

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

CRIMINAL APPEAL NO.798 OF 2010

Shrirang Shridar Jahagirdar]
Age: 30 years, Occ: Service,]
R/o: 552, Sadashiv Peth,]
Pune.]..Appellant

Versus

The State of Maharashtra]
(Copy to be served upon Public Prosecutor,]
High Court Bombay,]
Through PSO Vishrambaug]
Police Station)]..Respondent

Mr. Rahul S. Kadam, Advocate for the Appellant.
Mr. H. J. Dedhia, APP for Respondent - State.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 15th JUNE, 2018**

ORAL JUDGMENT (B. R. Gavai, J)

1] The Appeal challenges the judgment and order passed by the learned Additional Sessions Judge, Pune in Sessions Case No.715 of 2009, thereby convicting the Appellant for the offence punishable under Section 302 of Indian Penal Code (“IPC” for short”) and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.200/- and in default suffer one month further

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rigorous imprisonment.

2] The prosecution story in brief as could be gathered from the material placed on record is thus :-

The Appellant/Accused was serving as a peon in Training College and residing at 152, Sadashiv Peth, Pune. The deceased Madhuri was the daughter of PW-2 - Smt. Sulbha Jadhav born from her first husband late Baban Gaikwad. PW-2 – Smt. Sulbha Jadhav had married Sakharam Jadhav, when deceased Madhuri was aged about 20 years. After the second marriage of PW-2 – Smt. Sulbha Jadhav, Madhuri was not residing with her and she was residing with her brother. Madhuri got married to accused on 2nd October 2008. Initially after marriage, they resided happily. It is the prosecution case that after sometime, the accused was suspecting the character of deceased and ill-treating her. He also used to beat her. It is the prosecution case that in the midnight of 25th April 2009 and 26th April 2009, the accused quarreled with the deceased and in the quarrel he poured kerosene on the person of the deceased and set her on fire by igniting matchstick. The dying declaration of the deceased came to be recorded on 26th April 2009

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at around 2.00 a.m. by PW-1 – Habibkhan Pathan. On the basis of the said dying declaration, an FIR came to be registered vide Crime No.116 of 2009 for the offence punishable under Section 307 of the IPC. After registration of an FIR, the accused came to be arrested immediately. The deceased succumbed to injuries on 30th April 2009. As such, an offence came to be converted for the offence under Section 302 of the IPC. After completion of investigation, a charge-sheet came to be filed in the JMFC Court No.4, Pune. Since the case was exclusively triable by the learned Sessions Judge, the same came to be committed to the learned Sessions Judge. Learned Sessions Judge framed charges below Exh.3. The accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned Trial Judge passed the order as aforesaid. Being aggrieved thereby, the present Appeal.

3] Mr. Rahul S. Kadam, learned counsel appearing on behalf of Appellant submits that the conviction solely on the basis of dying declaration would not be sustainable. It is submitted that from the evidence of PW-2, it is clear that deceased was frustrated since she did not have children and possibility of her committing

suicide, cannot be ruled out.

4] By now, it is settled principle of law that if dying declaration is found to be truthful, cogent, reliable and trustworthy, the conviction solely on the basis of the dying declaration would be permissible in law. The reliance could be placed upon the recent judgment of the Full Bench (Nagpur) of this Court in **Criminal Appeal No.183 of 2013**, wherein such a view has been taken by the Full Bench by placing reliance on the case of *Laxman Vs. State of Maharashtra reported in (2002) 6 SCC 710*. In the light of this settled legal position, we will have to examine present dying declaration.

5] PW-1 – Habibkhan Pathan states in his evidence that he was on patrolling and checking duty between the night of 25th April 2009 to 26th April 2009 in Vishrambaug Police Station area. He states that he was informed by PSO of Vishrambag Police Station that Madhuri was admitted in Sasoon Hospital as her husband had set her on fire and she had received burns. He states that thereafter he went to Sasoon hospital at about 12.30 a.m. He made inquiry with Medical Officer whether the patient was in a position to give BGP.

statement. The Medical Officer examined Madhuri in his presence and told him that she was conscious and was in a position to speak. The Medical Officer then endorsed on a paper before recording her statement. He requested Medical Officer to remain present while statement of Madhuri was being recorded. After the Medical officer put some preliminary questions, PW-1 started recording her dying declaration. The dying declaration was in question and answer format. She has stated in the dying declaration that since the date of marriage, her husband was suspecting her character and on that count there was also quarrel prior to the incident between them. She further told him that on 25th April 2009 at about 7.30 p.m. she and her husband were in the house. On the count of suspecting her character, her husband was annoyed. He took kerosene from the can and poured it on her person and set her on fire by igniting matchstick. PW-1 – Habibkhan Pathan has further stated that after the dying declaration was concluded, he asked Medical officer to write an endorsement on the conclusion thereof. The Medical Officer therefore made an endorsement that the dying declaration was recorded in his presence. He has deposed that he has read over statement to her and she told that the statement was correct.

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Thereafter he obtained her impression of left toe. The witness has been thoroughly cross-examined.

6] Learned counsel tried to harp upon the absence of the wording in the dying declaration to the effect “the same was read over to the deceased and she accepted it to be correct”. However in view of the judgment of the larger Bench in **Criminal Appeal No.183 of 2013**, such an endorsement would not make the dying declaration unacceptable, if otherwise, it is of the nature that inspires confidence in the mind of the Court. Perusal of the dying declaration would reveal that it has an endorsement at 2.00 a.m. by the Medical officer to the effect “patient is in sound state of mind & oriented to time place & person to give valid statement”. It has also an endorsement at 2.20 a.m. by the Medical Officer to the effect “Statement complete at 2.20 a.m. Patient is in sound state of mind at the end of statement”.

7] The prosecution has also examined PW-6 – Dr. Prashant Moon, who was on duty in the relevant ward No.25 on 26th April 2009. He has stated that at the time of making declaration, only him, the patient and police were present. He has further stated that BGP.

he examined the patient Madhuri and she was in a position to give statement. He has further stated that after the police recorded her statement, he again examined patient and found she was conscious, oriented. He has specifically stated that police read over the statement to Madhuri and police obtained her left great toe impression on the statement. He has also deposed that before starting her statement, he made endorsement on the paper and after completing her statement, he made his endorsement on the dying declaration. He has further stated that he was present near Madhuri from beginning till completing her statement. Though, this witness has been thoroughly cross-examined, nothing damaging has come in his evidence.

8] Taking into consideration the evidence of PW-1 read with evidence of PW-6, we are of the considered view that the dying declaration below Exh.14 is truthful, cogent and reliable. It is further to be noted that in the medical papers while admitting the deceased in ward No.25, PW-6 – Dr. Prashant Moon has stated with regard to homicidal attempt by pouring kerosene oil over body by husband at 8.15 p.m. on 25th April 2009. PW-6 - Dr. Prashant Moon

has stated in his re-examination that entire case papers are in his hand writing and they are signed by him. The said case papers have been marked as Exh.39.

9] We are of the considered view that the history in the medico legal papers while admitting the deceased corroborates the dying declaration below Exh.14. PW-2 – Smt. Sulbha Jadhav, mother of the deceased has deposed about the oral dying declaration given to her. She has stated that the deceased Madhuri told her that her husband poured Kerosene on her person and set her on fire. In the light of the aforesaid discussion, we are of the considered view that the learned Trial Judge has rightly considered the evidence led before him and convicted the Appellant. The Appeal is found to be without merit and as such dismissed.

[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]