

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

CRIMINAL APPEAL NO. 610 OF 2014

Raju s/o Vishwanath Jadhav,
Age 45 years, Occu. Vegetable Seller,
R/o Gandhinagar, Ranjangaon
(Shenpunji), Taluka Gangapur,
District Aurangabad

...Appellant

Versus

The State of Maharashtra,
Through Police Station Officer,
M.I.D.C. Walunj Police Station,
District Aurangabad

...Respondent

Mr P.S. Paranjape, Advocate for appellant (appointed)
Mr R.V. Dasalkar, A.P.P. for respondent/State

**CORAM :V.K.JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

**RESERVED ON : 27.09.2021
PRONOUNCED ON : 06.12.2021**

JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Feeling aggrieved by the impugned judgment and order of conviction passed by the Additional Sessions Judge at Vaijapur, District Aurangabad in Sessions Case No.10/2012, the appellant has preferred this appeal by taking aid of Section 374 of the Code of Criminal Procedure.

2. The accused was put on trial for the charge of committing murder of his wife Manisha, punishable under Section 302 of the Indian Penal Code.

3. According to the prosecution story, the accused alongwith his wife and children namely Pradeep and Durga were residing at Gandhinagar, Ranjangaon (Shenpunji). The accused was suspecting about the character

of his wife Manisha. On that count, the accused used to abuse and ill-treat his wife Manisha. Once, Manisha had left the matrimonial house and went to the house of her maternal uncle at Shirdi. When Manisha was at Shirdi, accused informed Manisha on phone that he has sold house for Rs. 17 lakhs. Manisha alongwith her children came back to her house on 9.1.2012 and came to know that accused had played mischief by giving false information. The accused had not sold his house. However, accused had shifted all household articles to his brother's house and on that count, there was quarrel between the accused and his wife Manisha.

4. The incident took place on 12.1.2012 at 5.00 a.m. in the residential house of accused. According to the prosecution case, in the wee hours on 12.1.2012, accused alleged to have poured kerosene on the person of his wife Manisha and set her on fire by suspecting her character when the children had slept. The accused woke up the children and disclosed them that he had set their mother on fire by pouring kerosene and asked them to accompany him towards the Police Station. The daughter and son of the deceased went to the room where their mother had slept and found dead body of their mother due to burn injuries. One can containing kerosene was found inside the room.

5. Durga (daughter) lodged report about the incident at MIDC Waluj, Police Station against her father on 12.1.2012 at 11.15 a.m. On that basis Crime No. 7/2012 came to be registered against the accused for the offence punishable under Section 302 of the Indian Penal Code.

6. The investigation of the said crime was entrusted to P.S.I.

Khade. He paid visit to the spot and prepared panchnama of scene of offence and seized plastic kerosene can, burnt pieces of blanket, one match box, burnt pieces of blouse from the spot. The dead body was sent to the Government Medical College and Hospital, Aurangabad for post mortem examination. The Investigating Officer found sufficient incriminating evidence against the accused.

7. After the committal of sessions case, the learned Additional Sessions Judge, Vaijapur framed the charge against the accused for the offence punishable under Section 302 of the Indian Penal Code. The accused denied the charge of murder of his wife. Trial was commenced before the Additional Sessions Judge. The prosecution machinery examined in all eight witnesses including children who are stated to be eye witnesses, panch witnesses, Investigating Officer and Medical Officer. The learned Additional Sessions Judge, after appreciating the facts of the case, evidence on record and considering the argument advanced by the learned A.P.P. and defence counsel was pleased to hold the accused guilty for committing murder of his wife Manisha and sentenced him to undergo imprisonment for life and to pay fine of Rs. 2000/-, in default R.I. for six months.

8. The accused has challenged the impugned judgment and order of conviction on various grounds.

9. Perused the record and proceedings of the trial Court, evidence of prosecution witnesses, examination of accused under Section 313 of the Code of Criminal Procedure with the able assistance of learned A.P.P. and learned counsel for the appellant.

10. Mr. P.S.Paranjape, learned counsel for the appellant appointed through legal aid invited our attention to the F.I.R. He pointed out that the alleged incident had taken place on 12.1.2012 at 5.00 a.m. at the house of accused. According to the prosecution case, the accused alongwith his children rushed to the Police Station and informed about the incident in the wee hours on 12.1.2012. Mr. Paranjape learned counsel for the appellant pointed out that the F.I.R. came to be registered on 12.1.2012 at 11.15 a.m. There was delay of five hours in registration of F.I.R. though daughter Durga alongwith her father had been to Police Station soon after the incident. No satisfactory explanation is coming forth from the prosecution agency for such an inordinate delay. According to Mr. Paranjape, the possibility of subsequent implication of the appellant / accused as a result of after thought at the instance of brother of the deceased cannot be ruled out.

11. Mr. Paranjape learned counsel for the appellant further invited our attention to the testimony of the child witnesses. He pointed out that both the child witnesses namely P.W.-1 Durga and P.W.-2 Pradeep are of tender age. The learned Additional Sessions Judge had not taken precaution to verify the fact whether they are in a position to tender evidence on oath. He submitted that even though law recognizes the child as a competent witness, but, a child of tender age who is unable to form a proper opinion about the nature of incident because of immaturity of understanding, the evidence of child witness is required to be evaluated carefully because he is an easy prey to tutoring. The trial Court has not considered this aspect and recorded conviction against the accused by placing reliance on the testimony of child witnesses even though there was no corroboration from other evidence to their testimony.

12. Mr. Paranjape learned counsel for appellant / accused invited our attention to the panchnama of scene of offence vide Exh. 26 coupled with the evidence of Investigating Officer (P.W.-8). He submitted that the possibility of suicide by appellant's wife Manisha cannot be ruled out. The prosecution agency has not ruled out suicidal case of Manisha. Mr. Paranjape vehemently submitted that the prosecution has not examined neighbouring persons as witnesses to remove the doubt of suicidal case.

13. According to Mr. Paranjape learned counsel for the appellant, the prosecution has not proved the charge of murder against the accused beyond reasonable doubt. The appellant / accused needs to be acquitted of the charge of the murder. He submitted that if two views are possible on evidence on record, one pointing to guilt of accused and other his innocence, accused is entitled to have benefit of doubt. To buttress his argument Mr. Paranjape has pressed into service the following citations.

- 1) **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **(1984) 4 SCC 116**;
- 2) **State of Assam Vs. Mafizuddin Ahmed**, reported in **(1983) 2 SCC 14**;
- 3) **Laxmibai and Ors. Vs. The State of Maharashtra**, reported in **2003 (3) Crimes 308 (Bom.)**;
- 4) **Rajeevan and Ors., Vs. State of Kerala**, reported in **AIR 2003 SC 1813**;
- 5) **Bhagwan Singh and Ors. Vs. State of M.P.**, reported in **(2003) 3 SCC 21**
- 6) **Bisho Sao and Ors. Vs. The State of Bihar**, reported in **2015 (4) PLJR840 (Patna)**;
- 7) **Himmat Sukhadeo Wahurwagh and Ors. Vs. State of Maharashtra**, reported in **AIR 2009 SC 2292**;

**8) Criminal Appeal (SJ) 454 of 2015 decided on
17.4.2018 by the Patna High Court.**

14. Per contra Mr. R.V.Dasalkar, learned A.P.P. for the State/respondent supported to the decision rendered by the learned Additional Sessions Judge. He submitted that the prosecution case rests upon direct evidence coupled with circumstantial evidence. PW-2 Pradeep, who is son of the deceased has witnessed the incident. He has supported the prosecution case. His evidence is reliable and inspires confidence of the Court. No tutoring to the child witness. He is a natural witness to the incident.

15. Mr. Dasalkar, learned A.P.P. submitted that PW-1 Durga, who is daughter of the deceased has put the criminal law in motion by lodging the F.I.R. She has supported to the prosecution case. She has also disclosed the motive. She has stated that her father/accused was suspecting character of her mother. After construction of the house just before two days of the incident her father/accused had extended beatings to his wife (mother of PW-1) and N.C. case came to be registered at Police Station. The prosecution has also examined concerned police witness, who has registered the N.C. The evidence of PW-1 Durga is also trustworthy and reliable, though some improvement is brought on record by way of cross-examination.

16. Mr. Dasalkar, learned A.P.P. submitted that soon after the incident in the wee hours of 12.1.2012 accused took his son and daughter (PW-1 Durga and PW-2 Pradeep) to the MIDC Waluj Police Station and

narrated the incident to the Police. Police took time to verify the factual scenario before registration of F.I.R. As a result of it there was some delay in lodging of F.I.R. which is not at all fatal to the prosecution case. He submitted that panchnama of the scene of offence gives factual scenario regarding occurrence of incident. The seizure panchnama of the clothes of the accused also indicates that on his banian kerosene residues were found. C.A. report Exh. 31 is also supporting to the prosecution case. He submitted that the evidence of PW-5 Dr. Nitin thrown light that deceased Manisha died because of "shock due to burns". The evidence of PW-7 Dr. Ganesh Mane, who has examined the accused after arrest has ruled out the case of suicidal death of Manisha. It is the case of homicidal death as evident to PW-5 Dr. Nitin and PW-7 Dr. Ganesh Mane.

17. Mr. Dasalkar, learned A.P.P. invited our attention to the statement of accused recorded under Section 313 of the Cr. P.C. which is at Exh. 58. He pointed out that though the specific questions were put to the appellant accused, no explanation was offered by him about unnatural death of his wife in his own residential house. He submits that husband and wife were alone in the room when incident took place in the wee hours of 12.1.2012. Certainly, it is for the appellant / accused to offer explanation as to what had happened in the early morning of 12.1.2012 as required under Section 106 of the Evidence Act.

18. Mr. Dasalkar, learned A.P.P. submitted that the prosecution has proved the charge of murder against the appellant / accused beyond reasonable doubt by producing cogent and unimpeachable evidence. He submitted that no case is made out by the appellant/accused to interfere in

the impugned judgment and order of conviction rendered by the Additional Sessions Judge, Vaijapur. The conviction needs to be upheld.

19. Mr. Dasalkar, learned A.P.P. has also relied upon following stock of citations in support of his argument :

- 1) The decision of Division Bench of this Court in **Criminal Appeal No. 637 of 2014 dated 15.10.2020 (Anil S/o Shrawan More V/s State of Maharashtra),**
- 2) The decision of Honourable Supreme Court in **Criminal Appeal No. 588 of 2005 (Ravindra Mahto and Anr. V/s State of Jharkhand) dated 6.1.2006**
- 3) **Sahoo V/s State of U.P. (1966 AIR 40) Supreme Court,**
- 4) **Kumbhar Dhirajlal Mohanlal V/s State of Gujarat, dated 4.10.1996.**

20. Having regard to the submissions of Mr. Paranjape, learned counsel for the appellant / accused and Mr. Dasalkar, learned A.P.P. for the State/respondent, we have studied the impugned judgment and order of conviction rendered by the Additional Sessions Judge, Vaijapur thereby convicting the appellant / accused for the offence punishable under Section 302 of the I.P.C. We have also carefully gone through the evidence produced by the prosecution machinery and stock of citations relied upon by both the sides. Following is the factual scenario emerging from the record of the trial Court :

- 1) Date of offence and time : 12.1.2012 about 5 a.m.
- 2) Place of offence : house of accused at Ranjangaon

3) F.I.R. came to be registered : on 12.1.2012 at 11.15 a.m.

4) Crime No. 07/2012 under Section 302 of Cr.P.C. came to be registered at M.I.D.C. Police Station Waluj against the appellant/accused

21. The prosecution case rests upon direct evidence coupled with circumstantial evidence.

22. PW-5 Dr. Nitin vide Exh. 19 is Medical Officer attached to Govt. Medical College and hospital at Aurangabad, who has conducted post mortem examination alongwith Dr. Wakode on 12.1.2012. The post mortem report to that effect is placed on record vide Exh. 30. Dr. Nitin has stated that during post mortem examination, he noticed 90% burn injuries on the dead body which are described in column No. 17 of the post mortem report. The opinion given by the doctors, who conducted the post mortem examination is as under :

Opinion as to the probable cause of death : "shock due to burns" other than viscera kept for chemical analysis. According to Dr. Nitin, Manisha died before eight to ten hours before commencement of the post mortem examination. Dr. Nitin has given voluntary statement while facing the cross-examination that injuries may be suicidal or homicidal and that was highlighted by Mr. Paranjape, learned counsel for the appellant/accused. Certainly, whether it is a case of suicidal death or homicidal death needs to be determined on the basis of evidence on record. Learned Additional Sessions Judge by taking help of the evidence of PW-7 Dr. Ganesh Mane has recorded finding that Manisha met with homicidal death. Dr. Nitin, by way of voluntary statement raised possibility of homicidal death. It is material to note that Dr. Nitin has not given any kind of

explanation on what basis he is making such voluntary statement thereby raising possibility of homicidal death of Manisha. Mere making such voluntary statement and thereby giving birth to possibility of homicidal death must be kept out of consideration when there is supporting evidence or explanation from his mouth.

23. The evidence of PW-7 Dr. Ganesh Mane (Exh.38) has focused light on this important aspect whether Manisha met with suicidal death or homicidal death. He has examined the accused after arrest on 12.1.2012. On examination, he found scalds over right inguinal area and over abdomen due to fire on the person of accused. He has also referred the accused to surgery department for necessary procedure and accordingly, the accused was treated in surgery department. The case paper is also placed on record to that effect at Exh.40. Dr. Ganesh Mane further stated during his testimony that the burn injuries on the person of accused were superficial burns. The said injuries may be possible due to flames of fire. While facing the cross-examination, Dr. Ganesh admitted that he has not mentioned identification mark of the accused in the case paper and there is no documentary evidence to show that he has examined the accused. He was working as a Medical Officer at Government Medical College and Hospital at Aurangabad and on 12.1.2012, he was on duty as a casualty Medical Officer. The patient/accused was referred on 12.1.2012 to casualty ward by P.S.I. Khade, M.I.D.C. Waluj Police Station for medical examination about 8.25 a.m. The registration number of patient was 6061991. In view of above, it is very much clear that PW-7 Dr. Ganesh Mane was on duty as a casualty Medical Officer and he has examined the accused on that day at about 8.25 a.m. as evident from the documentary evidence vide Exh.39 and 40. Had it been a

case of suicidal death of Manisha, certainly, the burn injuries would not have found on the person of accused due to flames of fire. It nowhere brought on record through cross-examination of PW-7 Dr. Ganesh Mane that the accused had sustained burn injuries to his both the hands and that too while extinguishing the fire. The injuries found on scalds over right inguinal area and over abdomen due to fire, which completely ruled out the case of suicidal death. The abovesaid injuries had caused due to flames of fire and certainly, points finger to the accused about his involvement in the crime. Obviously, it is necessary to see whether there is corroborative piece of evidence.

24. PW-2 Pradeep vide Exh.20 is a son of the deceased. He has been cited as an eye witness to the incident by the prosecution agency. On going through the testimony of this important witness, he is stated to be twelve years old when his evidence was recorded by the trial Court. He has disclosed that the incident took place on 12.1.2012 about 5.00 to 5.30 a.m. He had slept with his sister in the house. His parents had slept in another room. He heard quarrel of his mother and father and, therefore, he woke up and went to the door of the room where his parents had slept. He disclosed that he had seen from the door of his room that his father poured the kerosene on the person of his mother and set her on fire. His mother raised shouts by saying "Save me - Save me" ("वाचवा - वाचवा "). His father rushed to the room where they had slept. The hands of his father were smelling kerosene and his face was looking black due to smoke. His father has disclosed to him and his sister Durga that he had killed their mother. Then, PW-2 Pradeep went to the room where his mother had slept and seen the

dead body of his mother. His father took them to Police Station.

25. The testimony of PW-2 Pradeep focused light on the entire episode and the complicity of the accused in setting his mother Manisha on fire. It gives picture as to how and in what manner his father had set his mother on fire after pouring kerosene in a room where they had slept, which is closed to the room where he and his sister had slept.

26. The testimony of PW-2 Pradeep is challenged mainly on the ground of tutoring at the hands of his maternal uncle. He was not a matured witness and the trial Court has casually recorded the statement of child witness without complying with the mandatory provisions of the Evidence Act.

27. The law recognises the child as a competent witness. In case of **Bhagwan Singh and Ors. Vs. State of M.P.** (supra), it is held by the Honourable Supreme Court that if a child witness is of a tender age, the evidence of child witness is required to be evaluated carefully. He is easy prey to tutoring. Therefore, the Court should look for adequate corroboration from other evidence to his testimony.

28. In case of **Laxmibai and Ors. Vs. The State of Maharashtra** (supra), the Division Bench of this Court (Bench at Aurangabad) held that evidence of a child witness needs to be evaluated very carefully with great circumspection as the child witness is susceptible to tutoring by relatives.

29. Mr Paranjape, learned Counsel for the appellant invited our attention to the cross-examination of the child witness (PW-2 Pradeep) and pointed

out that they went to Police Station early in the morning accompanied by his father. He and his sister were there. Their maternal uncle (PW-3 Rajesh) came to Police Station at about 10.00 to 10.30 a.m. and afterwards F.I.R. came to be recorded. By taking help of this material, Mr Paranjape, learned Counsel for the appellant forcefully submitted that evidence of PW-2 Pradeep is product of tutoring. Even for the sake of argument, it is accepted that there was some delay in registration of the F.I.R., it is difficult to accept the argument advanced by Mr Paranjape, learned Counsel for the appellant. On careful scrutiny of testimony of PW-2 Pradeep, it is noticed by us that this child witness had seen from the door of his room that the appellant/accused had put his mother on fire after pouring kerosene. He was a natural eye witness to the incident. His evidence is not anyway shaken by way of cross-examination on the point of witnessing the incident by his own eyes. It was suggested to him by way of cross-examination that he is stating false to that effect which he has denied. No material omissions, contradictions and improvements are brought on record through the testimony of this witness PW-2 Pradeep. He has also disclosed that after the incident, the face of his father had become black due to smoke. His father disclosed him and his sister Durga that he had killed their mother. It was an extra-judicial confession given by the appellant before his son and daughter (PW-1 and PW-2) in a natural course. The appellant/accused had taken both his children to the Police Station after the incident and surrendered before the Police.

30. It is material to note that PW-1 Durga and PW-2 Pradeep and one Kiran are three siblings of the appellant and the deceased. The evidence of PW-2 Pradeep is found natural and trustworthy and inspires confidence of

the Court. That is why the learned Additional Sessions Judge has accepted his evidence after careful scrutiny within four corners of law and accepted his testimony when it is found to be trustworthy and reliable. We do not see any reason to discard the testimony of PW-2 Pradeep who happened to be natural eye witness. His presence at the time of incident is nowhere disputed by the defence. Whatever he had seen seems to have disclosed before the trial Court and the same is found to be trustworthy and reliable.

31. PW-1 Durga vide Exh. 17 is a daughter of accused and deceased Manisha. Her evidence discloses that her father was suspecting about the character of her mother. Her father used to pick up quarrel with her mother and used to abuse and beat her. She has also disclosed about one incident happened on 11.01.2012 when her father picked up quarrel with her mother and pelted brick on the person of her mother and she along with her brother and sister had gone to the Police Station and informed about the act done by her father. She has also disclosed about the incident during her examination-in-chief para No. 3. On 12.01.2012 about 4.00 to 5.00 a.m. her father woke up them and informed that he had poured kerosene on the person of her mother and set her ablaze. The clothes of father were smell kerosene and hands were wet and his clothes were burnt. Her mother was lying dead in her house. Her mother had sustained burn injuries. She along with her father went to Police Station where her father disclosed to the Police in her presence that he had set his wife on fire. She lodged report about the incident vide Exh. 18.

32. Her evidence is questioned mainly on three grounds. One, she was not eye witness to the incident, second, delay in lodging of FIR and third, FIR

lodged by her is the outcome of tutoring at the hands of her maternal uncle PW-3 Rajesh (brother of the deceased).

33. Mr Paranjape, learned counsel for the appellant/accused invited our attention to the cross-examination of PW-1 Durga para No. 13. He pointed out that she had given admission that her maternal uncle told her and pointed out that her maternal uncle had also arrived at Police Station at about 6.00 to 7.00 a.m. She met with her maternal uncle in the Police Station. She had admitted that her maternal uncle PW-3 Rajesh informed her to lodge report against her father. By taking help of this, Mr Paranjape raised question mark about the credibility of this witness and the FIR vide Exh. 18. In case of **Rajeevan and Ors. Vs. State of Kerla** (supra), it is held by the Hon'ble Supreme Court as under :-

When there is a delay of 12 hours in lodging FIR at Police Station which is at distance of 100 meters, sufficient to doubt genuineness of FIR. No satisfactory explanation for lodging of the FIR on next day with Magistrate.

34. In case of **Rabindra Mahto & Anr. Vs. State of Jharkhand** (supra), the Hon'ble Supreme Court has referred the case of **Meharaj Singh Vs. State of U.P. (1994) 5 SCC 188** and para No. 12 therein is reproduced which reads thus -

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any,

used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.

It is held by the Hon'ble Supreme Court in the same decision as under :-

There cannot be any manner of doubt that Section 157 of Criminal Procedure Code requires sending of an FIR to the Magistrate forthwith which reaches promptly and without undue delay. The reason is obvious to avoid any possibility of improvement in the prosecution story and also to enable the Magistrate to have a watch on the progress of the investigation. At the same time, this lacuna on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution had produced the reliable evidence to prove the guilt of the accused persons. The provisions of Section 157, Cr.P.C. are for the purpose of having a fair trial without there being any chance of fabrication or introduction of the fact at subsequent stage of investigation. The cases cited by the learned counsel for the appellants do not lay down any law that simply because there is a delay in lodging the FIR or sending it to the Magistrate forthwith, the entire case of the prosecution has to be discarded. The decisions rendered by this Court and relied upon by the learned counsel for the appellant would only show that this will be a material circumstance which will be taken into consideration while appreciating the evidence on record.

35. The facts of the case in hand are peculiar. According to the evidence of PW-1 Durga and PW-2 Pradeep, their father/accused after the incident, took them to MIDC Police Station, Waluj in the early morning of 12.01.2012 where their father disclosed about the incident of setting his wife (mother of PW Nos. 1 and 2) on fire after pouring kerosene. They might have reached to the Police Station at about 6.30 a.m. in the morning as appearing from the evidence of above two witnesses. The FIR came to be registered on

12.01.2012 at about 11.15 a.m. PW-1 Durga has disclosed about the incident to her maternal uncle PW-3 Rajesh. Her maternal uncle also rushed to the Police Station about 6.00 to 7.00 a.m. The Police Station Officer of Police Station, MIDC Waluj, Aurangabad seems to have recorded the FIR about the incident as per the narration given by PW-1 Durga, who is daughter of the accused. It is evident from the testimony of PW-1 Durga that her father took her and her brother to the Police Station after the incident. The accused along with PW-1 Durga and PW-2 Pradeep reached at Police Station, MIDC Waluj early in the morning of 12.01.2012 though exact time is not available. They might have reached to the Police Station on 12.01.2012 at about 6.15 to 6.30 a.m. PW-1 and PW-2 were present at Police Station MIDC Waluj. No FIR seems to have been recorded by the Police Station Officer. It is evident from the testimony of PW-8 PSI Khade/Investigating Officer vide Exh. 43 that he was on duty on 12.01.2012. The Police Station Officer has recorded the FIR as per the narration of PW-1 Durga on 12.01.2012 at 11.15 a.m. As such, no delay can be attributed to the first informant PW-1 Durga. She was very much present in the Police Station since early morning of 12.01.2012. It was the duty of the Police Station Officer to register the FIR promptly as soon as information is received about the commission of cognizable offence.

36. About alleged tutoring to PW-1 Durga at the hands of her maternal uncle for lodging of FIR is concerned, coupled with the admission needs to be considered with attending circumstances. PW-1 Durga was 13 years old at the time of incident. She lost her mother in a shocking incident. PW-1 Durga and her brother PW-2 Pradeep were the witnesses, who had personal

knowledge about the incident. Even if it is accepted for the sake of argument that PW-3 Rajesh (maternal uncle) instructed to PW-1 Durga to lodge the FIR against her father not a ground to discard the FIR and her testimony. PW-3 Rajesh had no personal knowledge about the incident. As such, he might have given instructions to PW-1 Durga to lodge the FIR on the basis of her personal knowledge. PW-1 Durga and PW-2 Pradeep were the children present in the house when incident had taken place. PW-1 Durga had informed to her maternal uncle PW-3 Rajesh about the incident by making phone call. As such, PW-3 Rajesh was knowing that accused had committed murder of his sister Manisha before reaching to the Police Station. It is not a case that PW-1 Durga disclosed about the incident to PW-3 Rajesh in the Police Station. Had it been such case, then there would have been possibility of improvement by way of tutoring at the hands of PW-3 Rajesh. The presence of PW-1 Durga at the time of incident is duly proved. The age of PW-1 Durga also plays an important role. She is found to be tender aged girl. The situation was so horrifying and disturbing. This aspect needs to be considered. There was hardly any scope for tutoring to PW-1 Durga at the hands of her maternal uncle PW-3 Rajesh so as to lodge the FIR. PW-1 Durga has disclosed the incident on the basis of her personal knowledge.

37. She has admitted that she had not witnessed the incident by her own eyes. She had slept in the room. Her father came there and woke up her and disclosed about the incident. On careful scrutiny of the testimony of PW-1 Durga, it is noticed by us that her evidence is natural. The evidence of PW-1 Durga is also questioned in view of the contradiction brought on record through her statement the portion marked as 'A'. It was stated by PW-1

Durga in her statement that after hearing the noise of quarrel, she, her brother and sister woke up. PW-1 Durga has denied the said portion marked as 'A'. However, PW-2 Pradeep has stated to that effect during his evidence and witnessed the incident by his own eyes. Even though the prosecution has projected PW-1 Durga as eye witness to the incident, she has been fair enough by admitting such fact and stuck to her oath.

38. The evidence of PW-1 Durga is found consistent with the evidence of PW-2 Pradeep (brother) to the effect that accused had been to their room and woke them up and disclosed that he had poured kerosene on the person of their mother (deceased) and set her on fire. Both of them have categorically stated that after the incident, their father took them to the Police Station where he disclosed about the incident in the early morning of 12.01.2012. Therefore, it is clear that the evidence of PW-1 Durga and PW-2 Pradeep is corroborating each other on material story of the prosecution. Both of them had stated on oath that the hands of accused were smelling kerosene and his clothes were burnt. The above referred piece of evidence of PW-1 Durga and PW-2 Pradeep is nowhere shaken by way of cross-examination. Why their evidence should be disbelieved. They are not found to be tutored witnesses as argued by the learned counsel for the appellant.

39. On careful scrutiny of the evidence of PW-1 Durga and PW-2 Pradeep, it is revealed that their evidence is found trustworthy and reliable and corroborating each other. Their presence at the time of incident in their house is proved and both of them were found to be the natural witnesses. Both of them have stated about extra judicial confession given by their father soon after the incident. We did not see any reason to discard testimony of

PW-1 Durga and PW-2 Pradeep. Their evidence is found trustworthy and reliable and inspires confidence of the Court. The learned trial Judge has accepted the evidence of above two child witnesses after careful examination.

40. Now, coming to PW-6 Vitthal Jawkhede vide Exh. 35, who has scribed the NC report lodged by the deceased against her husband on 10.01.2012. On going through the testimony of PW-6 Vitthal Jawkhede, it is revealed that on 10.01.2012, he was attached to the MIDC Police Station Waluj and discharging his duty from 9.00 a.m. to 9.00 p.m. as a Station Diary Officer. Manisha (wife of the appellant/accused) came to the Police Station and lodged report against her husband stating that her husband abused her and extended beating by means of kick blows. On the basis of that, NC Case No. 26/2012 came to be registered under section 323 and 504 of the IPC against the appellant/accused vide Exh. 36. The said case was handed to Head Constable Mr S.S. Rajput for further action, who issued notice to the appellant/accused and the said notice is at Exh. 37. This has happened just one day before the incident. It is important circumstance focusing light on the behaviour of appellant/accused as to how he was treating his wife. PW-1 Durga has also stated about the same and corroborated the fact of filing NC case by Manisha against her husband/appellant.

41. Now, coming to the circumstantial evidence. PW-8 PSI Mr Khade is an Investigating Officer of this case. His evidence vide Exh. 43 discloses about the procedural part of investigation about visit to the scene of offence, preparation of panchanama of the scene of the offence and seizure of Muddemal property from the scene of offence. He has seized the plastic

kerosene can of five litters, burnt pieces of blanket, one match box, burnt pieces of blouse from the scene of offence (Article A to D). He has sent the seized articles to CA for analysis and the CA report to that effect is placed on record vide Exh. 31. PW-4 Bhausahab one of the panch witnesses to the spot panchanama vide Exh. 26 has also supported to the prosecution case. The baniyan of the accused also came to be seized under panchanama vide Exh. 27 and kerosene residues on baniyan of the appellant/accused were also found.

42. It was attempted by defence side to take doubt about the exact scene of offence. However, the evidence of PW-4 Bhausahab and evidence of PW-8 PSI Khade made it clear that the incident had taken place in the same room from where the articles were seized i.e. room E shown in the map.

43. The circumstantial evidence as discussed above is also supporting to the prosecution case. The baniyan of the accused seized in the case found kerosene residues. The muddemal articles seized from the scene of offence also found kerosene residues. Mr Paranjape, learned counsel for the appellant/accused attempted to show that the possibility of suicidal death of Manisha cannot be ruled out in view of the evidence on record. He submitted that if two views are possible, the view favourable to the accused needs to be taken by placing reliance in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** (*supra*).

44. Having regard to the close scrutiny of the above referred two material witnesses, who found to be natural witnesses completely ruled out the case of suicidal death of Mahisha in this case. Secondly, had it been the case of

suicidal death, certainly there would not have been kerosene residues on the clothes of the accused. Accused also sustained burn injuries on scalds over right inguinal area and over abdomen. His hands were wet with kerosene as stated by both his children. There is no explanation from the side of appellant/accused while examination under section 313 of Cr.PC that his wife Manisha met with suicidal death though he attempted to save her life. Under these circumstances, it is difficult to accept that Manisha met with suicidal death.

45. In case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra.*** (supra) the case was based upon circumstantial evidence against accused and it is held by the Hon'ble Supreme Court as under :-

In view of the facts of the case and when the case is based upon circumstantial evidence, when two views are possible on evidence on record, one, pointing out to the guilt of accused and other his innocence, accused is entitled to have benefit of one which is favourable to him.

It is not any way helpful to the case of appellant/accused.

46. The case in hand is mainly rest upon direct evidence tendered by daughter and son of the appellant/accused. The prosecution has also succeeded in proving the following facts :-

- (i) Manisha met with homicidal death.
- (ii) Manisha and her husband (appellant/accused) were alone in the room when the Manisha sustained burn injuries and succumbed to death.
- (iii) Extra judicial confession of appellant/accused before his daughter PW-1 Durga and PW-2 Pradeep.

- (iv) No explanation is forth coming from the appellant/accused as to how his wife Manisha met with unnatural death. No explanation is coming forth from the appellant/accused while his examination under section 313 of Cr.PC.
- (v) The subsequent conduct of the appellant/accused.

47. It is important to note that Manisha was in the custody of her husband/ appellant. She being wife and the appellant being husband, were alone in the room where the incident had taken place.

48. In case of ***Trimukh Maroti Kiran Vs. State of Maharashtra reported in (2006) 10 SCC 681***, the Hon'ble Supreme Court has held as under :-

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

49. The appellant/accused failed to offer any kind of explanation as to what had happened in the wee hours of 12.01.2012 and as to how his wife

sustained burn injuries. The evidence on record clearly points out the finger to the appellant/accused that it is none else but accused, who had set his wife Manisha on fire pouring kerosene in the wee hours of 12.01.2012. It is none else but the appellant/accused who happened to be husband has committed the murder of his wife Manisha by suspecting her character. The prosecution agency has proved the charge of murder against the appellant/accused beyond reasonable doubt. The learned trial Judge has appreciated the evidence of prosecution witnesses in a proper way and arrived at correct conclusion. We do not see any reason to disturb the findings recorded by the learned trial Judge. The conviction awarded by the learned trial Judge against the appellant/accused for committing murder of his wife and sentencing him to undergo life imprisonment needs to be upheld.

50. We do not find any merit in the appeal. The same is therefore, needs to be dismissed.

ORDER

(I) The criminal appeal is hereby dismissed.

(II) The impugned judgment and order of conviction passed by the Additional Sessions Judge at Vaijapur, Dist. Aurangabad in Sessions Case No. 10/2012 thereby sentencing the appellant/accused to undergo imprisonment for life for the offence punishable under section 302 of the IPC is hereby confirmed.

- (III) The professional fees of Shri. P.S. Paranjape, learned counsel appointed is quantified at Rs.10,000/-. The Secretary, High Court Legal Services Sub Committee, Aurangabad to make payment of fees.
- (IV) The record and proceedings be sent back to the trial court.
- (V) The criminal appeal is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)

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