

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

CRIMINAL APPEAL NO.1331 OF 2012

Arshad Khan Mehboob Khan Afzal Khan ... Appellant
Age : 40 Yrs. Occu : Nil
R/O. Cama Road, Raondevi Hill,
Rahat Communication Center.
Kama Park, Andheri (W), Mumbai.
(At present Nashik Road Central Prison)

Versus

State of Maharashtra ... Respondent

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Mr. Shashikant Chaudhari, Advocate for the Appellant.
Mr. S. V. Gavand, APP for Respondent – State.

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CORAM : PRASANNA B. VARALE &
PRAKASH D. NAIK, JJ.

DATE : 29th JULY, 2020.

JUDGMENT : (Per : Prakash D. Naik J.)

1. This is an appeal challenging the Judgment and order dated 8th September, 2004 passed by the Additional Sessions Judge, Greater Bombay in Sessions Case No. 518 of 2002 convicting the appellant for offence punishable under Section 302 of Indian Penal Code (for short "IPC") and sentencing him for imprisonment for life.

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

The accused and the deceased-Ravi Verma were working together at the Pan Shop of Shivling Godda. Services of accused were discontinued. He was seething in anger and ire. On 25th September, 2001 in the wee hours, deceased Ravi Verma was sleeping near R.K. Juice Centre which is in close proximity of Andheri Railway Station. At about 2.30 a.m. the accused poured some liquid on Ravi Verma and set him on fire. Ravi Verma started shouting for help. Accused ran away. Some persons tried to help the victim in dowsing fire. He was removed to Cooper Hospital. Matter was reported to the Police. Statement of victim was recorded. First Information Report (for short "FIR") was registered under Section 307 of IPC. The victim was treated in Cooper Hospital. He was shifted to K.E.M. Hospital. He passed away on 30th September, 2001. The offence was altered to Section 302 of IPC. The dead body was sent for post-mortem. Accused was arrested. During the course of investigation, water bottle containing combustible liquid was discovered at the instance of the accused. Statement of witnesses were recorded. On completing investigation, charge-sheet was filed.

3. Charge was framed against the accused under Section 302 of IPC by order dated 18th March, 2004. The accused denied the charge. Prosecution examined 14 witnesses. Statement of the accused was recorded under Section 313 of Cr.P.C. Accused was convicted and sentenced to suffer imprisonment for life.

4. During the pendency of appeal report dated 31st January, 2019 was submitted to this Court which was taken on record and marked as "R-I" for identification vide order dated 18th February, 2019. The report indicated that the appellant has been released from jail after undergoing sentence.

5. Learned advocate for the appellant submitted as follows:

i) There is no cogent evidence to establish the offence against the appellant.

ii) The trial Court has relied upon the evidence of PW-2, who claimed that he was sleeping next to the deceased and heard conversation between the accused and deceased and deceased was set on fire by accused. PW-2 nowhere stated that

the accused poured liquid on the person of deceased. Prosecution has failed to examine Dilip Yadav, who was also sleeping at the place of incident.

iii) The trial Court failed to appreciate that PW-2 had stated that the deceased used to sleep near him occasionally and not regularly. Hence, the accused would not be certain where the deceased would be sleeping in the night of incident and therefore it cannot be said that he was carrying any liquid with him for using it in commission of crime. PW-2 had failed to identify the clothes of deceased.

iv) The trial Court has committed error in considering that PW-4 – Venkatesh Prasad Godda had clear glimpse of accused running towards him and deceased shouting for help. However he did not see PW-2 – Ramesh Yadav, who claimed that he was chasing the accused. This shows that PW-2 and PW-4 are not trustworthy witnesses.

v) The written dying declaration and oral dying declarations suffers from serious infirmities. The version of the witnesses to whom oral dying declarations were made are

afterthought. The written dying declaration is doubtful. PW-10 admitted that, right hand of Ravi Verma was burnt. It is difficult to accept that the victim would sign the document. Hence, the dying declaration seems to be fabricated document. There are material contradictions in the testimony of witnesses. The nature of evidence is unworthy.

6. Learned APP submitted that, version of witnesses is trustworthy. Their evidence was unshaken in the cross examination. The contradictions are minor in nature and no way affect the prosecution case. All the witnesses are natural and nothing was brought on record by the defence to submit that the appellant was having any enmity or animus with prosecution witnesses. The ocular evidence and medical evidence fully supports the prosecution case. There are eye witnesses to the incident. There is corroborative evidence on record which establishes the prosecution case beyond doubt.

7. We have scrutinized the evidence. The prosecution has examined 14 witnesses. PW-1 Mohd. Yasin Shaikh is the panch witness, in respect to memorandum statement of the

accused leading to discovery of water bottle containing liquid used in commission of crime. Memorandum Panchanama and discovery Panchanama were adduced in evidence vide Exh.6 & 7 by this witness. PW-2- Ramesh Srigovind Prashant Yadav is the witness, who was sleeping near deceased. He stated that, the accused had set the deceased on fire by matchstick. PW-3 Shivling Godda is the Pan Shop vendor, where accused and deceased were working. According to him, when he went to Cooper Hospital, the victim told him that the accused had set him on fire. PW-4 Venkatesh Godda has stated that, he saw Ravi Verma on fire and accused running from the place of incident. The victim told him that accused set him on fire. He took the victim to the hospital. PW-5 Samir Shaikh is the panch witness for scene of offence Panchanama. Panchanama was exhibited in evidence as Exh.13. PW-6 - Ganpat Narayan Pandit has deposed that, he saw Ravi Verma on fire and accused running from the place of incident. PW-7 Sarwaribegum Shaikh is the owner of premises which was let out to the accused. PW-8 Sitaram Gupta is Police Sub Inspector, who recorded statement of victim at Cooper Hospital. The statement of victim was marked as Exh.20

in the evidence. PW-9- Shaikhshafi Abdul Sattar is the Auto rickshaw driver. He saw victim on fire and accused running from that place. PW-10- Dr. Priyesh Krishnaraj Sampat was attached to Cooper Hospital. Injury certificate and indoor medical papers were marked as Exh.24 & 25 in evidence. PW-11 Motilal Savale was A.S.I. PW-12 Dr. Manoj Dashrath Gupta conducted post-mortem. PW-13- Suresh Patil is the constable, who seized the clothes of accused. Panchanama was marked as Exh.33. PW-14 Shaikh Abdul Rauf is the Investigating Officer. Medical certificate, Leave and License agreement and forwarding letter/ Chemical Analysis (C.A.) reports were marked as Exh.35, 36 & 37.

8. The defence of the accused is total denial of the offence.

9. It would be relevant to first examine the evidence of witnesses who were near the place of incident and or met the victim after incident.

i) PW-2 Ramesh Yadav has deposed that, in the year 2001 he was serving at R.K. Juice Stall at Andheri (East)

Railway Station. Accused was working in Pan Shop near R.K. Juice Centre. On 24th September, 2001 at about 3.00 a.m. Ravi Verma was sleeping near him. He was having some conversation with accused. The accused put the matchstick and set Ravi Verma on fire. He raised alarm. He ran after the accused but he escaped from platform No.1. He was cross examined. His evidence was not shaken in any manner. In cross examination he stated that accused threw matchstick on Ravi and ran away. He chased accused upto platform No.1. Victim was removed to hospital. Dilip also got up at the same time. He did not have conversation with Dilip. He could not remember colour of clothes of victim at the time of incident. He could not state colour of clothes of accused at the time of incident.

ii) PW-3 Shivling Godda has stated that accused and Ravi Verma were working in his Pan shop. On 24th September, 2001 his Pan Shop was closed in the night. He was told on the next day Ravi Verma and accused fought with each other. Ravi Verma was set on fire and he is in hospital. He proceeded to Cooper hospital. He met Ravi Verma. On inquiry, Ravi Verma told him that, the accused set him on fire and ran away. In

cross examination he stated that R.K. Juice Centre is hardly 15 feet away from the Railway Station. He did not remember the name of the person who informed him about the incident. His statement was recorded on 5th October. On 25th September, inquiry was made with him but statement was not recorded. He knows the accused for 5-6 years. He was working with him for one and half year before the incident. Since he was not regular, he was removed from services. Business is conducted in the name of Akash Verma who is relative of Ravi Verma. From the cross examination it can be seen that the defence has not been able to disturb evidence of this witness with regards to the statement made by Ravi Verma to him stating that he was set on fire by the accused and he ran away.

iii) PW-4 Venkatesh Godda has deposed that, he knows the accused. He was working in Pan Shop. On 24th September, 2009 at about 3.30 a.m. he went to take tea after closing business. He saw accused running and Ravi Verma in flames. He rushed to save him. He tried to extinguish the fire. The victim had suffered burn injuries. Rickshaw was called and he took victim to Cooper hospital. His clothes were smelling of petrol.

The victim told him that accused had set him on fire. Ravi Verma was his friend. Employer of Ravi Verma came there. He narrated him the incident. In the night of incident the accused had visited his stall. He was drunk. He was carrying small Bisleri water bottle containing something like petrol. He was shown Article-1, but he could not say whether it was same bottle. In the cross examination he stated that, he cannot read Hindi or Marathi. He does Pavbhaji business in the night. Sridhar Poojari is the owner of the stall of Pavbhaji where he is working. Enquiry was made by police with him on 25th September, but statement was not recorded on that day. His statement was recorded as per his narration. He did not tell police as to which clothes accused was wearing. Ravi Verma was shouting for help. Accused was running towards his direction. When he saw accused running, he did not suspect anything. He did not see anybody running after the accused. He saw Ravi Verma near Juice Centre. He was in flames. He extinguished fire. Cooper hospital is at 5 to 7 minutes driving distance from Andheri Station. The victim was immediately admitted as emergency case. The victim spoke to him. His statement was recorded on

27th September, 2001. On perusal of his cross examination we find that nothing was elicited which could doubt version of this witness. He appears to be natural witness. He corroborated visit of employer of the victim (PW-3) to Cooper Hospital.

iv) PW-6 - Ganpat Narayan Pandit has deposed that, he has newspaper stall at Andheri Railway Station. The accused had a Pan Stall. The deceased was working with accused. He saw Ravi Verma in burnt condition. Accused came running from platform No.1 and ran to the opposite side. Nobody was chasing him. crowd had collected near Ravi Verma. People were trying to extinguish fire. In cross examination he stated that no questions were put to him regarding clothes of the accused. There was no suspicion when he saw accused running. He did not hear noise from behind the accused. He did not know as to which precise place Ravi Verma was burnt. He had not seen the clothes of the victim. He did not see anybody chasing the accused. He had seen Ravi in flames. The cross examination was vague and nothing to controvert the version of the witness was brought through his cross examination. On the contrary he affirmed that he had himself seen Ravi in flames.

v) PW-9 – Shaikh Shafi Abdul Sattar is a rickshaw driver. According to him he was knowing accused and deceased. Both were working in Pan Shop. At about 4.00 a.m on 25th September, 2001 he was standing near auto rickshaw at Andheri Railway Station. He saw that the accused came near the place twice and peeped into the place where Ravi Verma was sleeping. He went inside the Juice Center. Five minutes thereafter, accused was seen running. Ravi Verma followed him and he was shouting that accused had set him on fire. Accused ran towards platform No.1. Ravi Verma was on fire and he was trying to run away. He tried to extinguish the fire. He took Ravi Verma in his auto-rickshaw to Cooper hospital. While on the way Ravi Verma told him that accused was removed from the job and he was annoyed with him and set him on fire. He was admitted to Cooper hospital. He identified the accused. He was called to act as Pancha for Inquest Panchanama. He acted as Panch to said Panchmana. He was with Ravi Verma from 25th to 30th September, 2001. His statement was recorded on 25th September, 2001. After the accused peeped in, he went inside and then Ravi Verma caught fire. The precise period of 5

minutes and that he was inside is not mentioned in his statement before the police. Ravi Verma ran towards platform No.1 when he caught fire in the same direction where the accused had ran. Only he and another person whose name is Lalu and who works in a Pavbhaji stall took part in extinguishing fire. Lalu's Name is Gauda. He was alongwith him when Ravi was removed to hospital. Venketesh @Lalu works in Pavbhaji Shop. Venkatesh was in the auto-rickshaw along with him and Ravi Verma. They both admitted victim in hospital. Police came to the hospital and at that time Venkatesh and he was there in the hospital. Statement of Venkatesh was recorded in the hospital. The cross examination of the witness establishes that the victim was in auto-rickshaw of PW-9 with PW-4 Venkatesh Godda.

vi) The other evidence is of panch witnesses, Police Personnel and Medical Officers. PW-1 Mohd. Shaikh is the panch witness. He stated that he was called on 26th September, 2001 by police. Accused made the statement that he would point out the place where he had kept the water bottle. He took them to platform No.1 of Andheri Railway Station and R.K.

Juice Stall. He took out a bottle from behind the water tank. Some drops of petrol were seen. Panchanama was drawn. In the cross examination he stated that he is conducting the business of selling spectacles. Police did not know his residential address. He was called by the police from his residence through one boy. There was open space around and behind the place where the bottle was taken out. Accused was not handcuffed. In the Panchanama it was stated that accused was hand cuffed. PW-5- Samir Shaikh acted as panch witness. He was called by the police on 25th September, 2001. He visited scene of offence. Panchanama was drawn. It was read over and explained to him, he signed the same. The Panchanama was exhibited in evidence. In cross examination he stated that, his place of business is near police chowki. He is scared of police. He was shown articles at police station. Shirt was shown at Police Station.

vii) PW-7 – Sarwaribegum Shaikh is the owner of premises. She knows the accused. In 2001 the first floor premises was given to him on rent. He was staying alone. On 24th April, 2001 the accused did not return back in the night. On the next day police came there. In cross examination she stated

that on 25th September, 2001 Police came to her. Statement was recorded by the police on 25th September, 2001. She had not seen the accused at the police station on 25th September, 2001. She came to know that the accused was arrested on 25th September, 2001. She never met the accused in police lockup. The staircase for the first floor is from outside. The accused would neither inform her while going nor after returning.

viii) PW-8 Sitaram Gupta is Police Sub Inspector attached to Andheri Police Station. He was on night duty. He received phone call from Cooper Hospital. He went to hospital. He saw Ravi Verma in burnt condition. He recorded his statement immediately. Victim was in position to talk. He obtained his signature. He admitted contents of statement. Statement was marked as Exh.20. The said statement mentions that accused poured some liquid substance and set him on fire by burning matchstick. He also recorded statement of Dilip Yadav and Ramesh Prasad. FIR was registered by A.S.I. Mr. Savale. In cross examination he stated that he did not obtain the certificate of doctor regarding fitness of Ravi Verma to make statement. The doctor assured that he would give the certificate afterwords. On

reading the dying declaration on the face of which it cannot be said that it was taken down in the hospital. One has to ascertain that the maker of the statement is in a fit condition to make it. From the said document itself it cannot be said that he was in a fit state to give statement. Ravi Verma made statement in Hindi. Time has not been mentioned. He recorded statement in Marathi.

ix) PW-11 Motilal Savale was Assistant Sub Inspector attached to Andheri Police Station. He was night S.H.O. He was informed that one person was set on fire. Patient was removed to hospital. A.P.I. Gupta recorded statement of injured and handed over it to him. Based on the statement of injured he recorded FIR. It was marked as Exh.27. The FIR was filed in the Court. The cross examination of this witness was declined.

x) PW-13 Suresh Patil was the Head Constable. He deposed that accused was arrested. His clothes were attached in the presence of panchas. Panchanama was drawn. In the cross examination he denied that the Panchanama was false. He denied that he collected the shirt from Juice Center. Accused

was arrested in his presence.

xi) PW-14 Shaikh Abdul Rauf was attached to Andheri Police Station as Police Inspector. He was present when PSI Gupta recorded statement of victim. He conducted investigation. Statement of witnesses were recorded. On 26th September, 2001 he recorded further statement of victim Ravi Verma. He recorded statement of other witnesses. Chemical Analysis (CA) reports were received. He submitted charge-sheet. He was cross examined. He stated that bottle was retrieved from the spot on 26th September, 2001. He seized the article and put label on it. It is not specifically mentioned that the bottle was sealed. Juice Centre is visited by the public round the clock. The accused was not hand cuffed when he was taken for discovery. The word "Bedi" is the Marathi equivalent for hand cuff. What is mentioned in that regard in Panchnama is recorded by mistake. Article 1 bottle was not sent to finger print expert. The articles were lying at the police station in Muddemal room from 25th September, 2001 to 21st October, 2001. Dilip Yadav is not traceable.

xii) PW-10, Dr. Priyesh Sampat was Medical Officer, attached to Cooper hospital. According to him, he had examined patient Ravi Verma. History was given by the patient which was written by him in the record. He told that he was set on fire after sprinkling kerosene. The patient was at that time in moderate condition. His pulse and BP were normal. He was conscious oriented. He had sustained 36 to 40 percent burns. He was in a position to make statement. He was administered I.V. fluids, I.V. antibiotics and pain killers. He was subsequently transferred to V. H. Desai hospital on 26th September, 2001. The extent of burns sustained by him could have caused death. He had issued injury certificate. It was marked as Exh.24. In cross examination he stated that injuries mentioned in the certificate were marked as simple. The injuries were simple but complications can arise subsequently which may assume form of dangerous. One of the complication could be non-provision of adequate medical facility. Face and neck of patient were completely burnt. It was case of superficial burns. In absence of complications, injuries are not dangerous to life.

xiii) PW-12 Dr. Manoj Gupta was working at K.E.M.

hospital. Victim expired on 30th September, 2001. He conducted post-mortem on body of Ravi Verma. He stated that there were external injuries on the body. He also noticed internal injuries. Injuries were possible by burns. The opinion as to cause of death is Septicaemia pneumonia due to 52-60% superficial to deep burns. He produced Post-mortem report and cause of death certificate. In cross examination he stated that he cannot say what should be the quantity of petrol to cause injuries. He did not feel any smell of kerosene or petrol when he examined the body. The infection and Pneumonia were the ultimate cause of death. The hand and the fingers of the patient were not completely burnt. Most of the internal organs were congested on account of septicemia.

10. We find that there is cogent evidence on record which proves the prosecution case. PW-2 is the eye witness to act of setting victim on fire by accused. The accused escaped from place of incident after setting victim on fire. PW-4 saw victim in flames. He also saw accused running. PW-6 saw victim in burnt condition. He saw accused running from spot. PW-9 saw accused running and stated that victim was shouting that

accused had set him on fire. Thus, there is evidence of accused setting victim on fire and that he was running from the spot of incident. The prosecution case is also supported by oral and written dying declarations. PW-3 visited hospital after hearing about incident. His conduct is natural. Victim was working with him. Accused was also working with him in the past. When he visited hospital victim told him that accused had set him on fire. His visit has been corroborated by PW-4. The evidence of PW-4 also refers to the fact that he was in Auto- rickshaw with victim. The victim was taken to Cooper hospital. The victim told him that, accused set him on fire. This witness has also established presence of PW-4 with victim in his Auto-rickshaw. Thus, there were oral dying declarations to PW-3, PW-4 and PW-9.

11. In pursuant to incident and admission of victim in hospital, PW-8 Sitaram Gupta, PSI attached to Andheri Police Station recorded statement of victim. The statement was signed by victim. The statement is in the nature of dying declaration. The statement mentions that it was written in Marathi and explained to victim in Hindi. The defense had assailed the dying declaration on the ground that, it could not have been

signed by victim and he was not in fit condition to make statement. There was no endorsement of doctor on the statement about fitness of victim to make statement. The defense has brought minor infirmities in cross-examination but it does not discard the testimony with regard to involvement of the accused. Although the victim was in pain it could not be said that, there was impediment for him to sign his statement. On perusal of Exh.20 it would make it clear that the maker of signature was not comfortable putting it on the statement. The evidence of PW-10 Medical Officer taken as a whole does not show that it was difficult for the maker of signature to put it. PW-10 Medical Officer has stated that victim was conscious and oriented.

12. PW-10, Medical Officer attached to Cooper Hospital also refers to history given by patient(victim). This is another piece of evidence which supports prosecution case. Victim told him that he was set on fire after sprinkling kerosene. This witness has produced indoor case papers Exh.25A. The history provided by patient was recorded in case papers on 25th September, 2001 at 5.05 a.m., which reads as follows :

“Alleged h/o. Assault today about 4.45 a.m. by sprinkling kerosene and setting on fire the pt.”

This witness examined the victim. He stated that patient was in moderate condition. He was in position to make statement.

13. PW-12 Dr. Manoj Gupta conducted postmortem. He issued cause of death certificate. He stated that there is no fixed criterion percentage wise of burns which is sufficient to cause death. Even a patient with 20% burns accompanied with complications can die. While here the percentage was more. That was sufficient to cause death. The cause of death certificate stated cause of death as pneumonia following 50 to 60% superficial to deep burns. Homicial as alleged. The postmortem report refers to injuries of victim and same cause of death.

14. The evidence of PW-1 refers to recovery of water bottle at the instance of accused. The prosecution case is that petrol was poured from the bottle on the person of victim and he was set on fire. Some drops of liquid substance were noticed in the bottle. PW-5, Panch for spot Panchanama has referred to recovery of articles, such as burnt shirt, bag, watch and cash. CA

report Exh.37 mentions that full shirt was examined and result of analysis regarding test for detection of petrol residues are positive. CA report for partly burnt half shirt and orange liquid in plastic bottle indicated that results of the tests for the detection of petrol residues on shirt were positive and the liquid is petrol.

15. Death is homicidal. The presence of witnesses at the place of incident is natural. Their evidence is trustworthy. There is evidence of witnesses who had seen accused setting victim on fire. The accused was running from place of incident. His presence is established. Dying declarations corroborate prosecution case. The defense has brought on record certain omissions and contradictions. However, it is not sufficient to disbelieve case of prosecution. Trial Court has analysed the evidence of witnesses in great detail. Trial Court has given cogent reasons while convicting the appellant. Trial Court has given thought to the cross-examination of witnesses, scanned evidence and arrived at finding of guilt of accused. We do not find any reason to disturb the findings of trial Court. We are satisfied that there is cogent evidence on record to establish the

charge against appellant. The prosecution has proved its case beyond reasonable doubt. Hence, appeal must fail.

16. Hence, we pass the following order :

ORDER

- i) Criminal Appeal No. 1331 of 2012 is dismissed.
- ii) We appreciate the assistance rendered by the learned Counsel appointed to prosecute the appeal on behalf of the appellant and we quantify the fees payable to him at Rs.5,000/- (Five Thousand Only). The Registry to ensure payment of fees to the learned Counsel appointed on behalf of the Appellant, within four weeks from today.
- iii) The appeal stands disposed of accordingly.

17. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

(PRASANNA B. VARALE, J.)