

Vidya Amin.

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

CRIMINAL APPEAL No. 998 OF 2012

The State of Maharashtra	...	Appellant
VS.		
Hanmant Balu Mhaske	...	Respondent

CRIMINAL APPEAL No. 694 OF 2013

Hanmant Balu Mhaske	...	Appellant
VS.		
The State of Maharashtra	...	Respondent

Ms. S.S. Kaushik, APP for the appellant/State in Appeal No. 998 of 2012 and respondent in Appeal No. 694 of 2013.

Ms. Geetanjali Koli I/b. Mr. Vijay Killedar, Advocate for the appellant in Appeal No. 694 of 2013 and respondent in Appeal No. 998 of 2012.

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: 12th September, 2018**

JUDGMENT : (PER MRS. MRIDULA BHATKAR, J.)

1. These two Appeals are filed against the judgment and order dated 25th January, 2012 passed by the Additional Sessions Judge, Islampur in Sessions Case No. 26 of 2010 thereby convicting the accused under section 304 Part-I of Indian Penal Code and sentenced him to suffer R.I. for 7 years and to pay fine of Rs.5,000/- and in default, S.I. for one year.

2. The incident took place at 0.30 a.m. on 30th May, 2010 of

burning deceased Vanita, wife of the accused. It is the case of the prosecution that Vanita and accused were residing in a chawl at Islampur, District Sangli. The accused was addicted to liquor and he has sold her ornaments. On the night of 29th May, 2010 accused and Vanita had dinner, at that time, Vanita questioned him about her ornaments and demanded her ornaments back. The accused got angry and there was exchange of hot words between them. The accused took can of kerosene in a room and poured it on her person and set her on fire by telling that he wanted to get rid of her nagging permanently (in vernacular language “Tujhi kayamchi katkat sampavto” and closed the door and fled away. After hearing her shouts, the neighbours came running and opened the door. They found Vanita in a burnt condition. Immediately she was taken by the neighbours to the Government Hospital at Islampur. As per the advice of medical officer, she was taken to Civil Hospital. Vanita died on 30th May, 2010 at 9 a.m. Her dying declaration was recorded on the same day before her death. One head constable Mr. Shaikh from Islampur Police Station made enquiry and earlier offence was registered under section 307 of Indian Penal Code in C.R. No. 82 of 2010. However, she succumbed to 99% burn injuries and thereafter the

accused was prosecuted under sections 302, 342, 504, 506 of Indian Penal Code. PW-10 Bapu Narayan Shinde arrested the accused on 3rd June, 2010 under arrest panchnama at Exhibit 28, which is proved through PW-3 Dhanaji Vasant Hubale. He recorded the statements of some witnesses on 6th June, 2010. The accused voluntarily made statement and under panchnama Exhibit 30A and 31A, memorandum of seizure of gold necklace of Vanita was drawn on 6th June, 2010. The Investigating officer sent the articles to C.A. along with requisition letter and after completion of the evidence, he filed charge sheet. Thereafter the accused was committed to the Court of Sessions. The applicant/accused took defence of denial. The prosecution, in order to prove the case, examined 10 witnesses and the learned Judge after considering the evidence of the prosecution and the defence, acquitted the accused from the offence under section 342, 504 of Indian Penal Code and instead of Section 302, punished him for lesser offence, i.e., under section 304 Part-I and sentenced him to suffer R.I. for 7 years and also convicted under section 506 of Indian Penal Code. Hence, these Appeals.

3. Learned APP, while arguing the case, has submitted that

it is a case of a murder based on dying declaration where she has specifically mentioned that she was set on fire by her husband. Learned APP submitted that the incident took place at midnight in the house where only accused and deceased were residing. After setting her on fire, the accused ran away and the deceased was found in burnt condition. He submitted that the learned Judge has erred in convicting the accused under sections 304 Part-I and 506 of Indian Penal Code and giving lesser punishment of 7 years. He submitted that dying declaration could be the sole basis of conviction and evidence of PW-8 Vithal Dattatraya Mali was sufficient to prove the dying declaration. All the witnesses as well as independent witnesses have supported the case of the prosecution. The learned Judge ought to have appreciated the evidence of two jewellers as well as the recovery of gold ornaments at the instance of accused, who have also brought the relevant registers of selling the jewellery and thus it supported the truthfulness of the dying declaration.

4. The learned counsel for the appellant/accused has argued that the appellant/accused is innocent. The evidence of dying declaration is very weak, insufficient and untrustworthy. She

argued that the conviction based on such dying declaration is illegal and not sustainable. PW-1 Sagar Shinde and PW-5 Sangeeta Shinde, neighbours, who are the best witnesses, did not support the implication of the applicant/accused. On the contrary, they have stated that the applicant/accused was not present when she was ablazed. She, therefore, argued that the conviction of the appellant/accused under section 304 Part-I should be set aside and he should be acquitted from the said offence and Appeal be allowed.

5. The prosecution in all examined 11 witnesses. The incident has taken place on the night intervening 29th May, 2010 and 30th May, 2010 when the accused and deceased Vanita were together. PW-10 Bapu Narayan Shinde, attached to Islampur Police Station, when he received information of the burning of Vanita, he went to Civil Hospital, Sangli. He stated that he received dying declaration which was recorded by PW-8 Vithal Dattatraya Mali. The said dying declaration was considered as the FIR, which is recorded on the early hours of 30th May, 2010 (Exhibit 46). Immediately, the spot panchnama was carried out. The evidence of PW-10 Bapu Narayan Shinde disclose that the accused was

arrested on 30th June, 2010. His clothes were seized under arrest panchnama (Exhibit 28). On 6th June, 2010 the accused made statement that he is ready to disclose certain information that he sold the gold necklace to the jeweller, which was recovered from the jewellery shop and panchnama is recorded at Exhibit 31A.

6. The entire case of the prosecution is based mainly on the dying declaration, as the husband and wife were alone on the night intervening 29th and 30th May, 2010. Vanita's first dying declaration Exhibit 46 was recorded by PW-8 Vithal Dattatray Mali, Police Head Constable. He has stated that when he was on his duty at Civil Hospital Police Chowky, Sangli, he received telephonic message about Vanita's admission in the hospital. Then, he went to the Burn Ward at around 4.15 a.m. He contacted the medical officer of the Burn Ward. He got confirmed that Vanita was conscious. His evidence corroborates with the evidence of PW-9- Dr. Nijunk Bhavesh Mody. Police Head Constable Vithal Mali approached Dr. Mody and he informed him that he wanted to record the statement of Vanita and PW-9 Dr. Nijunk Mody certified that the patient was conscious and well-oriented to give statement. He also made statement on the top and below of the statement of

Vanita. The dying declaration is marked at Exhibit 46. PW-8-Vithal Mali has deposed that Vanita has stated that on the night of 29th May, 2010 after taking dinner with her husband, she requested him to get her ornaments redeemed from the jeweller and at that time, her husband got angry with her and he said that I will stop your nagging permanently (in vernacular language "Tujhi kayamchi katkat sampavto"). Thereafter he poured kerosene on her and set her on fire. She disclosed that PW-1 Sagar Ananda Shinde took her to hospital. Thereafter she was shifted to the Civil Hospital. Whatever she told were reduced into writing and the contents of her statement was read over to her and thereafter her thumb impression was taken. PW-1 Sagar Shinde, neighbour was called to attest the thumb impression. Thus, the dying declaration is proved through PW-8 Vithal Mali.

7. PW-1 Sagar Shinde was examined by the prosecution, however, he did not support the prosecution. Another neighbour PW-5 Sangita Shinde was also examined, however, she also turned hostile. The statement Exhibit 46 corroborates the evidence of PW-8 Vithal Mali. Vanita has specifically attributed the

role of pouring kerosene and setting her on fire, to her husband. She has mentioned that her ornaments were sold by her husband and that was the cause of their quarrel. The prosecution has examined PW-6 Sagar Ramchandra Salunkhe, a jeweller. Vanita made gold necklace from his jewellery shop. He has produced the said register, which is marked as Exhibits 37 and 38 and stated that as per the register, the account number of the deceased was 140 and he further deposed that in the month of June, 2010, deceased and accused came to the shop. Initially they mortgaged the necklace and subsequently sold the said necklace, totalling to Rs.2,600/- as they were in need of money. Thereafter the police seized the necklace on 7th June, 2010 which is under panchnama Exhibits 39 and 40. Thus, the evidence corroborates the contents in the dying declaration which supports the cause of quarrel. The case papers of admission of Vanita was produced which is marked at Exhibit 48. Vanita as per the case paper died due to 99% burn injuries. The defence could not demolish the evidence of dying declaration and evidence of PW-8 Vithal Mali. All these witnesses are found creditworthy and their evidence is hence believed. Thus, the dying declaration as per the requirement is found voluntary as well as truthful.

8. Though the charge is framed under section 302 of Indian Penal Code, from the evidence before the Court it is found that the incident has taken place in a spur of moment. When the quarrel took place between the husband and wife, it is not a pre-planned murder. But it is a case of culpable homicide not amounting to murder falling under Exception 4 of Section 300 and thus, the conviction under section 304 Part I is legal and we do not incline to disturb the same.

9. Thus, the finding of the trial Court of conviction under section 304 Part-I is legal and correct.

10. Both the Appeals are dismissed.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)