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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.421 OF 2002

Rakhmabai @ Rukhminibai Kisan Dalvi
Age – 60 years, Occ – Household
R/o Behind the School of Bhutkarwadi
Taluka and District – Ahmednagar

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

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Mr. Joydeep Chatterji, Advocate for the appellant
Miss. S. S. Raut, APP for respondent - State

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[CORAM : SUNIL P. DESHMUKH &
P. R. BORA, J.J.]

DATE : 2nd FEBRUARY, 2018

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. By this appeal, the appellant – accused in Sessions Case No.119 of 2000 has challenged her conviction for the offence punishable under section 302 of the Indian Penal Code and sentence to suffer rigorous imprisonment for life and to pay a fine of Rs.500/-, in default to undergo further rigorous imprisonment for three months, passed by 2nd Ad-hoc Additional Sessions Judge, Ahmednagar.

2. It is the case of the prosecution that on 9th July, 2000, a

burnt person had been admitted in Civil Hospital, Ahmednagar around 10.15 a.m. One Mr. Shivaji N. Sathe, police head constable who had been on hospital duty, had recorded statement of the patient upon endorsement by doctor / medical officer about she being in condition to give statement, that she had been residing with husband Baban Kisan Dalvi and two sons. Her parents in law and brothers in law had been staying separately in the neighbourhood. She along with her husband and children was residing separately from parents in law for over one year. However, they were visiting her house for meals and snacks. Her mother in law used to pick up quarrels with her on petty issues. On 9th July, 2000, while she had washed clothes and was putting the same on a string for drying, mother in law Rakhmabai had come there and abused her as to why she was hanging clothes on a particular string. Thereafter, she went inside the house for preparing meals, that time mother in law had come and said that she would see her and had poured kerosene on her person from a five liter kerosene container. Since stove had been on, her clothes caught fire. Said time was around 9.30 a.m. and she had come out of the house shouting and people from neighbourhood had gathered and extinguished fire by pouring water and covering her body with blanket. She

had realized that her face, neck, chest, both the hands and legs and back was burnt and injured. Thereafter she had been admitted to hospital for treatment by her brother in law Nitin Kisan Dalvi. On the very evening an attempt had been made to have statement of the burnt patient recorded, however, medical opinion had been that the patient was not in a condition to give statement.

3. On the very day, spot *Panchanama* had been drawn by the investigating officer, who had found that there was cooking platform and a gas stove on the same. He had also found utensils containing milk and some other household articles on the gas stove. The *panchanama* shows that kerosene stove was also found, however, it was also observed that the same was not in use. The spot *panchanama* records that there is a kitchen platform and over the same there is gas stove and some utensils with milk and there was a sachet of sugar and there were other utensils for preparation of tea. Below the platform some household articles were also found. The *panchanama* also records that four legged steel stove had also been found, however, it appears that the same was not in use, albeit, some kerosene had been found in its tank.

4. Victim Surekha had suffered 99% burn injuries and she had been admitted in the hospital around 10.15 a.m. and her statement was recorded in said condition around 12.30 p.m. Endorsement over the statement of the victim made by the medical officer does not show that she was conscious while her statement was being recorded. The endorsement specifically depicts that the victim can give statement. The doctor had endorsed it only at the top of the statement. The statement is said to have been given by 99% burnt person and to whom drug like voveron was administered. During investigation, statements of quite a few persons had been recorded, however, their evidence had not been taken, particularly the persons like, husband, brother in law of the victim who appear to have admitted her in hospital. Their statements before the police do not support or corroborate the statement of the deceased. Even son of the deceased, whose statement had been recorded by the police does not corroborate the dying declaration. The dying declaration shows that there had been quarrel between the deceased and her mother in law, to this extent there is corroboration in the form of statements before police by husband, brother in law and son of the deceased so also sister in law of the deceased. Their rest of the versions give indication

that in the hit of moment, deceased had went inside the house, locked the same from inside and thereafter shouts, screaming and smoke came out and door of the house was tried to be broken open. Thereafter the victim came out of the house and fire was extinguished and these very persons who were residing in neighbouring houses had taken her to hospital. Their versions also show that all of them around the time incident had occurred were very much present around the victim's house.

5. Cross examination of the medical officer PW-1 Dr. Sima Deshmukh, shows that health condition of the victim was poor. It has also been recorded in the cross-examination that the victim had been administered with Voveron and Dexona injunctions, which reduce brain edema. Although the medical officer has denied that Voveraon puts the patient to sleep and is a sedative drug, yet it is well known that said injunction / drug puts a person in delirium. It would have to be taken into account that the patient had been admitted in the hospital around 10.15 a.m. and her statement had been recorded around 12.30 p.m.

6. Evidence of PW-3 Maruti Sambhaji Sadafule, the investigating officer at Exhibit-14 evinces that police head constable Sathe had been doing hospital duty and had come to

the police station informing that Surekha was admitted in the hospital in burnt condition and her statement was to be recorded. He could not trace Special Judicial Magistrate and, therefore, had recorded statement of Surekha and had produced statement before him and thereafter said investigating officer had proceeded to civil hospital and had got verified statement by asking Surekha as to how it happened and on the basis of statement recorded by police head constable Sathe, crime had been registered. On that very day, he had visited the spot and prepared *panchanamas* and had seized articles 1 to 4 as per *panchanamas*. On the same day, the accused was arrested and her sari and blouse were seized. On the next day i.e. on 10th July, 2000 around 3.00 p.m. Surekha died. Inquest *panchanama* was accordingly prepared and dead body had been sent for post mortem. Thereafter on 27th July, 2000, seized articles were sent to chemical analyzer at Aurangabad.

7. Nitin Kisan Dalvi, brother in law of the victim, who is said to have admitted her in hospital, has not been examined by the prosecution. Wife of Nitin who was also present at the time of incident has also not been examined. Even husband and son of the deceased are not examined. The Son has stated in the statement before police that people from outside were trying to

open the door by kicking. Bhagat also states the same thing. Tushar, son of the victim has stated in the statement before police that there was quarrel between his mother and grand mother and his father had calmed them down, however, his mother went inside the house saying that '*now see what I will do*' and soon thereafter shouts and screaming was heard from the house and he saw that the people were trying to break open the door of their house by kicking. Even Baban, husband of the victim has not been examined. Post mortem report shows that upper limbs of the deceased were burnt to the extent of 18%. Dr. Pokharna, who has conducted the post mortem has stated that fingers of the deceased were burnt.

8. After catching fire, victim had opened the door from inside and came out of the house and she was doused. In such circumstances, it appears to be highly improbable that mother in law had been an access to the house of the deceased and to commit offence alleged against her. Trial court has not taken into account that a dying declaration should be such which should be absolutely reliable, if conviction is to be based solely on the same. Veracity of the dying declaration requires to be taken into account, having regard to surrounding circumstances and in the present matter it may not be safe to absolutely rely on the same

to base conviction of the accused. For, going by allegations against the accused, the deceased had been the solitary person who claims to have seen the accused committing the offence. There had been quarrel and thereafter there had been the incident. It is not the case that deceased was being harassed on any other count. Deceased, in fact had two children. Her marriage had been eleven year old. The accused had not been seen entering house of the deceased by any one at the relevant time. At the time of commission of offence all the persons were supposed to be at home. Thus, the circumstances do not inspire confidence in the veracity of the statement (dying declaration) recorded. In the first place, it is doubtful that the deceased had been conscious and was in a fit mental condition to give statement. The doctor has in the circumstances only recorded that she was fit to give statement. Whether she was conscious or not has not come forth. Further the doctor has endorsed only at the top of the statement and there is no endorsement after recording the statement at the end of the statement that the patient was fit and while special executive magistrate had been to the hospital, to record statement of the victim, on the same day in the evening, the doctor had opined that the patient was not fit to give statement and the patient died very next day.

9. As a matter of fact, dying declaration accuses the appellant about her pouring kerosene on the person of the victim, it does not appear that there is any accusation about any overtact of actually setting the victim on fire. Coupled with this, if the spot *panchanama* is perused, it discloses that kerosene stove had not been in use. Fire, it appears, had been caught, even going by the accusations, accidentally. No traces of kerosene are recorded in *panchanama* on platform, albeit other articles thereon have been recorded in the same.

10. Situation, as it emerges from evidence on record, is that the incident had occurred around 9.30 a.m. on 9th July, 2000 in close residential locality having adjoining houses. Relatives of the deceased had been staying close-by, separately. All the male persons had not gone out for working. They were around the residences. The accused and the deceased had been staying separately in the neighbourhood. It appears that quarrel had erupted between them and thereafter the deceased had went to her house. In the house, spot *panchanama* gives clear indication of that, there was a kitchen platform having a gas connection and gas stove, whereon a pot containing milk was found and sugar was also found on the platform. Kerosene stove, however,

had been found not to be in use and had been at some distance from the kitchen platform. The *panchanama* gives an indication that it was the kitchen platform and the gas stove which was in use. While the victim had sustained burn injuries around 9.30 a.m. her statement was recorded around 12.30 p.m., i.e. almost three hours after the incident that too while she had suffered 99% burn injuries and had been administered drug / injections palliating / alleviating pains known for their side effects. The medical officer purportedly at the top of the statement, had endorsed about the patient being fit to give statement, however, there is neither specific reflection on that about she being fit enough to make a conscious statement nor there is any endorsement by the medical officer at the end of the statement.

11. The patient had suffered 99 % burn injuries and her statement was recorded three hours after the incident that too upon drug inducement. On the very day, in the evening, the medical officer had in fact opined that the patient had not been in the condition to give statement and on the very next day, patient succumbed to the burn injuries. The post mortem report also supports that the deceased had suffered 99% burn injuries, her limbs were burnt to the extent of 18%, which gives a clear indication of that her limbs were completely burnt. All these

circumstances render the statement as appearing to have been recorded was recorded of a person who had not been conscious enough to understand and relate the same to the factual position. Even the statement does not show that the accused had played an act in putting the deceased on fire.

12. The recorded statement shows that the patient having stated that she was preparing meals on a stove and the accused had poured kerosene on her person, whereas the spot *panchanama* shows that kerosene stove had not been in use and the house had gas connection and gas stove facility, which was in use.

13. The surrounding circumstances are that all the residents, who are expected to be around the houses at the relevant time, were in fact present there and none of them had seen the accused entering the house of the deceased nor does it appear that the residents around who live very close-by had therefore an occasion to prevent the accused from going to the house of the deceased. The statement also records that the fire caught by the victim had been doused by neighbourers, yet none of the neighbourer had either been examined or their clothes or quilt or other objects had been seized for examination.

14. The circumstances show that it took quite a while for an action to be taken for dousing fire by which time, it appears that the victim had been burnt 99%. It is not the case that the victim had been prevented from coming out of the house after catching fire. Had it been really a case that the deceased had immediately come out of the house after catching fire, it appears that looking at the circumstances, dousing of fire could have immediately taken place and action could have been immediately taken preventing burns to the extent the victim had sustained. As a matter of fact the victim was taken to hospital as it emerges from record by her husband and / or brother in law. Had it really been the case that their mother was to commit certain act having regard to the background of the circumstances, they would have immediately rushed to prevent commission of the act imputed against the accused. Moreover, one may have to take into account that though it is alleged that the accused had poured kerosene from a five liter kerosene can on the victim and she caught fire since kerosene stove was burning, receiving 99% burn injuries, however, one fails to understand that how the accused did not receive even simple burn injury in the incident.

15. During investigation, statement of mother of the patient was recorded to the similar effect as the statement of the victim

about there being quarrel over hanging of cloths for drying on a string and the appellant had poured kerosene on the person of Surekha while she was cooking on a stove.

16. In the evidence of mother of the victim, who had been turned out to be hostile, she has disowned her statement given before the police and had stated that statement of Surekha – the victim was in fact told by one Ashok Sakharam Jadhav, who had produced sari and blouse before the police. Surprisingly, the prosecution has not examined said Ashok Jadhav.

17. The statement does not appear to be absolutely safe to be relied upon and creates host of doubts about its correctness. The conviction, as it emerges by the sessions court, is solely based on the statement of the deceased, for the medical officer had endorsed in the beginning that the patient had been fit to give statement. Evidence on record and the surrounding circumstances fall far too short to lend credibility to such an endorsement to reflect that the patient was fit to give conscious statement at the relevant time. Further, doubt is created also about same appearing with thumb impression or organ impression of the deceased, for the organ of which the impression is stated to have been taken, does not appear that it

was in a condition to have an impression, since the record with certainty shows that the organ had also been burnt in the process. Coupled with this, it has come in the evidence that the accused and the deceased had been staying separately, marriage of the deceased had been subsisting for over eleven years, the deceased was having two children, house of the deceased had a gas stove facility which had been in use and that statement of the victim was recorded while she had suffered 99% burn injuries that too three hours after the incident and after administration of drugs and the victim had been found soon later to be not in a position to give statement.

18. In such a case, while there is absolutely no corroboration to the statement and since none of the relatives of the deceased from paternal side has corroborated the statement, none of the neighbouring person had been examined, the prosecution has not proved the guilt of the accused beyond reasonable doubt. In view of such dithering evidence and doubtful circumstances, it would not be safe to sustain conviction under the impugned judgment and the accused should receive benefit of doubt.

19. Thus, the impugned judgment and order of conviction is liable to be set aside and the same is accordingly set aside. The

criminal appeal is allowed. The appellant is acquitted of all the charges with which she was charged and convicted. Fine, if paid, be refunded to the appellant. Bail bonds of the appellant stand cancelled.

[P. R. BORA, J.]

[SUNIL P. DESHMUKH, J.]