

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.88 OF 2021

Suresh Babu Giri,
age 55 yrs, Occ. Driver,
R/o At Post Rajnagar, Mukundwadi,
Aurangabad, Tq. & Dist Aurangabad.

..Appellant..
(orig. accused)

Versus

The State of Maharashtra
Through Police Station Mukundwadi,
Tq & District Aurangabad.

..Respondent..
(orig complainant)

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Mr. S K Adkine, advocate for the appellant (Appointed)
Mr. S P Deshmukh, APP for the respondent-State.

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CORAM : V.K. JADHAV & S.G. DIGE, JJ.

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Reserved on : 19.07.2021
Pronounced on : 28.07.2021

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JUDGMENT :- (Per V. K. Jadhav, J.)

1. This appeal is directed against the judgment and order of conviction passed by the Additional Sessions Judge, Aurangabad dated 11.9.2015 in Sessions Case No.118 of 2013 thereby convicting the appellant/accused Suresh s/o Babu Giri for the offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/-.

2. Brief facts of the prosecution case, are as follows :-

a] It is the prosecution case that the appellant/accused Suresh Giri had committed murder of his wife Bebibai by pouring kerosene on her person and setting her on fire with the help of matchstick. Deceased Bebibai had taken initiative to fix marriage of their daughter with the relatives of her side. However, the appellant/accused was not agree for the said relation. On 18.9.2012 at about 10.30 to 11.00 p.m. the appellant/accused came to the house by consuming liquor. Their children slept on terrace. Deceased Bebibai was alone in the house. The appellant/accused had raised the quarrel with deceased Bebibai by saying as to how she had taken initiative to fix the marriage of their daughter. Deceased Bebibai had replied to him that the boy and his family members are good persons and, therefore, she had decided to give their daughter in that family. The appellant/accused got annoyed. He had abused and assaulted deceased Bebibai with kicks and fist blows. Thereafter, the appellant/accused took out kerosene from the stove and poured it on her person and set her on fire with the help of match stick. After

setting her on fire, the appellant/accused ran away from the house. Deceased Bebibai had raised a hue and cry. By hearing her hue and cry, her son and daughter came down from the terrace. They had also shouted for help. Neighbour also came there. Thus, all of them took injured Bebibai to Sumananjali Hospital, Aurangabad.

b] PW 4 PHC Pandit Ratiram Bangare attached to Mukundwadi police station at the relevant time informed on phone by the PSO about the MLC received from Sumananjali Hospital, Aurangabad. Thus, he went to the police station at about 3.30 am in the night. Thereafter, he went to the Sumananjali Hospital. Patient was admitted in Ward No.202 of the Sumananjali Hospital. He had recorded the statement of deceased Bebibai as per her say. Deceased Bebibai had stated before him that at about 22.30 hours while she was cooking in the house, her husband came inside the house under the influence of liquor and quarreled with her on account of the settlement of the marriage of their daughter with the relatives of the deceased. Deceased Bebibai had further stated that accused

started beating her, poured kerosene on her person and set her on fire by means of match stick and then ran away. Before commencement and after completion of the said statement, PW 4 PHC Bangare has obtained endorsement of in-charge Doctor about fit state of mind of the deceased Bebibai to give statement. Said statement-cum-dying declaration is marked at Exhibit-21. On the basis of the said statement-cum-dying declaration Exhibit-21, crime no.298 of 2021 for the offence punishable under section 307, 504 of the IPC came to be registered at police station, Mukundwadi, Aurangabad. PW 9 PSI Amit Ghule took over the investigation of the crime. He had visited the spot of the incident and drawn spot panchnama exhibit-14. He had seized one stove, kerosene can, partly burnt pieces of clothes, match box from the place of the incident. He has also recorded statement of the witnesses. He had also issued letter to the Special Executive Magistrate with a request to record the statement of the injured. After recording of her statement by the Special Executive Magistrate, deceased was shifted to Ghati Hospital, Aurangabad where she died on 26.9.2012. He had also

drawn inquest panchnama and sent the dead body for postmortem examination. After completion of the investigation, he had submitted the charge-sheet against the accused.

c] The learned Additional Sessions Judge, Aurangabad framed charge at exhibit-8 for the offence punishable u/s 302, 504 of the Indian Penal Code. Contents of the charge were read over and explained to the appellant/accused in vernacular and he has pleaded not guilty to the charge and claimed to be tried. Prosecution has examined in all ten witnesses to substantiate the charges levelled against the accused. The defence of the appellant/accused is of denial. According to him, he was not present in the place of incident at the relevant time. The appellant/accused has examined his daughter DW-1 Maya Puri in support of his defence.

3. The learned Additional Sessions Judge, Aurangabad by judgment and order dated 11.9.2015 in Sessions Case No.118 of 2013 has convicted the appellant/accused as follows :-

1. Accused Suresh s/o Babu Giri is hereby convicted under section 235 (2) Cr.P.C. for the offence punishable under section 302 of IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/-.
2. The accused is acquitted under section 235 (1) Cr.P.C. of the offence punishable under section 504 of the Indian Penal Code.
3. Muddemal property being worthless be destroyed after the appeal period is over.
4. Copy of the judgment be given to the accused free of cost.
5. Copy of the judgment be sent to the District Magistrate for compliance of section 365 of Cr.P.C.

4. Learned counsel for the appellant/accused submits that the prosecution case rests upon the dying declaration and, there is no direct evidence in this case. Learned counsel submits that, dying declaration exhibit-21 recorded by PW 4 PHC Pandit Bangare is not reliable and trust worthy. Deceased Bebibai was not in a position to give her statement. Learned counsel submits that second dying declaration exhibit-29 recorded by PW 6 Sakharam Mukundrao Gokhale, Special Executive Magistrate is also not reliable and trust worthy. The doctors have not made endorsements

on both the dying declarations itself. There is no corroboration to both the dying declarations. The Trial court has not considered the defence of the appellant/accused. Appellant/accused has examined his own daughter DW-1 Maya. She has deposed that deceased Bebibai was cooking on the stove and sustained burns due to ablaze of the stove. They had extinguished the fire. Thereafter, she herself and her brother took deceased Bebibai to the hospital. She has deposed that the appellant/accused had been to Jalgaon and he returned to the house on the next day. Learned counsel submits that the appellant/accused is entitled for the benefit of doubt.

5. Learned A.P.P. submits that the dying declarations exhibit-21 and exhibit-29 are reliable, trust worthy and consistent. Deceased Bebibai had voluntarily given her statement. PW-3 Rakesh Suresh Giri and DW-1 Maya are their children. PW-3 Rakesh has not supported the prosecution case. DW-1 Maya has deposed before the Court as defence witness. Learned APP submits that there was no possibility of tutoring at all and deceased

had made dying declarations voluntarily stating true facts before the police as well as Special Executive Magistrate. Learned APP submits that, dying declarations exhibit-21 and dying declaration exhibit-29 came to be recorded on the same day while deceased Bebibai was admitted in Sumananjali Hospital, Aurangabad. Learned A.P.P. submits that, defence has not disputed the place of incident and death of deceased Bebibai by burns. Though, the defence witness Maya has deposed that deceased Bebibai had sustained burn injuries by ablaze of stove, however, the stove was seized under the spot panchnama exhibit-14. Said stove is having no damages. It was seized for the reason that deceased Bebibai had stated in her dying declaration that accused took out kerosene from the stove, poured on her person and set her on fire with the help of match stick. Learned APP submits that, deceased Bebibai had also given the oral dying declaration to PW 7 Goraknath Bhanudas Jadhav, who is her neighbour. He is an independent witness. On 19.9.2012 in the night hours DW-1 Maya came to his house and knocked the door. DW-1 Maya told him that there was quarrel between her

father and mother and asked him to help her for taking her mother to the hospital. Therefore, PW-7 Gorakhnath Jadhav went to their house and made inquiry with the injured Bebibai, who told him that her husband (appellant/accused) set her on fire and went away. PW-7 Gorakhnath Jadhav thereafter took her to Sumananjali Hospital. Learned APP submits that the conduct of the accused post incident is also necessary to be considered. Appellant/accused has not tried to extinguish the fire and, he left the house immediately after setting the deceased Bebibai on fire with the help of match stick by pouring kerosene on her person. Learned APP submits that PW-3 Rakesh Giri (son) is a young boy and DW-1 Maya is younger to him. Initially, they had shifted their mother to Sumnanjali Hospital and, thereafter shifted to Ghati Hospital. The appellant/accused never turned to Ghati Hospital to look after the condition of deceased Bebibai. Appellant/accused remained absconded. The learned APP submits that appeal is lacking merits. The Trial Court has rightly convicted the appellant/accused for having committed an offence punishable under section 302 of the Indian

Penal Code and sentenced him to suffer imprisonment for life. Appeal is liable to be dismissed.

6. Learned APP in order to substantiate his contentions placed reliance on following cases :-

- i. Khushal Rao Vs. State of Bombay reported in AIR 1958 SC 22.
- ii. Ramprasad Vs. State of Maharashtra reported in 1999 AIR SCW 1657.
- iii. Laxman Vs. State of Maharashtra reported in 2002 AIR SCW 3479.
- iv. Gaffar Badshaha Pathan Vs. State of Maharashtra reported in (2004) 10 SCC 589.
- v. Mohan Sadhu Kawale Vs. State of Maharashtra reported in 2004 ALL MR (Cri) 2626.
- vi. State of Punjab Vs. Parveen Kumar reported in 2004 AIR SCW 6897.
- vii. P. Mani Vs. State of Tamilnadu reported in (2006) 3 SCC 161.
- viii. Prabhakar Wamanrao Salve Vs. State of Maharashtra reported in 2006 ALL MR (Cri) 1274.
- ix. Sayed Babli Sayed Lal & Ors. Vs. State of Maharashtra reported in 2007 ALL MR (Cri) 3098.
- x. State of Maharashtra Vs. Jubedabai Shabbir Shah and another reported in 2007 ALL MR (Cri) 266.

- xi. Lahu Ramchandra Bandpatte Vs. State of Maharashtra reported in 2008 ALL MR (Cri) 2492.
- xii. Ramesh Gyanoba Kamble Vs. State of Maharashtra reported in 2011 ALL MR (Cri) 3536.
- xiii. Amarsingh Munnasingh Suryawanshi Vs. State of Maharashtra reported in 2008 AIR (SC) 479.

7. Prosecution case mainly relied upon two dying declarations. Exhibit-21 is the complaint-cum-dying declaration recorded by the police, whereas, Exhibit-29 is the dying declaration recorded by PW 6 Sakharam Mukundrao Gokhale, Special Judicial Magistrate, Aurangabad. Deceased Bebibai was taken to the hospital immediately after the incident and, she was admitted in the Sumnanjali Nursing Home, Aurangabad at about 01.00 am. Concerned doctor on duty of the Sumananjali Hospital had given MLC intimation to the Mukundwadi Police Station, Aurangabad on the same day at about 03.00 am. P.S.O. of Mukundwadi Police Station, Aurangabad City has taken entry of the said MLC No.230 of 2012 at about 03.55 am in station diary no.264 of 2012. PW-4 Pandit Ratiram Bangare PHC attached to Mukundwadi Police Station immediately

went to Sumnanjali Hospital, Aurangabad and issued letter exhibit-20 to the Medical Officer, stating therein that he wants to record the statement of Bebibai and requested therein to the Medical Officer on duty to certify as to whether the patient was in fit state of mind to give her statement. As per endorsement at exhibit-20, PW 10 Dr. Ashwini Nagargoje has examined the patient and certified on 19.9.2012 at about 4.55 am that the patient was in fit state of mind to give her statement. Said endorsement on exhibit-20 bears the signature of the doctor and seal of the hospital.

8. PW-4 PHC Pandit Bangare B.No.706 had recorded the complaint-cum-dying declaration of deceased Bebibai exhibit 21. According to him, he had asked name of the patient. He was satisfied that patient was in a position to give statement. She has given her name as Bebibai Suresh Giri, aged 42 years. He has further deposed that Bebibai stated before him that on 18.9.2012 at about 22.30 hours while she was cooking in the house, at that time, her husband came in side the house by consuming liquor and asked her that why

she settled the marriage of their daughter with the relatives from her side. Her husband had abused her. Deceased told him that she wanted to perform marriage of her daughter with her relative. Deceased Bebibai had further stated before him that the appellant/accused started beating her, threatened her, poured rokel on her person and set her on fire by means of match stick and then ran away. Thereafter, she shouted. Her son PW-3 Rakesh Giri came there and extinguished the fire. PW-4 PHC Pandit Bangare has deposed that, he read over the statement to her. She admitted the contents thereof and put her thumb impression on it. Thereafter, on the basis of her statement, crime no.298 of 2012 for the offence punishable under section 307, 504 of the IPC came to be registered on the basis of her complaint-cum-dying declaration exhibit-21.

9. We have carefully gone through the evidence of PW-4 PHC Pandit Bangare and PW-10 Dr. Ashwini Nagargoje, who has made endorsement on exhibit-20 certifying fit state of mind of the deceased. We must mention here that deceased Bebibai had sustained 50%

burns in total. There is nothing in the cross-examination to disbelieve the evidence of PW-4 PHC Pandit Bangare and PW-10 Dr. Ashwini Nagargoje. Even, the defence has not suggested to PW-10 Dr. Ashwini that deceased Bebibai was not in a fit state of mind to give her statement. Even, PW-4 PHC Bangare was also not suggested to that effect.

10. We have thus carefully perused the evidence of PW-6 Sakharam Mukundrao Gokhale, Special Judicial Magistrate. On 19.9.2012 he has received letter from police station Mukundwadi, requesting therein to record the dying declaration of patient namely Bebibai Suresh Giri, who was admitted in Sumananjali Hospital, Aurangabad. Said letter is marked at exhibit 27. On 19.9.2012 at about 1.30 p.m PW 6 Sakharam Gokhale has received said letter exhibit-27 as per his endorsement made on exhibit-27 itself. He, thereafter, went to Sumnanjali Hospital, Aurangabad in room no.202, where deceased Bebibai was admitted. PW 6 Sakharam Gokhale gave letter to the Medical Officer, requesting to examine Bebibai and, whether she was in

a position to give the statement. PW-6 Sakharam deposed that Medical Officer has examined the patient Bebibai and gave opinion on his letter exhibit 28 certifying therein that patient is conscious and fit to give the statement. Said endorsement at exhibit 28 bears seal of the hospital. PW 6 Sakharam, Special Judicial Magistrate has recorded the statement of the deceased Bebibai in question and answer form. He got satisfied that Bebibai was in a position to give the statement. According to him, deceased Bebibai has stated before him her full name, age, occupation and residence. She had also given name of her mother as Durgabai Baban Puri, resident of Rajnagar, Mukundwadi, Aurangabad. PW-6 Sakharam Gokhale, Special Judicial Magistrate has also asked deceased Bebibai when her marriage was solemnized and about children. Deceased Bebibai told him that her marriage was solemnized before 25 years and she is having two sons and one daughter. Deceased Bebibai had further stated before him that incident occurred on 18.9.2012 at about 10.00 to 10.30 p.m. Her husband came to the house and asked her why she settled the marriage of her daughter. She told her

husband that person with whom marriage is settled is from good family. Thus, deceased Bebibai had further stated before him that accused became annoyed, took out rockel from the stove in a pot and poured kerosene on her person. He had thereafter lit the match stick from the matchstick box, which he was having with him and threw it on her person and ran away after setting her on fire. Prosecution has examined PW-10 Dr. Ashwini Nagargoje. She had deposed that she had examined the patient Bebibai before her statement was recorded by the police so also her statement recorded by the Special Judicial Magistrate. There is nothing in the cross-examination to consider any other possibility.

11. In a case **Purshottam Chopra and another Vs. State (Government of NCT of Delhi) reported in (2020) 11 SCC page 489**, by referring the principles laid down by the Supreme Court in a case of Laxman Vs. State of Maharashtra reported in (2002) 6 SCC 710 relating to admission and acceptability of the statement made by a victim representing the cause of death, usually referred to as a dying declaration. Summarized

principles relating to recording of the dying declaration and its admissibility and reliability in paragraph no.21 of the judgment is as follows :-

21]. For what has been noticed herein-above, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under :-

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.

21.2. The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

21.8. If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

12. Learned APP has placed reliance on the various cases right from the view taken by the Supreme Court in Khushal Rao's case (supra). There is no need to refer all the cases one by one.

12. It is well settled that dying declaration can be the sole basis for conviction even without corroboration, if it inspires confidence of the Court. In the instant case, we find both the dying declarations exhibit-21 recorded by the police and exhibit-29 recorded by the Special Judicial Magistrate are reliable, trust worthy and inspired confidence. We do not find any suspicious circumstances or any infirmity such as want of fit state of mind of deceased Bebibai while making the said dying declarations. PW-4 Pandit Bangare and PW-6 Sakharam Gokhale, Special Judicial Magistrate also got satisfied about fit state of mind of the deceased to give her statement. Deceased Bebibai in her dying declaration exhibit-29 recorded by the Special Judicial Magistrate

has given all the details including the name of her mother, so also the details about marriage and children. PW-10 Dr. Ashwini Nagargoje has made endorsement on exhibit-20 and exhibit-28 about fit state of mind of the deceased Bebibai before recording her dying declaration exhibit-21 and exhibit-29, respectively. We are satisfied that both the dying declarations have been made voluntarily and we find it cogent and consistent. There is no impediment in recording the conviction on the basis of these dying declarations exhibit-21 and exhibit-29 respectively, even without corroboration.

13. In addition to the dying declarations, the prosecution has examined PW-7 Gorakhnath Bhanudas Jadhav, who happened to be the neighbour. DW-1 Maya had knocked his door in the night of 19.9.2012 and informed him about the incident. PW-7 Gorakhnath Jadhav has deposed that DW-1 Maya has informed to him that there was quarrel between her father and mother and asked him to help for taking her mother to the hospital. Therefore, he went to her house and inquired with injured Bebibai. PW-7 Gorakhnath has

deposed that deceased Bebibai told him that her husband set her on fire and went away. PW-7 Gorakhnath is an independent witness and there is no reason to disbelieve him. Deceased Bebibai had made oral dying declaration before PW-7 Gorakhnath Jadhav immediately after sustaining of the burns. There is nothing in the cross-examination of PW- 7 Gorakhnath Jadhav to disbelieve the evidence of PW-7 Gorakhnath Jadhav.

14. In addition to this, we have also carefully gone through the spot panchnama exhibit-14. Following articles came to be seized while drawing the spot panchnama. One stove of pink colour having capacity of one liter kerosene, one steel container, semi burnt saree and blouse and other pieces of clothes, one match stick of plus-2 Brand. The learned Judge of the trial court in paragraph no.29 of the judgment has observed that said stove was produced before the Court and it was still in tact. Thus, we find corroboration from the articles seized while drawing the spot panchnama exhibit-14 to

the dying declaration exhibit-21 to exhibit-29 respectively.

15. So far as motive for the commission of the crime is concerned, deceased Bebibai had stated in both of her dying declarations exhibit-21 and exhibit-29 respectively that appellant/accused got annoyed because she had decided to settle the marriage of their daughter with the relative from her side and because of that poured kerosene on her person and set her on fire by means of match stick. Learned APP has rightly pointed out that even in the statement under section 313 of Cr.P.C. of the appellant/accused in reply to the question nos.3 and 4, the appellant/accused has answered in the following manner :-

Q.3] It has further come in the evidence that she had engaged marriage of daughter with her relative. What do you want to say. ?

Ans :- It is correct.

Q.4] It has further come in the evidence that you were not agree with that relation. What do you want to say ?

Ans :- It is correct.

16. The appellant/accused had returned to the house under the influence of liquor. Immediately after his arrival, he started quarreling with the deceased Bebibai

by questioning about her decision in respect of settlement of marriage of their daughter. It appears that, the appellant/accused had returned to the house with some determination and, after questioning and abusing the deceased Bebibai, he poured kerosene on her person and set on fire with the help of match stick, which was with him. We do not think that the incident had taken place in a spur of moment and heat of passion.

17. The appellant/accused has taken a defence of alibi. According to him, he was not present at the relevant time in the house. It is well settled that burden to prove the alibi is on the accused. The appellant/accused has not examined himself before the Court to explain about his absence at the relevant time in the house. Appellant/accused has also not given evidence about the place where he was in the fateful night of the incident. Appellant/accused examined his daughter DW-1 Maya, who has stated for the first time before the Court that the appellant/accused had been to Jalgaon. Appellant/accused has not stated in his

statement under section 313 of the Code of Criminal Procedure that at the time of the incident or prior to that he had gone to Jalgaon for some work and returned to the house on the next day. DW-1 Maya w/o Mahendra Puri has deposed that deceased Bebibai sustained burns due to ablaze of stove. In paragraph no.29 of the judgment, the learned Additional Sessions Judge, Aurangabad has observed that the stove was produced before the Court and it was intact.

18. PW 3 Rakesh Giri, son of the appellant/accused has not supported the prosecution case, has admitted in his cross-examination by the APP that he do not have any other relative except his father and he do feel that his father should be acquitted. We can understand that as to why children have deposed in favour of the appellant/accused. We are of the considered opinion that the appellant/accused has failed to discharge the burden of proving his defence of alibi.

19. So far as post-incident conduct of the appellant/accused is concerned, the appellant/accused left the house immediately after setting the deceased

Bebibai on fire with the help of match stick and, he did not try to extinguish the fire. Appellant/accused remained absconding after the incident.

20. In view of the above discussion and applying the relevant principles as laid down by the Supreme Court in the case of Purushottam Chopra and another Vs. State (Government of NCT of Delhi) (supra) to the facts of the present case, we have not an iota of doubt that the appellant has been rightly convicted by the trial Court. Accordingly, we pass the following order.

ORDER

1. Criminal appeal is hereby dismissed.
2. Criminal Appeal accordingly disposed off.
3. Since Mr. S K Adkine, the learned counsel is appointed to prosecute the cause of appellant, we quantify his legal fees and expenses at Rs.5,000/- (Rs. Five thousand) to be paid by the High Court Legal Services, Sub-Committee, Aurangabad.

(**S.G.DIGE, J.)**

(**V.K. JADHAV, J.)**

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