardly any infirmity in the Dying Declaration Ex.21 recorded by this witness P.W.3 Dayanand Mane, SJM.

20. As far as the second Dying Declaration, Ex.33, is concerned, it is recorded by P.W.6 PI Suryakant Phadnis. On this Dying Declaration also at the beginning, before starting recording of the Dying Declaration and after it was completed, the Medical Officer has given clear endorsements. Though there

are some more details given in this Dying Declaration, it can be seen from the evidence that anyway the first Dying Declaration was recorded between 06.30 to 06.45 p.m. and second Dying Declaration was recorded at 07.30 p.m. Thus, she was in a good mental condition for a period of one hour. There was nothing unusual if she had given little more details in her second Dying Declaration. However, as far as the main incident is concerned, both Dying Declarations are consistent.

21. Mr.Mane, the learned counsel for the Appellant submitted that, since both the limbs were totally burnt, it was not possible that the thumb impression of the deceased would show clear ridges. In this connection, the Medical Officer who had conducted post-mortem has stated that there were superficial to deep burns on the palm. The defence has not asked any specific question as to whether the burn injuries on the thumb were superficial or deep. In the absence of any such cross-examination, it could not be inferred that the thumb impression would not show ridges at all.

22. Mr.Mane further submitted that the evidence of the Medical Officer Dr.Shinde does not inspire confidence and his endorsement appears to have been given as an afterthought. We are unable to record any such findings, we find that the deposition of Dr. Shinde is quite reliable. He is an independent witness and he has absolutely no reason to support the prosecution case. Dr.Shinde has examined the patient on four occasions, twice each in case of each of the Dying Declarations and every time he had conducted the proper investigation and has given proper endorsement about the fit mental condition of the patient to give those Dying Declarations. Therefore we see no reason as to why this evidence should be discarded.

23. Dr.Shinde was present when both Dying Declarations were recorded and he has also supported the version of P.W.3 and P.W.6 that the patient told them that the Appellant had poured kerosene on her and had caused burn injuries. Thus, we find that both these written Dying Declarations are duly proved

by the prosecution. They are consistent with each other and therefore we are inclined to rely on these two Dying Declarations.

24. The evidence of Dr.Kshatriya P.W.4 shows that the medical analysis of the scalp hair and skin sample sent for analysis showed presence of kerosene. Thus, if it was the case of accident, there was no reason as to why the kerosene would appear on the scalp. As against that, this circumstance corroborates the prosecution case that the Appellant had poured kerosene over her. This is an additional circumstance against the present Appellant.

25. The prosecution has relied on another circumstance that the clothes of the accused showed presence of kerosene. However, we do not find that, this circumstance is properly proved by the prosecution. The Appellant was arrested on 08/10/2007 and his clothes were seized on 11/10/2007. There is no explanation as to why the clothes were not immediately

seized and therefore we are not holding this circumstance against the present Appellant. Mr. Mane the learned counsel, invited our attention to the evidence given by the defence witnesses and submitted that the evidence should be accepted in favour of the Appellant. Though, D.W.1 Vidya Jodhpurkar has stated that, the deceased had made oral Dying Declaration to her that, she suffered burn injuries because of bursting of the stove. However, D.W.2 Parvati Mane, who was also supposed to be present there, does not depose about any such Dying Declaration. D.W.3 Jaya Nimbole has stated that all these witnesses were at the spot. D.W.1 Vidya Jodhpurkar actually was a married lady and was residing somewhere else, but she used to visit her parents' house often. D.W.3 Jaya Nimbole stated that the Appellant was in Pune on the date of incident. However, the Appellant himself has not taken this defence of alibi and even in his statement u/s 313 he has not stated that he was in Pune on the date of incident. Therefore, it is quite clear that all the defence witnesses and in particular D.W.3, who was the sister-in-law of the Appellant, are trying to save the

Appellant and we do not find that their evidence is reliable enough.

26. With the result, we find that there is no merit in the Appeal. Hence following order :

ORDER

The Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)