

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1006 OF 2014**

Balasaheb Shankarrao Gangale Age 46 years, Occ: Mason Residing at Urali - Kanchan Taluka Haveli, Dist. Pune (At present accused lodged in Yerawada Central Prison, Pune)	..	Appellant
Vs.		
The State of Maharashtra Through Police Sub-Inspector Mandrup Police Station, Solapur	..	Respondent

....

Mr. Abhaykumar Apte Advocate appointed for the Appellant
Mr. Arfan Sait A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND P.N.DESHMUKH, J.
DATED : MAY 07, 2018
(SPECIAL VACATION BENCH)**

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, ACJ.]

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 27.5.2013 passed by the learned Additional Sessions Judge-2, Solapur in Sessions Case No. 283 of 2012. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs.1000/- i/d R.I. for six months.

2 The prosecution case briefly stated, is as under:

(1) Deceased Nagubai was married to appellant - Balasaheb in the year 1996-1997. At the time of incident, Nagubai along with her husband Balasaheb and their two children were residing at Mandrup Dist. Solapur. PW 1 Dareppa was the brother of Nagubai. Dareppa was residing at a distance of about 700 to 800 feet from the residence of Nagubai and Balasaheb. Appellant Balasaheb was addicted to liquor and under the influence of liquor, he used to assault Nagubai. He used to beat her quite frequently.

(2) The incident took place on 10.9.2012 at about 11.30 p.m. Balasaheb came home in an intoxicated state and started abusing Nagubai as she did not serve him dinner quickly. The appellant then poured kerosene on Nagubai and set her on fire. This was witnessed by PW 2 Ashwini who was the daughter of Nagubai and the appellant. Ashwini raised hue and cry. On hearing this, Dareppa rushed to the house of his sister Nagubai. He saw that his sister Nagubai had sustained burn

injuries. At that time, his sister Nagubai told him that her husband Balasaheb came home at about 11.30 p.m. under the influence of liquor. Her husband Balasaheb told her to serve him dinner. Her husband then started abusing her. Then he poured kerosene on her, set her on fire and ran away. Nagubai was taken to the civil hospital at Solapur. In the hospital, the dying declaration (Exh.21) of Nagubai was recorded by PW 3 PHC Mulani. PW 3 Mulani also recorded FIR (Exh.23) of Nagubai. Thereafter investigation commenced. PW 5 Birajdar also recorded dying declaration of Nagubai in the hospital. This dying declaration is at Exh. 36. Nagubai expired in the hospital on 16.4.2012 while undergoing treatment in the hospital. After completion of investigation, charge sheet came to be filed.

3 Charge came to be framed against the appellant under sections 302, 323 and 504 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant poured kerosene on his wife Nagubai and set her on fire which led to her death.

5 The conviction is mainly based on the evidence of PW 2 Ashwini, PW 3 PHC Mulani and PW 5 SEM Shri. Birajdar. PW 2 Ashwini was the daughter of deceased Nagubai and appellant Balasaheb. She has stated that they were residing at Indira Nagar Zopadpatti at Mandrup. Her uncle PW 1 Dareppa was residing nearby. Ashwini has further stated that her father under the influence of liquor, used to beat her mother Nagubai for no reason. The evidence of Ashwini shows that the incident took place at 11.30 p.m. She has stated that at about 11.30 p.m. her father came home. He had consumed liquor. Her father assaulted her mother as dinner was not offered to him

by Nagubai. Her father then poured kerosene on her mother and set her on fire with a match-stick. She made a hue and cry. Her maternal uncle PW 1 Dareppa immediately came to their house. Dareppa and others asked Nagubai what had happened? Thereupon, Nagubai informed them about the incident. Ashwini has stated that after setting her mother Nagubai on fire, her father ran away from the spot. Thus, the evidence of Ashwini clearly shows that the appellant set his wife Nagubai on fire.

6 PW 3 PHC Mulani has stated that on 11.9.2012 he was on duty at civil hospital at Solapur. Doctor informed him that Nagubai was admitted in the civil hospital with burn injuries. Mulani then visited the burn ward. Mulani asked the Doctor whether Nagubai was in a fit condition to give a statement. Doctor informed Mulani that Nagubai was in a fit condition to give a statement. Doctor gave an endorsement to that effect. PHC Mulani then recorded the statement of Nagubai (Exh.21). Nagubai told him that on 10.9.2012 at about 11 p.m. her husband came home and asked her to give him dinner. As there was delay in serving dinner to her husband, her husband

poured kerosene on her and set her on fire. PHC Mulani has further stated that at about 8.30 a.m. he again asked Doctor whether Nagubai was conscious and was able to give a statement. Doctor told PHC Mulani that Nagubai was in a fit condition to give a statement. He also gave an endorsement to that effect. PHC Mulani then recorded dying declaration of Nagubai which is treated as F.I.R. (Exh. 23).

7 PW 5 Shri. Birajdar was an Executive Magistrate. He was called to civil hospital Solapur on 11.9.2012. He reached hospital at 7.30 a.m. He requested the Doctor on duty to examine patient Nagubai and give his opinion whether Nagubai was conscious and in a fit condition to give a statement. Doctor examined Nagubai and gave an endorsement that she is in a fit condition to give a statement. Shri. Birajdar then recorded the dying declaration of Nagubai. Nagubai in her dying declaration has stated that at about 11.30 p.m. her husband came home under the influence of liquor and assaulted her. Her husband assaulted her because she did not give him dinner. Her husband Balasaheb then poured kerosene on her and set her on fire. This dying declaration is

at Exh. 36. On perusal of all the three dying declarations, we find them to be cogent and consistent. On perusal of the evidence of PW 3 PHC Mulani and PW 5 SEM Birajdar, we find that nothing has been brought on record to cause us to disbelieve their testimony. We are of the opinion that their testimony inspires confidence, hence, we have no hesitation in relying on the same.

8 PW 3 PHC Mulani and PW 5 SEM Birajdar have stated that before they recorded the dying declarations of Nagubai, they had asked Doctor to examine Nagubai and to state whether Nagubai was in a fit condition to give a statement. They have further stated that the Doctor examined Nagubai and stated that she was conscious and in a fit condition to give a statement.

9 PW 4 Dr. Aalwekar is the Doctor who examined Nagubai and certified that she was conscious and in a fit condition to give a statement. Dr. Aalwekar has stated that police had come to record the statement of Nagubai. They made enquiry with her whether Nagubai was in a fit condition

to give a statement. She examined Nagubai and stated that Nagubai was conscious, fit and able to give a statement and she gave endorsement to that effect. Thereafter, Special Executive Magistrate requested her to examine the patient Nagubai and give opinion whether she was in a fit state to give a statement. Accordingly, at 7.50 a.m. Dr. Aalwekar examined Nagubai and found that she was conscious and in a fit condition to give a statement and she made endorsement to that effect accordingly. Thereafter, the SEM recorded the statement of Nagubai. After recording the statement, Dr. Aalwekar again examined the patient on the request of SEM and found that Nagubai was conscious and was in a fit condition, hence, she gave endorsement to that effect.

10 The prosecution case that the appellant poured kerosene on Nagubai and set Nagubai on fire is corroborated not only by PW 2 Ashwini, PW 3 Mulani and PW 5 SEM Shri. Birajdar but the medical evidence also corroborates the same. PW 4 Dr. Aalwekar has stated that Nagubai was admitted to the hospital on 11.9.2012 at about 3.45 a.m. with burn injuries. Dr. Aalwekar has stated that Nagubai had sustained about 89%

burn injuries. The post-mortem notes (Exh. 18) also shows that Nagubai had sustained 86% burn injuries and the cause of death was on account of burn injuries. The fact that the appellant poured kerosene on his wife Nagubai and set her on fire is further corroborated by the C.A. Report Exh. 42 which shows that clothes of Nagubai tested positive for residues of kerosene.

11 In addition to the above evidence, the prosecution is relying on the evidence of PW 1 Dareppa who was brother of Nagubai. Dareppa has stated that Nagubai was married to appellant Balasaheb in the year 1996 - 1997. Ashwini was the daughter of Nagubai and the appellant. Dareppa has further stated that at the time of the incident, his sister Nagubai along with appellant Balasaheb and their children, were residing at Indira Nagar Zopadpatti at Mandrup. He was residing at a distance of about 500 feet from the house of his sister Nagubai. Dareppa has further stated that the incident took place at about 11.30 p.m. on 10.9.2012. At about 11.30 p.m. he heard hue and cry which was coming from the house of Nagubai and Balasaheb, hence, he went to the house of Nagubai and

Balasaheb. He saw that his sister had sustained burn injuries. He made enquiry with his sister Nagubai. Thereupon, Nagubai told him that her husband Balasaheb came home at about 11.30 a.m. under the influence of liquor. Balasaheb asked her to give him dinner. She told Balasaheb that he should not consume liquor, thereupon, Balasaheb got annoyed and started abusing and assaulting Nagubai. Balasaheb then poured kerosene on her and set her on fire.

12 Mr. Apte, the learned counsel appearing for the appellant submitted that the evidence of PW 1 Dareppa that his sister Nagubai made oral dying declaration to him, cannot be believed, because, Dareppa has stated that he had no talk with Nagubai during the journey in the Jeep from Mandrup to civil hospital Solapur. He submitted that this shows that no dying declaration at all, was made by Nagubai to Dareppa. As far as this submission is concerned, the evidence of Dareppa shows that at about 11.30 a.m. he heard sound of hue and cry. It was coming from the direction of the house of his sister. He saw fire in the house of his sister. He rushed to the spot. He saw his sister Nagubai had sustained burn injuries. On making

enquiry with his sister, his sister Nagubai told him that her husband Balasaheb (appellant) had poured kerosene on her and set her on fire. Thus, it is seen that this dying declaration was made in the house of Nagubai. Once this dying declaration was made by Nagubai to her brother, there was no need for her to keep on repeating the same during the journey by Jeep from Mandrup to civil hospital at Solapur. Thus, we find no merit in this submission.

13 Mr. Apte thereafter submitted that PW 1 Dareppa made a reference to Jalal and Ramesh coming to the house of Nagubai. He submitted that these witnesses were not examined. However, on perusal of the evidence of PW 1 Dareppa, it is seen that Jalal and Ramesh came to the spot a little later. Thus, non-examination of these witnesses would in no way affect the prosecution case.

14 Mr. Apte thereafter submitted that the appellant has been falsely implicated in this case and in fact, Nagubai committed suicide by pouring kerosene on herself and setting herself on fire. To support this contention, he has placed

reliance on the evidence of PW 1 Dareppa who is the brother of Nagubai. He pointed out that Dareppa has admitted that Nagubai used to tell him that she was fed up with the conduct of her husband Balasaheb and she wanted to commit suicide. No doubt, Dareppa has given this admission wherein he has stated that his sister used to tell him that she was fed up with the conduct of her husband Balasaheb and therefore, wanted to commit suicide with her children. However, looking to the clear and categorical evidence of PW 1 Dareppa, PW 2 Ashwini, PW 3 PHC Mulani and PW 5 SEM Shri. Birajdar, we are of the opinion that the prosecution has proved beyond reasonable doubt that the appellant poured kerosene on his wife Nagubai and set her on fire due to which she died.

15 On going through the record, we find no merit in this appeal and this appeal is dismissed.

P.N.DESHMUKH, J.

ACTING CHIEF JUSTICE