

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.336 OF 2015**

Walmik Devram Lahange	]	
Age about 42 years,	]	
R/o: Indira Nagar, Devgaon, Taluka Niphad,	]	
District Nashik	]	
(At present lodged in Nashik Road Central	]	
Prison, Nashik)	]	..Appellant
vs.		
The State of Maharashtra	]	
(Through Police Inspector, Lasalgaon Police	]	
Station, Nashik	]	...Respondent

Ms. Rohini M. Dandekar (Appointed) for Appellant .
Mr. Arfan Sait, APP for Respondent.

**CORAM : SMT. V.K. TAHILRAMANI
ACTING CHIEF JUSTICE, &
P. N. DESHMUKH, J.
DATE : 11th MAY, 2018
(SPECIAL VACATION BENCH)**

JUDGMENT [Per : P. N. DESHMUKH]

. In this appeal challenge is to the judgment of the learned Additional Sessions Judge-I, Niphad, Nashik in Sessions Case No.22/2012 dated 7/5/2013 convicting appellant for the offence punishable under section 302 of IPC and sentencing to suffer imprisonment for life and to pay fine of Rs.500/- in default of payment of fine to suffer SI for 2 months.

2. Case of prosecution in brief can be stated as under:

i) That the deceased Sarla Lahange is wife of appellant who made a statement while in hospital, admitted on sustaining 40% burn injuries that appellant had set her on fire. On the basis of said statement and treating it as FIR offence vide C.R. No.16/2012 came to be registered with Lasalgaon Police Station initially under section 307, 323 of IPC. On

death of deceased on 6/3/2012 offence under section 302 of IPC is added in the present crime. In the dying declaration victim stated that appellant poured kerosene on her person and set her on fire. Offence was investigated by PW-8-Sachin Gore and during the course of same drew spot panchanama and seized bottle containing kerosene, match box, soil burnt pieces of saree, quilt under panchanama. Statement of deceased was recorded by PW-1-Ayub Khan Pathan, Special Judicial Magistrate, on 26/2/2012 as per Exh.18 and on recording statement of witnesses and on completion of investigation charge-sheet is filed before the Court of JMFC, Niphad. In the course of time case is committed to Session's Court for trial.

ii) Charge is framed against accused vide Exh.4 under section 302 of IPC to which he pleaded not guilty and came to be tried. Defence of accused is of total denial. Accused had not examined any witness in support of his defence.

iii) To establish charge prosecution in all examined 8 witnesses commencing from PW-1-Ayub Khan Pathan, Special Judicial Magistrate who has recorded dying declaration; PW-2-Waluba Suryabhan Pimpale, brother of deceased; PW-3-Chandrabhan Pimpale, cousin brother of deceased, PW-4-Dr. Deepak Pralhadsing Rajput, who had examined deceased before and after recording her statement. PW-5-Nandu Arun Sonawane, spot panch; PW-6-Namdeo Ananda Raut in whose presence clothes of accused and other articles are seized from the spot; PW-7-Dr.Swaruparani Dilip Thakur, who had performed post mortem on the body of Sarla and issued post mortem report Exh.24 and prosecution concluded evidence on examining PW-8-Sachin Gore, Dy. S.P., Investigating officer.

3. Heard learned counsel for appellant and Learned Additional Public Prosecutor. Learned counsel for appellant raised serious doubt on

the dying declaration submitting that the same is not truthful as according to the requisition memo received by PW-1-Ayub Khan Pathan to record dying declaration which is part of Exh.13-C deceased is stated to have sustain burn injuries accidentally due to bursting of stove. It is contended that there is absolutely no satisfactory explanation on this aspect given by prosecution. Learned counsel had further referred to certain discrepancies in the evidence of PW-1-Ayub Khan Pathan, Special Judicial Magistrate and PW-4-Dr.Deepak Rajput. However at this stage itself it is noted that the discrepancies pointed out are minor in nature as they are in respect of PW-1-Ayub Khan Pathan meeting with PW-4-Dr.Deepak Rajput in casualty ward while according to PW-4-Dr.Deepak Rajput, he met Special Judicial Magistrate in the burn ward and as such are not material as do not go to the root of the case.

4. Learned APP on the other hand supported the judgment and contended that there is nothing to disbelieve the dying declaration and thus prayed that appeal be dismissed.

5. Considering the submissions advanced as aforesaid admittedly there is no eye witness to the incident and case of prosecution rest upon the dying declaration at Exh.14. In that view of the matter on perusal of evidence of PW-1-Ayubkhan Pathan, Special Judicial Magistrate it has come on record that on 26/2/2012 at 1.00 p.m. he was appointed as Special Judicial Magistrate and on that day received telephonic instructions from ASI Tribhuvan of Nashik Rural Police Station, requesting to attend patient admitted in the burn ward at Civil hospital, Nasik for recording dying declaration. Accordingly he reached Civil Hospital at 1.30 p.m. where ASI met him and handed over Requisition Exh.13 for recording dying declaration. It is further stated that PW-4-Dr. Rajput took him to the victim when PW-1-Ayubkhan Pathan requested him to examine patient and to

know if she is in a condition to give statement. Accordingly on examination of the victim PW-4-Dr.Deepak Rajput endorsed to that effect on the proforma of dying declaration. Thereafter, PW-1-Ayubkhan Pathan states that he then put some preliminary question to the lady to satisfy himself that she was conscious and in a position to make a statement to which she replied satisfactorily and therefore asked her about the incident when it is disclosed by her that the incident took place at 6.00 p.m. that time she was having Rs.100/- with her and out of that gave Rs.50/- to appellant, However, appellant had snatched balance money and assaulted her by wooden log and in the course of same transaction poured kerosene on her person and set her on fire by igniting a match stick. She further stated that PW-3-Chandrabhan arrived on the spot who had extinguished fire. Accordingly, her statement is recorded at Exh.14.

6. Evidence of PW-1-Ayubkhan Pathan, Special Judicial Magistrate further reveals that he then read over contents thereof to its maker and obtained her thumb impression and had also stated that on his request PW-4-Dr. Deepak again examined victim and certified that she was conscious and fit to make a statement. Dying Declaration was accordingly recorded on 26/2/2012 from 1.40 p.m. to 2.15 p.m. In the cross examination nothing is brought on record to doubt his evidence except for suggestion that no such statement was stated by deceased and that same is recorded on the say of ASI Tribhuvan involving appellant. However, nothing is on record to establish as to why ASI Tribhuvan would falsely implicate the appellant.

7. Learned counsel for appellant by referring to the contents of Exh.13-C had submitted that according to its contents injured sustained burn injuries accidentally due to bursting of stove and has therefore contended that in view of said statement applicant's involvement is

established to be false. Above submission however when considered with above evidence on record particularly of PW-3-Chandrabhan Pimpale would reveal that he was residing adjacent to the house of deceased and on hearing her shouts arrived on the spot and noting that she had sustained burn extinguished fire with the help of quilt and took her to hospital at Deonar. It is to be noted that no question is put to this witness in his cross examination with reference to the cause of deceased sustaining burn injuries accidentally, as he could be the best person to explain since he had took the injured in the hospital first in point of time.

8. On this aspect evidence of PW-8-Sachin Gore, Investigating Officer when is perused he has admitted that there is reference of Sarla sustaining burn injuries due to bursting of stove and that Sarla was admitted in hospital at Deogoan before she was referred to civil hospital at Nashik. Investigating officer has admitted that on his inquiry with the Medical officer, Deogoan hospital as to who had admitted Sarla it was informed that along with PW-3-Chandrabhan, Sarpanch of the village has brought Sarla. No statement of Sarpanch is recorded as admitted by Investigating Officer nor any documents from Deogoan hospital are admitted to be collected nor investigating officer made any inquiry about the contents of requisition memo of deceased sustaining burns accidentally, or on what basis such fact is mentioned in the requisition memo Exh.13.

9. In the circumstances, we find that PW-3-Chandrabhan was the correct person to whom it was necessary to ask about the contents of requisition memo Exh.13 as there is every possibility of said fact having been mentioned in the requisition memo as informed to the medical officer by the person who carried patient to the hospital. Moreover even if it is considered that either PW-3-Chandrabhan or Sarpanch made a statement that deceased Sarla sustained burn injuries accidentally, same cannot be

relied as PW-3-Chandrabhan had reached at the spot only after Sarla sustained burn injuries and no statement of sarpanch is recorded as admitted by Investigating Officer. In view of above discussion contents of requisition memo to PW-1-Ayubkhan Pathan, who recorded dying declaration are of no consequence to doubt the dying declaration.

10. As from the evidence of PW-1-Ayubkhan Pathan, dying declaration is found recorded correctly and since we come to the conclusion that dying declaration is truthful version as to the circumstances of the death, same can be acted upon without further corroboration more particularly, when dying declaration is found to be recorded in accordance with law and as such is reliable, cogent depicting plausible explanation of the occurrence of the event and therefore there is nothing to disbelieve the version of the deceased and thus, can form sole piece of evidence resulting in conviction of accused.

11. Evidence of PW-1-Ayubkhan Pathan on the aspect of procedure followed by him while recording Exh.14 is found corroborated from the evidence of PW-4-Dr.Deepak Rajput where he has deposed that on the request of PW-1 he has examined Sarla in the burn ward and gave endorsement that she was conscious and was in a condition to make her statement. He has further admitted that after recording of dying declaration he again examined her and made endorsement below the statement that patient was conscious and was in a fit condition to make her statement. Both such endorsements are found on the dying declaration on record at Exh.14.

12. Moreover evidence of PW-6-Namdeo Raut reveals that on 2/3/2012 he has acted as panch and in his presence police seized clothes of accused being his full sleeves shirt and pant vide panchanama Exh.21.

Nothing has come in the cross examination to doubt said seizure of clothes which as per evidence of Investigating Officer are forwarded to Chemical Analyzer for analysis and as per CA report Exh.7 the shirt of accused is stated to have kerosene residue while similar kerosene residue are also detected on the quilt, earth and partly burnt pieces of sari of deceased. No explanation is put forth by appellant as to under what circumstances his clothes were found having kerosene residue. As per evidence of PW-7 Dr. Thakur deceased had sustained 40% superficial to deep burn injuries over her body and cause of death is stated to be septicemic shock due to burn injuries. Deceased as such is stated to have met an unnatural death.

13. Considering the facts as aforesaid prosecution is found to have established guilt of accused beyond reasonable doubt. Appeal is therefore dismissed.

Sd/-
(P.N. DESHMUKH, J)

Sd/-
(ACTING CHIEF JUSTICE)