

JPP

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

CRIMINAL APPEAL No.723 OF 2013

Suraj Jagannath Jadhav

Age: 28 years, Occupation:Service,
R/o. Gharkul Gayran, Vitthalwadi,
Dehugaon, Tal. Haveli, District Pune
(At present in Yervada Central
Prison, Pune)

...APPELLANT

VERSUS

The State of Maharashtra
(Through Dehu Road Police Station,
Dehu Road, District Pune)

...RESPONDENT

...

Mr. V.B.Shivarkar, Advocate for Appellant.
Ms. M.H. Mhatre, A.P.P. for Respondent- State.

...

**CORAM: S.S. SHINDE AND
A.S. GADKARI, JJ.**

DATE: 9TH OCTOBER, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the
Judgment and order dated 21st December, 2012,

passed by the Sessions Judge, Pune in Sessions Case No.317 of 2011, thereby convicting the Appellant/accused – Suraj Jagannath Jadhav for the offence punishable under Section 302 the Indian Penal Code [for short 'IPC'] and sentencing him to suffer imprisonment for life and also to pay a fine of Rs.100/-, in default of payment of fine to suffer rigorous imprisonment for six months. Hence this Appeal is filed by the Appellant challenging the conviction and sentence.

2. The prosecution case, in brief, is as under:

A) Jayshree Suraj Jadhav [deceased] is second wife of accused – Suraj Jadhav. Accused Suraj married with Jayshree seven years prior to the incident and out of the said wedlock, a female child namely Swamini, aged about six years, was born. The couple was residing at Vitthalwadi,

Dehugaon, Pune, an area where their other relatives also used to reside. Prior to marriage with Jayshree the accused Suraj had performed marriage with a lady by name Sarika, 9 or 10 years before to the incident. After divorce, said Sarika used to reside at Ganjpeth area. After marrying with deceased Jayshree, accused Suraj had performed third marriage with one Vaishali, two years prior to the incident. However, said Vaishali returned to her parents at Mumbai because of her ailment and harassment by the accused. According to the prosecution case, accused used to harass, abuse and beat deceased Jayshree. He was having habit of consuming liquor.

B) The alleged incident took place at the residential house of the couple on 21st January, 2011, at about 9.30 p.m. According to the prosecution, in that night Jayshree cooked food

and served it to the accused. The accused started abusing Jayshree by suspecting her character. While he was taking dinner, he got about 15-20 missed calls on his mobile handset. Hence, Jayshree asked him about the caller. The accused informed her that his first wife Sarika was calling him from Ganjpeth and she was asking him to reside with her separately. Jayshree told the accused that he had taken divorce from said Sarika and apart from having one daughter, she is carrying pregnancy of five months. The accused then started abusing and beating her by telling her that she should maintain the child and he does not want to cohabit with her and wish to cohabit with his earlier wife Sarika. In the process of beating Jayshree, the accused poured kerosene on her person. Drenched with kerosene, Jayshree went up-to front door of the house for saving her life. However, when Jayshree was opening the chain of

the front door, accused threw a burning matchstick on her person from behind and set her ablaze. Jayshree came outside the house in burnt condition. Upon hearing her shouts, her sister Mangala Mahapure, her brother Ramesh Telang, cousin Sakharbai Shinde gathered there. Accused Suraj poured water on the person of Jayshree. After extinguishing fire from the person of Jayshree, she was initially taken to Y.C.M. Hospital, Pimpri-Chinchwad, Pune and from there she was admitted to burn ward of the Sasoon Hospital, Pune for her medical treatment.

C) On getting information about admission of Jayshree Jadhav with burn injuries at Sasoon Hospital, Pune, in the night intervening 21st January, 2011 and 22nd January, 2011, Police Head Constable Dhananjay Sawant of Dehu Road Police Station, went to the Sasoon Hospital, Pune after

getting her examined from Dr. Pravin Surwase, he recorded statement of Jayshree at about 2.30 to 3.00 a.m. of 22nd January, 2011. Thereafter, on visiting the spot of the incident, Police Head Constable Dhananjay Sawant recorded spot panchnama in presence of panch witnesses and seized plastic Can containing $\frac{1}{2}$ liter kerosene and matchbox from the spot which was house of the accused, shared by deceased Jayshree. On 24th January, 2011, Vijay Ambadas Telang, brother of deceased Jayshree lodged FIR which has resulted into registration of Crime No.37 of 2011, under Section 307, 323, 504 and 506 of the IPC against the accused. Thereafter, accused came to be arrested. On 25th January, 2011, in presence of panch witnesses jeans pant and shirt worn by the accused at the time of incident, came to be seized by preparing seizure panchnama.

D) Investigating Officer, Ranjeet Bhoite, PSI had recorded second dying declaration of Jayshree Jadhav by visiting Sassoon Hospital, Pune on 25th January, 2011, and by reading over her statement dated 22nd January, 2011 to her. On 26th January, 2011, Jayshree died while taking medical treatment at Sassoon Hospital, Pune. After taking inquest notes, her dead body was sent for postmortem examination. Section 302 of the IPC came to be added to the case diary of the crime. During the course of investigation, statement of witnesses came to be recorded, seized muddemal was sent for Chemical Analysis. On completion of the investigation, the accused was charge-sheeted for the offence punishable under Section 302 and 498-A of the IPC.

E) As the offence punishable under Section 302 of the IPC was exclusively triable by the

Court of Sessions, the learned Judicial Magistrate First Class, committed the case to the Court of Sessions.

F) A charge for an offence punishable under Sections 302 and 498-A of the IPC was framed against the accused and the same was explained to him. The accused pleaded not guilty and claimed to be tried.

3. After recording the evidence and conducting full-fledged trial, the trial Court convicted the Appellant – accused for the offence punishable under Section 302 of the IPC and sentenced him to suffer life imprisonment and to pay fine, as afore-stated. Hence this Appeal is preferred by the accused – Appellant challenging the conviction and sentence.

4. Mr. Shivarkar, learned counsel appearing

for the Appellant submits that the Appellant has not committed any crime and he has been falsely implicated by the relatives of the deceased. The case of the prosecution is unbelievable and the motive tried to be imputed is not trustworthy. There is an inordinate delay in lodging the First Information Report and the explanation offered by the informant for such delay is unbelievable and untrustworthy. The dying declarations are concocted versions of the deceased as she was tutored by the relatives. The spot panchnama does not reveal that, Jayshree must have been burnt while within the house. The spot panchnama does not disclose any signs of scuffle or resistance. The learned counsel further submits that if the Appellant had an intention to commit murder of his wife, he would not have tried to extinguish the fire and would not have immediately shifted her to the Hospital. In support of his submissions,

learned counsel placed reliance upon the exposition of law in the case of Shantilal @ Lakhan Purandar Kamble vs. The State of Maharashtra¹ and Kalu Ram vs. State of Rajasthan². Learned counsel therefore submits that the appeal may be allowed.

5. On the other hand, Mrs. Mhatre, learned APP invites our attention to the dying declarations recorded by the Police Head Constable and PSI and submits that both dying declarations are trustworthy and reliable. She further invites our attention to the evidence of PW-1 Vijay and PW-4 Ramesh to whom oral dying declarations were given by deceased Jayshree. She further submits that after considering the entire evidence on record, the trial Court has convicted the accused and findings recorded by the trial Court are in

1 2016 All M.R. [Cri.] 3453

2 (2000) 10 S.C.C. 324

consonance with the evidence brought on record. The learned APP, therefore, submits that the Appeal may be dismissed.

6. Heard learned counsel appearing for the Appellant and learned APP appearing for the State at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

7. To prove its case, the prosecution has examined as many as 7 witnesses. Before discussing the evidence regarding the incident, reference needs to be made to the spot for better appreciation of the evidence. The spot panchnama is at Exhibit-19. The spot panchnama is proved by the panch witness PW-2 Ravindra Mohan Misal. The

spot panchnama shows that the spot of the incident is the house of the Appellant, consisting of two rooms. In the room where the incident took place there was one matchbox and matchsticks, near the door there were two matchsticks in half burnt condition. The household articles were found scattered in the house. One plastic Can without cover, containing $\frac{1}{2}$ liter kerosene was also seen on the spot of incident. To the entrance of the inner room there is no door, but the front room has door, having a latch from inside and outside.

8. PW-5 Dr. Nitin Anantrao Patil deposed that he himself and Dr. Sanjay Kalyani conducted post-mortem examination on dead body of Sou. Jayshree Suraj Jadhav from 7.00 a.m. to 8.00 a.m. on 27th January, 2011. On external examination they found following external injuries on the dead body of Jayshree:

1) Injection mark on both ankles medially 3 cm. Each with two stitches (Therapeutic)

2) Superficial to deep burns seen over following parts of body:

I) Head, neck and face	:-	05%
II) Upper Limb (Right)	:-	07%
(Left)	:-	07%
III) Chest and Abdomen	:-	13%
IV) Lower limb (Right)	:-	03%
(Left)	:-	03%
V) Back	:-	13%
VI) Genital	:-	00%

Total	-----	51%

9. PW-5 Dr. Nitin further deposed that on internal examination they found brain matter congested and edematous. In stomach 150 cc. semi-digested food was found with no peculiar smell. The medical officer further deposed that all burn injuries were ante-mortem in nature and were sufficient in the ordinary course of nature to

cause a death of a human being. He further deposed that cause of death was 'shock due to burns'.

10. Thus, evidence of PW-5 Dr. Nitin shows that Jayashree had received 51% burn injuries, all burn injuries were ante-mortem and were sufficient in the ordinary course of nature, to cause a death, and the cause of death was 'shock due to burns'.

11. Now, we will refer to the written dying declarations recorded at Exhibit-22 and Exhibit-33. PW-3 Dhananjay Yashwant Sawant, working as police head constable at Dehu Road Police Station at the relevant time, deposed that on 21st January, 2011, he received information that Jayshree Jadhav sustained burn injuries and was admitted at Sasoon Hispotal, Pune. On 22nd January, 2011, at about 2.30 a.m. to 3.00 a.m., he recorded

statement of Jayshree. Initially he met Dr. Surwase who examined Jayshree. After examining her blood pressure, doctor told that Jayshree was fit to give statement. Evidence of PW-3 Dhananjay further shows that he recorded statement of Jayshree in presence of the doctor. Jayshree told him that her husband Suraj Jadhav had poured kerosene on her person and set her ablaze by burning match stick. Whatever stated by Jayshree was recorded by him as per her say, he obtained her left thumb impression on her statement. He also obtained certificate from the doctor on that statement. He proved the dying declaration Exhibit-22.

12. PW-6 Dr. Pravin Tukaram Survase deposed that on 22nd January, 2011 when he was present on his duty at Sasoon Hospital, Pune, a patient named Jayshree Suraj Jadhav, aged about 32 years, was

brought by her relatives at 12.14 a.m. She was having about 44% superficial to deep burn injuries. He examined the patient and found to be conscious and oriented to time, place and person. Jayshree was running to 18 to 20 weeks pregnancy. Patient and her relatives gave history of homicidal burns.

13. About examination of the patient Jayshree at the time of recording dying declaration, evidence of PW-6 Dr. Pravin Survase shows that on 22nd January, 2011, police personnel from Dehu Road police station came to burn ward to record statement of Jayshree. He examined Jayshree and found her to be conscious, oriented and capable of making valid statement. Thereafter police recorded statement of Jayshree. During recording statement of Jayshree, her condition was stable. He was present near the patient during recording of her

statement. On completion of recording of statement of Jayshree, he gave endorsement about her fitness on the statement. He proved the endorsement in margin about the fitness of Jayshree on the statement Exhibit-22. His evidence further shows that the said endorsement is in his handwriting and bears his signature.

14. Thus, it is clear that the prosecution has proved the dying declaration Exhibit-22. On conjoint reading of evidence of PW-3 Dhananjay Vijay and PW-6 Dr. Pravin, it shows that before recording the dying declaration every precaution was taken. Before recording the statement, the patient was examined by the medical officer and when it was certified by the medical officer that patient was conscious and well oriented, her statement was recorded, and after completion of the statement also the doctor examined the victim

and endorsed that she was conscious and well oriented. The evidence of this medical officer also shows that at the relevant time Jayshree was carrying advance pregnancy of 18 to 20 weeks.

15. Dying declaration Exhibit-22 shows that the victim, after referring to the family members in the house and a daughter she had, stated that her marriage with accused solemnized about seven years prior to the incident. She further stated that it was the second marriage of her husband and prior to marriage with her, accused had earlier performed marriage with one Sarika but thereafter took divorce from said Sarika. She further stated that after performing marriage with her, her husband again performed marriage with one Vaishali but she was not residing with the accused and had gone to reside with her parents. She further stated that since two years after the marriage,

her husband used to harass, abuse and beat her.

16. About the incident, Jayashree has stated in the dying declaration that on 21st January, 2011 at about 9.30 p.m., she served food to the accused. The accused started abusing her by suspecting her character. Accused was under the influence of alcohol. While accused was taking dinner, he received about 15-20 missed calls on his mobile handset. Therefore, Jayshree asked accused as to who was calling her on mobile handset. The accused replied that his first wife Sarika was calling him from Ganjpeth and Sarika was asking him to reside with her separately. Hence, Jayshree told the accused that he had taken divorce from said Sarika and that she is having one daughter and also carrying pregnancy of five months. Accused told Jayshree that the said facts make no difference for him and that she should

maintain the child, and saying this, accused started abusing and beating her and when resisted, stated that he does not want to cohabit with Jayshree and wish to reside with his first wife Sarika. Jayshree further stated that, in the process of beating her, accused took out the kerosene from the Can which was available in the house and poured kerosene on her person. In order to save her life, Jayshree started running towards the front door of the house and when she was opening the chain of the front door, accused thrown a burning matchstick on her person from behind and set her ablaze. She came outside the house in burnt condition. Upon hearing her shouts, accused Suraj poured water on the person of Jayshree and tried to extinguish the fire. After extinguishing the fire, her sister Mangala Mahapure, Sakharbai Shinde and Ramesh Telang initially took her to Y.C.M. Hospital, Pimpri-

Chinchwad and from there she was shifted to burn ward of Sassoon Hospital at 12.00 midnight.

17. Thus, the dying declaration Exhibit-22 shows that Jayshree has given minute details about the incident. She has stated about Sarika, first wife of accused and also about Vaishali, third wife of her husband- accused. Thus, it is clear that while recording the dying declaration she was fully conscious. She narrated all the incident in rational manner. Thus, dying declaration Exhibit-22 is trustworthy, reliable and inspires full confidence.

18. PW-7 Ranjeet Vilasrao Bhoite deposed that he was serving as Police Sub-Inspector at Dehu road Police Station at the relevant time. He further deposed that on 22nd January, 2011, one Dhananjay Sawant, Head Constable serving at Dehu

Road Police Station had recorded statement of Jayshree Jadhav at Sasoon Hospital, Pune. PW-7 Ranjeet further deposed that on 25th January, 2011, he went to Sasoon Hospital, Pune, he met Dr. Survase in burn ward. He further deposed that in his presence Dr. Survase asked the patient – Jayshree as to whether she was in a position to give a statement. Jayshree replied in the affirmative. He further deposed that then he read over the statement given by Jayshree on 22nd January, 2011. Jayshree stated that the contents of the said statement were correct. Then he obtained endorsement of Dr. Survase on the said statement. Prior to that he has recorded statement of Jayshree Jadhav. Impression of her left thumb was taken on her statement. He further deposed that he had also signed statement Exhibit – 33.

19. Regarding the statement recorded by PW-7

– Ranjeet, the evidence of PW-6 Dr.Pravin is that on 25th January, 2011, he was called on duty at Sassoon Hospital, Pune at the instance of Police. On that day, again statement of Jayshree was recorded by Police. He was near the patient at the time of recording her statement. Condition of Jayshree was stable while recording her statement by Police. He had examined Jayshree prior to recording of her statement. After recording of statement of Jayshree by Police, he gave endorsement regarding her condition in the margin of the said statement. He proved the endorsement (Exhibit – 29) given by him regarding fitness of Jayshree, which is in his handwriting and bears his signature.

20. Jayshree mentioned in the statement (Exhibit-23) that she was taking treatment in the burn ward of Sasoon Hospital. She was fully

conscious and upon asked, she stated that her statement which was recorded on 22nd January, 2011, was read over to her, the contents of the same are correct and recorded as per her say. Jayshree again stated that she was taking treatment in the hospital and was fully conscious. Regarding her conscious, in the margin of the said statement there is endorsement of the doctor that patient was conscious and oriented to give the statement.

21. As observed earlier, the prosecution has conclusively proved the dying declaration Exhibit-22. The same is reliable and trustworthy. The prosecution has brought on record, through the evidence of Medical Officer PW-6 Dr. Pravin Survase that before and after recording the statement, he has examined the patient and found her to be conscious and well oriented to give the statement. Further, the prosecution has proved the

statement (Exhibit – 33) recorded by PW-7 Ranjeet Bhoite, wherein Jayshree has specifically admitted that her statement dated 22nd January, 2011, was recorded as per her say and the contents of the same were correct. Further, before and after recording the statement Exhibit-33, Dr. Pravin Survase (PW-6) examined Jayshree and endorsed that she was conscious and well oriented to give statement. Thus, the dying declaration is trustworthy and reliable.

22. Apart from the above dying declarations, the prosecution has brought on record two oral dying declarations. Therefore, it would be appropriate to discuss the evidence of other prosecution witnesses. PW-1 Vijay Ambadas Telang is the brother of Jayshree, who is also informant in the present case. He deposed that Jayshree was his sister. She married with Suraj Jadhav 5 to 6

years prior to the incident. The incident took place on 21st January, 2011. After receipt of the information of the incident, he went to Sasoon Hospital, Pune and met Jayshree. PW-1 Vijay further deposed that he asked Jayshree as to what happened and Jayshree told him that her husband Suraj Jadhav consumes liquor and abuses her, suspects her character. He further deposed that said fact was disclosed by Jayshree to him even prior to one month of the incident. He further deposed that Jayshree told him that she served food to her husband Suraj. Jayshree told him that Suraj received 15 to 20 missed calls from his first wife Sarika. Jayshree questioned Suraj as to who was calling him and Suraj informed her that it was his first wife Sarika and they have decided to reside jointly. Jayshree told Suraj that they were married and Suraj has divorced his first wife. Jayshree told Suraj that they are having a

daughter aged about 6 years and she is running pregnancy of 5 months. Suraj told Jayshree that it makes no difference and she should take care of the daughter. Then Suraj abused and assaulted her, and thereafter poured kerosene from a Can on her person and in order to save herself, Jayshree ran out of the house but she could not remove the chain of the door. Suraj came from behind and threw a burning matchstick on her person. As Jayshree caught fire, she ran outside the house and neighbours came and extinguished the fire. Thereafter neighbours took Jayshree to the Hospital. PW-1 Vijay further deposed that Jayshree disclosed all the above facts to him at about 00.30 hours of 22nd January, 2011.

23. Thus, through the evidence of this PW-1 the prosecution has brought on record the oral dying declaration given by Jayshree to her brother

when she was admitted in the Hospital and taking treatment. Thus dying declaration Exhibit-22 is corroborated by the oral dying declaration given to PW-1.

24. PW-4 Vijay Ambadas Telang is another brother of Jayshree. He deposed that his sister Jayshree got married with Suraj seven years prior to the incident. He further deposed that the incident took place on 21st January, 2011. He was at his house. House of Jayshree was at a distance of 30 to 40 feet from his house. At about 9.15 p.m., he heard shouts and therefore came out of the house. Jayshree was lying in burnt condition in the front yard of the house. Mangala Mahapure, Nitin Mahapure, Sakharbai Shinde and Suraj Jadhav were near Jayshree. In Sumo Vehicle, they took Jayshree to Y.C.M. Hospital, Pimpri-Chinchwad, Pune. After preliminary treatment, she was

referred to Sasoon Hospital, Pune. He was with her. She was admitted in burn Ward at Sasoon Hospital.

25. PW-4 Ramesh further deposed that in the Ambulance he asked Jayshree as to what happened. Jayshree told him that her husband received 20 to 22 missed calls on his mobile handset and therefore she asked accused about those missed calls. Jayshree told that her husband told her that she should not ask him and she is having one daughter to whom she should maintain. Jayshree told that she was running pregnancy of 5 months. Jayshree told that missed calls were by first wife of her husband who was living in Ganjpeth. Jayshree told that her husband poured kerosene on her person and set her ablaze. Jayshree told that nylon sari worn by her caught fire. He further deposed that Jayshree was admitted in Sasoon

Hospital, Pune for six days and thereafter she died.

26. Thus, on conjoint reading of the oral testimony of PW-1 Vijay and PW-4 Ramesh it is clear that the dying declaration Exhibit-22, recorded by the Police Head Constable and further the statement Exhibit-33 recorded by the PSI, get corroborated by the oral dying declarations given by Jayshree to her brothers namely Vijay (PW-1) and Ramesh (PW-4). The prosecution has brought on record that, at the time of incident the Appellant was present in the house. Even otherwise it is presumed that during the night time the house members are bound to be in the house unless any plausible explanation is offered for absence. The Appellant did not offer any explanation in this regard. Therefore, the onus lies on the Appellant to explain how Jayshree caused burn injuries.

27. The Supreme Court in the case of State of Rajasthan Vs. Thakur Singh³ while explaining the scheme of provisions of Sections 101 to 106 of the Evidence Act, 1872, and its scope in para 22 to 24 held thus:

"22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had

3 2014(12) SCC 211

entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this."

28. In the present case also, the prosecution has discharged its burden of firmly establishing

that deceased Jayshree was last seen in the company of the Appellant. The Appellant did not offer any explanation how Jayshree received such extensive burn injuries of 51%. The said facts were within the special knowledge of the Appellant and therefore it was obligatory on the part of the Appellant to explain how Jayshree received such burn injuries. In these circumstances the dying declaration of Jayshree that Appellant poured kerosene on her person and set her on fire has to be accepted, as the same is corroborated by oral dying declarations given to informant Vijay (PW-1) and Ramesh (PW-4) and other circumstantial evidence brought on record.

29. So far as the submissions of the learned counsel appearing for the Appellant that there is delay in lodging the FIR and no plausible explanation is offered in that behalf is

concerned, the evidence of the informant Vijay (PW-1) shows that he had not lodged the report immediately as his mental condition was not good as his sister was taking medical treatment and therefore he lodged the report on 24th January, 2011. Thus, the informant has given plausible explanation as to why there was delay in lodging the FIR. Thus, we find no substance in the submissions advanced by the learned counsel in that behalf. We have perused the spot panchnama and it does disclose that there were signs of scuffle and the household articles were lying in scattered condition and therefore the submissions made by learned counsel in that behalf, deserves no consideration.

30. After considering entire evidence on record, the trial Court, in Para 36 of the Judgment observed that the prosecution has proved

from truthful and voluntary statements made by the deceased Jayshree duly corroborated by other evidence on record that the accused committed murder of Jayshree by intentionally and knowingly causing her death by pouring kerosene on her person and by setting her ablaze on 21st January, 2011. The trial Court has further observed that the fact of pouring kerosene on the person of deceased Jayshree and setting her ablaze shows that the accused intended to cause death of Jayshree. Hence the prosecution has proved that deceased Jayshree died homicidal death at the hands of the accused and the prosecution is successful in proving the offence punishable under Section 302 of the Indian Penal Code committed by the accused. After considering the entire evidence on record, the trial Court has convicted and sentenced the accused as afore-stated.

31. It is alternatively argued by the learned counsel appearing for the Appellant that there was no intention on the part of the Appellant to kill his wife, and therefore the offence would fall under Section 304 Part II of the I.P. Code.

32. In our considered view, the aforesaid submissions of the learned counsel that the offence would fall under Section 304 Part II of the Indian Penal Code deserves no consideration for the simple reason that in absence of any explanation offered by the Appellant under which circumstances his wife Jayshree died, it is not possible to read the mitigating circumstances in favour of the Appellant. On the contrary, the Appellant poured kerosene on the person of Jayshree and when she was trying to run out of the house to save herself and was trying to open the latch of the door of the house, the accused thrown

matchstick on her person and set her ablaze, that too, when she was having one daughter aged about 6 years and at the time of incident, carrying advance pregnancy of 18 to 20 weeks. These facts clearly show the involvement and intention of the Appellant in the commission of offence. Though the learned counsel has placed reliance upon the exposition of law in the case of Kalu Ram (supra), the facts are distinguishable. In the reported case the Appellant therein in a highly inebriated stage approached the deceased when the demand for sparing her ornaments was made by him and when she refused to oblige, he poured kerosene on her and wanted her to light the matchstick. However, in the present case the Appellant though consumed liquor, was not in a highly inebriated stage. At the time of incident, Appellant – Suresh was taking dinner, he received so many missed calls on his mobile handset and when asked by Jayshree, he

told that his first wife Sarika was calling him from Ganjpeth and was asking him to reside with her separately. Jayshree told the accused that he had taken divorce from said Sarika and apart from having one daughter, she is carrying pregnancy of five months. The accused then started abusing and beating her by telling her that she should maintain children and he does not want to cohabit with her and wish to reside with his first wife Sarika. Thus, all these facts shows that the Appellant was in very much conscious condition when the incident took place. In the present case, there are no mitigating circumstances to accept the submission of the counsel appearing for the Appellant that the Appellant had no intention to kill his wife.

33. The Supreme Court in the case of Santosh Shankar Pawar Vs. State of Maharashtra⁴ in the

⁴ AIR 2015 SC 3789

facts of the said case where the allegations against the appellant were that the appellant therein after assaulting his wife with fists and kicks, poured kerosene from a nearby lamp and set her ablaze, observed in para 12 of the Judgment as under:

"12. Even assuming that the accused had no intention to cause the death of the deceased, act of the accused falls under clause (iv) of Section 300, IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death."

34. In the present case also, after abusing and assaulting Jayshree, accused poured kerosene on her person and set her ablaze. An intention can

be formed at the spur of the moment. As observed earlier, Jayshree was trying to run out of the house to save herself at which time accused came from behind and threw matchstick on her person and set her ablaze knowing fully well that she was carrying advance pregnancy of 18 to 20 weeks. The intention of the accused was clear to cause death of Jayshree and therefore the offence in the present case would not fall under any of the exception under Section 300 of the Indian Penal Code.

35. In the light of discussion herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record and has rightly convicted the Appellant-

accused. There is no perversity as such.

36. In that view of the matter, we are of the opinion that there is no merit in the Appeal. Accordingly, the Criminal Appeal stands dismissed.

[A.S. GADKARI, J.]

[S.S. SHINDE, J.]