

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 343 OF 2014****IN****SESSIONS CASE NO. 79 OF 2011**

Bhagwan Dattu Shinde]
Age 35 years, Occ: Agri. Labour]
Residing at Aran Taluka Madha,]
Dist. Solapur]
At present lodged in]
Yerawada Central Prison, Pune].. Appellant
[Ori. Accused]

Vs.

The State of Maharashtra]
At the instance of Tembhurni]
Police Station, Taluka Madha,]
Dist. Solapur].. Respondents

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Mr. Prosper D'Souza Advocate appointed for Appellant
Mrs. G.P. Mulekar A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.M.S.KARNIK, JJ.**

DATED : OCTOBER 05, 2017

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :-

1 This appeal is preferred by the appellant - original
accused against the judgment and order dated 20.10.2012
passed by the learned Additional Sessions Judge- 2 Solapur in

Sessions Case No. 79 of 2011. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to RI for life and to pay a fine of Rs. 2000/- in default RI for one year.

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

(i) Deceased Suman was married to the appellant about 17 years prior to the incident. Suman was residing with the appellant and her three children at village Aran, Taluka Madha, Dist.Solapur. The children were minor at the time of the incident. The appellant was addicted to liquor. The appellant used to constantly quarrel with his wife Suman. He wanted to sell their land and he wanted Suman to give her signature for selling the land, however, Suman was not willing to do so, hence, quarrels used to take place between the appellant and Suman.

(ii) Incident occurred on 29.11.2010. On that day at about 7.30 p.m., the appellant demanded money from his wife Suman and also demanded that she should give her signature to sell the land. Suman refused to do so. The appellant then poured kerosene on Suman and set her on fire. Thereafter, the

appellant went away. Suman extinguished the fire by wrapping herself in a bed-cover. Suman was rushed to the hospital by her brother-in-law. In the hospital, two dying declarations of Suman came to be recorded i.e. dying declaration Exh. 40 which was treated as F.I.R. and dying declaration Exh. 38. Thereafter investigation commenced. Dying declaration Exh. 40 was recorded by PW 7 ASI Gaikwad and dying declaration Exh. 38 was recorded by Special Executive Magistrate Shri. Wagh. In both the dying declarations Suman stated that her husband i.e. the appellant poured kerosene on her and set her on fire. After Suman expired, her dead body was sent for post-mortem. PW 4 Dr. Bhoi conducted the post-mortem on the dead body of Suman. He opined that the cause of death was due to burn injuries and the burn injuries were to the extent of 69%. After completion of investigation, the charge-sheet came to be filed against the appellant under Sections 302 and 504 of IPC.

3 Charge came to be framed against the appellant under Sections 302 and 504 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. It is further the defence of the appellant that his wife has committed

suicide. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal. It may be stated here that the appellant came to be acquitted of the offence under Section 504 of IPC.

4 We have heard the learned Advocate for the Appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant poured kerosene on his wife Suman and set her on fire which led to her death.

5 The conviction of the appellant is mainly based on the dying declarations Exhs. 40 and 38. Dying declaration Exh. 40 was recorded by PW 7 ASI Gaikwad and dying declaration Exh. 38 was recorded by Special Executive Magistrate Shri. Wagh. In both the dying declarations, Suman stated that her husband i.e. the appellant poured kerosene on her and set her on fire.

6 PW 7 ASI Gaikwad has stated that on 29.11.2010, he was directed to record the dying declaration of Suman Shinde, hence, he went to Solapur Burn Care Center. He met Dr. Khairatkar who was on duty and requested him to clinically examine patient Suman. Dr. Khairatkar examined the patient and found her to be conscious, oriented and able to make a statement. He made endorsement to that effect on the left side of the top of the paper. Thereafter, ASI Gaikwad recorded the statement of Suman. Suman told him that she was married to the appellant about prior to 17 years. She had two sons and a daughter. Suman further told him that the appellant who was a drunkard, was compelling her to alienate 4½ acres of land on that day. She was preventing her husband from selling the land on account of the fact that their children were minor. ASI Gaikwad further stated that Suman told him that on 29.11.2010 when she was at home, her husband poured kerosene on her and set her on fire. She extinguished the fire by wrapping herself in bed-cover. ASI Gaikwad has stated that thereafter he again requested Dr. Khairatkar to examine Suman. Dr. Khairatkar examined Suman and thereafter made an endorsement in respect of consciousness and orientation of the patient. It is pertinent to note that ASI Gaikwad has stated that

he personally ascertained about consciousness and orientation of the patient. Thereafter ASI Gaikwad requested Special Executive Magistrate Shri. Wagh (PW 6) to record the dying declaration of Suman.

7 Special Executive Magistrate PW 6 Shri. Wagh has stated that on 29.11.2010 Shri. Gaikwad (PW 7) requested him to record the dying declaration of patient Suman Shinde who was in Solapur Burn Care Centre. He went to Solapur Burn Care Centre and enquired with the Nurse on duty about the patient Suman Shinde. The Nurse called Dr. Khairatkar. Shri. Wagh disclosed to Dr. Khairatkar that he wanted to record dying declaration of patient Suman Shinde and requested Dr. Khairatkar to clinically examine the patient whether she was conscious, oriented and able to make a statement. Dr. Khairatkar examined the patient and confirmed that patient was conscious, oriented and was in a position to give a valid statement. Dr. Khairatkar gave his endorsement to that effect on the top of the paper. Shri. Wagh has stated that Dr. Khairatkar and the patient were present in the room. None of the relatives of the patient were inside the room when he recorded the dying declaration. Shri. Wagh has further stated

that he put preliminary questions to the patient and on his interrogation, he was certain that the patient was conscious, oriented and able to give a statement. Thereafter, he recorded statement of Suman. Suman told him that her husband was addicted to liquor, her husband was insisting that they should alienate 4½ acres of land and as she was not ready to do so, her husband was quarreling with her. Suman told him that on 29.11.2010 at about 7.30 a.m. her husband insisted that she should pay money for consuming liquor and she should put her signature for selling the land. She resisted to alienate the land. Her husband poured kerosene on her and set her on fire. Her husband then left the place. She extinguished the fire by wrapping herself in 'wakal' (bed-cover). Shri. Wagh has stated that after recording dying declaration, he requested Dr. Khairatkar to again examine the patient whether she was conscious and oriented. Dr. Khairatkar examined the patient and gave his endorsement to that effect. The dying declaration recorded by Shri. Wagh is at Exh. 38.

8 In addition to the two dying declarations Exhs. 38 and 40, the prosecution is relying on an oral dying declaration made by Suman to her brother PW 3 Jalindar Kale. Jalindar has stated

that Suman was his sister and she was married to the appellant about 17 years prior to the incident. The appellant was addicted to liquor. He used to quarrel with Suman. Jalindar has further stated that incident occurred on 29.11.2010. He received a message that his sister had received burn injuries and she was shifted to Burn Care Centre at Solapur, hence, he went there. His sister told him that the appellant was asking for her signature to sell the land. His sister told him that the appellant poured kerosene on her and set her on fire.

9 It is the prosecution case that the appellant poured kerosene on his wife Suman and set her on fire. This is also borne out by the medical evidence. PW 4 Dr. Bhoi conducted the post-mortem on the dead body of Suman. He noticed that Suman had sustained 69% burn injuries. In his opinion, all the injuries were ante-mortem and cause of death was due to burn injuries. Dr. Bhoi has stated that injuries as noted by him in the post-mortem Notes were possible if kerosene is sprinkled on the body of a person and the person is set ablaze. Thus, medical evidence also supports the case of the prosecution.

10 Mr. Prosper D'Souza, the learned counsel for the

appellant submitted that both dying declarations and oral dying declaration cannot be relied upon in view of the evidence of DW 1 Ashwini Shinde. Ashwini was the daughter of the appellant and deceased Suman. Mr. D'Souza pointed out that Ashwini has clearly stated that her mother had poured kerosene on her person and set herself on fire. He submitted that this shows that the entire prosecution case is false and cannot be believed. As far as the evidence of Ashwini is concerned, it is seen that she was minor at the time of the incident as well as at the time of giving evidence. She has been residing with the mother of the appellant i.e. her paternal grand-mother. Looking to the fact that she is a child witness, she was susceptible to tutoring. Ashwini has admitted that her father had asked her mother for money, however, her mother refused to give money. However, Ashwini states that her mother set herself on fire. As stated earlier, she is a child witness and susceptible to tutoring, she was staying with her grand-mother i.e. mother of the appellant. Ashwini has stated that she has been living with her father's mother and on the day, she came to give evidence with her paternal grand-mother. She also admitted that her grand-mother met her father in the corridor of the Court on the day she gave the evidence as well as on the earlier date. What is

most pertinent to note is that as far as evidence of Ashwini is concerned, it is her categorical case that her mother committed suicide. However, she had not disclosed the fact that her mother committed suicide to anyone till the time she gave evidence before the Court. Normal conduct would be that if she saw her mother pouring kerosene on herself and setting herself on fire, she would have immediately run out of the house and informed this fact to whosoever she saw including her close relatives. However, the fact that she has not done so, shows that it is not a case of Suman committing suicide. Ashwini has also admitted that she felt it necessary that her father should be released from Jail. This shows the motive for Ashwini to give false evidence before the Court in order to save her father and to ensure that he is released. The most glaring aspect as far as evidence of Ashwini is concerned, is that, if at all her mother poured kerosene on herself and set herself on fire, she would have immediately informed this fact at least, to her near relatives and other persons. However, she has kept quiet about this fact and stated so for the first time in the Court. This raises serious doubt about the veracity of her evidence. This conduct on her part, shows that her evidence is not reliable and trustworthy, hence, we are not inclined to place any reliance on

her evidence.

11 On going through the evidence on record, we are of the opinion that the prosecution has proved its case against the appellant beyond reasonable doubt, hence, we find no merit in the appeal. Appeal is dismissed.

[M.S.KARNIK, J.]

[SMT.V.K.TAHILRAMANI, J.]