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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 47 OF 2000

1. Kanaji Laxman Chavan
2. Smt. Hansa Kanji Chavan
Both adults, both residing at
Vaja Mohalla, House No. 12,
Municipal Building, Bhiwandi,
Dist. Thane.
Versus

...Appellants
(Orig. Accused)

The State of Maharashtra
...Respondent

Mr. B.G. Tangsali for the Appellant.
Mr. Arfan Sait, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.

RESERVED ON : 31-08-2021
PRONOUNCED ON : 22-12-2021

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Special Judge (Atrocities on Women) & III Additional Sessions Judge, Thane in Sessions Case No.89 of 1998 whereby the Appellants – Original Accused who were charged for commission of offences punishable under Sections 302 read with Section 34 of the Indian Penal Code (for short 'IPC')

convicted and awarded sentence for life imprisonment along with fine, filed the present Criminal Appeal.

2. The case of prosecution is based on the statement of the victim Ratna which is treated as the dying declaration. Victim Ratna was resident of village Janava. She was married to one Valmik Kisan Sonawane. The couple was blessed with two children. Due to the differences in the couple, which resulted in desertion of Ratna by her husband. Ratna left her matrimonial home and came to Bhiwandi for earning livelihood. While doing labour work, she came in contact with accused no. 1. Accused no. 1 developed a closed acquaintance with Ratna. The acquaintance resulted in their love affair and accused no. 1 married with Ratna. It is the case of prosecution that Ratna started residing with accused no.1 who was already married with accused no. 2. Ratna, accused no.1, accused no.2 and children of accused no. 1 and 2 were residing under one roof.

3. After some period, Ratna started remembering children begotten from her first husband. The accused no.1 and 2 were displeased with the said conduct of Ratna. On 03.09.1997 at about 11.00 pm. They picked up

quarrel with her as to why she is remembering them and even she was assaulted on next day also i.e. 04.09.1997, they picked up quarrel with her on this very ground i.e. as to why she is remembering her children from first husband. As per the case of prosecution, accused no. 2 – Hansa caught hold of Ratna and accused No.1 – Kanji poured kerosene on Ratna and set her ablaze. Ratna started running here and there to save her life but, accused no.1 again caught hold of her and in that process, accused no.1 also sustained burn injuries. Father of accused no.1 who was present in the house made attempt to save Ratna by extinguishing fire.

4. Ratna immediately proceeded towards Bhiwandi city police station. PSI Shivaji Shendge (PW 8), on duty police officer witnessed that one burnt lady came in police station about 04.25 a.m. he immediately deputed one police constable to said victim to Indira Gandhi Memorial Hospital, Bhiwandi. Then Shivaji Shendge (PW 8) contacted the Special Executive Officer – Pravin Shinde and then they both went to IGM Hospital, Bhiwandi for recording the statement of

Ratna. At the relevant time, Dr. Mohd. Ansari (PW 1) was on duty. He took immediate steps to admit Ratna. At the time of admission of Ratna, history was recorded and Ratna disclosed that she was subjected to burns at the hands of her husband and his first wife. Then Shivaji Shendge (PW 8) sought opinion of Dr. Mohd. Ansari about fitness of Ratna to give statement and then recorded statement of Ratna in presence of Special Executive Officer as well as medical officer. Then he obtained thumb impression of the victim. Then the document was signed by the Special Executive Officer and the medical officer. Special Executive Officer also put his seal on the statement.

5. Shivaji Shendge (PW 8) carried the statement to police station and on the basis of that statement the crime was registered against the accused persons. Initially the crime was registered under Section 307 read with Section 34 of the IPC. Shivaji Shendge (PW 8) entrusted the investigation to PI Shaikh Rahim Shaikh Abdulla (PW 7). Ratna was then shifted to Civil Hospital, Thane for further treatment. At Civil Hospital, Thane her statement was again recorded by the

Special Executive Officer – Sandhya Pawar (PW 4) after obtaining opinion of the medical officer that Ratna was conscious and fully oriented to give her statement. Then PI Shaikh Rahim Shaikh Abdulla (PW 7) who was entrusted with the investigation took further steps in the investigation such as drawing panchnama, recording statement of the witnesses.

6. On 07.09.1997 Ratna succumbed to burn injuries and her dead body was subjected to an autopsy. Dr. Sudhakar Jadhav (PW 2) conducted the autopsy. Notes of the postmortem are collected in the process of investigation. Dr. Sudhakar Jadhav (PW 2) gave an opinion that Ratna had suffered 100% superficial to deep antemortem burn and died of septicemic shock due to burns. In view of the death of Ratna and the opinion expressed by the doctor the charge against the accused persons under Section 307 was converted to the charge under Section 302 of IPC. The investigation concluded in filing charge-sheet against the accused persons before the learned JMFC. Considering the nature and gravity of the offences, the case was committed to the Court of Sessions. The learned Sessions Judge framed

charges. The accused though denied the charges, have not adduced any evidence on their behalf. The prosecution in support of its case examined as many as 8 witnesses.

7. The learned Trial Judge, on the basis of evidence brought before him as well as on hearing the learned Counsel appearing for the respective parties, framed the points for consideration namely, Whether the death of Ratna is homicidal? and Whether the prosecution proves that both the accused, in furtherance of their common intention, committed murder of Ratna by setting her on fire after pouring kerosene? Both the points are answered in affirmative by the learned Trial Judge and ultimately the judgment and order of conviction and sentence is passed.

8. Learned Counsel appearing for the Appellants vehemently submitted that the learned Trial Judge committed an error in appreciating the evidence. It is submitted that the trial court rightly discarded the dying declaration, however, erred in convicting the accused on the basis of history of the incident given by the deceased to medical officer (PW-1). Learned

Counsel submitted that on the backdrop of medical evidence which indicates that the victim Ratna had suffered 100% burns and her death occurred due to septicemic shock due to burns as such, it is difficult to believe that the victim was physically fit and conscious to give history of the incident to medical officer (PW-1). Learned Counsel further submitted that even otherwise the history given by a person suffering 100% burns ought to have been looked into very cautiously and without there being any other evidence, the learned Trial Judge ought not to have placed an implicit reliance solely on the history given by the deceased to convict the accused. An attempt was also made to submit before this Court that victim Ratna was under depression. Learned Counsel for the Appellant further submitted that there is no positive evidence to show that the accused no. 1 married with victim and/or there was a matrimonial relationship between the victim and accused no.1. It is also submitted by the learned Counsel for the Appellants that apart from the police officials and doctor the prosecution relies on the version of other two witnesses who are sisters of

victim Ratna and being sisters of victim Ratna they are interested witnesses. Thus, sum and substance of the submissions of learned Counsel for the Appellants is learned Trial Judge failed to appreciate the evidence in proper perspective and as such, arrived at erroneous conclusion. Learned Counsel for the Appellant, thus, prayed for allowing the appeal by setting aside the judgment and order of conviction.

9. *Per contra*, learned APP vehemently submitted that the trial court erred in discarding the dying declarations which were immediately recorded. Learned APP submitted that before recording the dying declarations the physical fitness and consciousness was ascertained and the medical officer gave his opinion. It is submitted that they are free from any infirmities. Learned APP then submitted that the trial court has rightly relied upon the history given by the deceased to medical officer (PW-1). Learned APP submitted that as the victim patient was alone when the medical officer put questions about the history of the incident and as it was a voluntary and immediate disclosure of the victim in absence of any other

persons, the said history assumed an importance. It is also submitted by the learned APP that it is nobody's case that the medical officer had any prior acquaintance with the victim. Learned APP thus, submitted that considering the surrounding circumstances the history given by the patient fully supports the case of prosecution. Learned APP submitted that Trial Judge committed no error in passing the judgment and order of conviction.

10. Learned APP further submitted that merely because the medical officer conducting the autopsy opined that the death of Ratna was due to septicemic shock due to 100% burns cannot be a reason to discard the case of prosecution. Learned APP further submitted that Ratna was admitted in the hospital on 04.09.1997 and she was under treatment for three days and succumbed to burn injuries on 07.09.1997. Thus, the submission of learned APP is, when the dying declarations and more particularly, the first dying declaration, it cannot be said that at the first point of time Ratna had suffered 100% burns. On the contrary, the material placed on record show that at the initial

stage Ratna had suffered 77% burns. Learned APP in support of his submissions placed reliance on the judgment in the case of Purshottam Chopra and Another vs. State (Government of NCT of Delhi)¹. Thus, learned APP prayed that Criminal Appeal may be dismissed.

11. With the assistance of both the learned Counsel, we have gone through the material brought on record.

12. The prosecution in support of its case, examined as many as 8 witnesses. Now we may refer to the evidence of Shivaji Shendage (PW 8).

13. Shivaji Shendage (PW 8) in examination-in-chief stated that he was attached to Bhiwandi town police station as PSI from the year 1994 to 1998 and was police station officer. This witness stated that on 04.09.1997 at about 04.25 a.m. Ratnabai Kanji Chauhan came running into the police station and was completely burn. There were no clothes on her person. Then this witness asked her name. Then he immediately sent her by police jeep to IGM Hospital, Bhiwandi and took entry in station diary. Then this witness contacted to Special

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Executive Magistrate Shinde and took him to the IGM Hospital, Bhiwandi. He further stated that at that time Ratnabai was being treated in outdoor patient department. Then this witness recorded her statement in presence of the medical officer and the Special Executive Magistrate, as per her say. This witness stated that before recording the statement he asked medical officer about her condition to which medical officer told him that Ratna was conscious and in a condition to give statement. Then this witness read over the statement to her and obtained thumb impression of Ratna below the statement. Medical officer and Special Executive Magistrate put their signatures and their seals on the statement. He further stated that Medical Officer and Special Executive Magistrate were present through out while recording the statement. This witness also signed the statement.

In the cross-examination, this witness stated that the IGM Hospital, Bhiwandi was at about 1 km away from the police station. This witness further stated that about 15 minutes were required to record the statement. The statement was recorded till 05.00 am to

05.15 am and he obtained left hand thumb impression of Ratna. A suggestion was given that Ratna was not conscious to give the statement, this suggestion was denied.

14. Now we may refer to the evidence of Dr. Mahamad Salim Ansari (PW 1), who on the day of incident was duty medical officer in Indira Gandhi Memorial Hospital, Bhiwandi. In examination-in-chief, this witness stated that on 04.09.1997 he was on duty as the medical officer. On that day at about 05.00 am the burn patient by name Ratnabai Kanji Chauhan was brought by police constable D.M. Shirsat, to the hospital. This witness further stated that the patient gave the history that her husband and his first wife poured kerosene and set her on fire on 04.09.1997 at about 04.30 am. Then this witness stated that the patient was conscious and apprehensive. On examination, he found following burn injuries on Ratna:

1. Superficial to deep burns on face – 7%
2. Superficial to deep burns on right upper extremity – 9%
3. Superficial to deep burns on lower upper extremity – 9%

4. Superficial to deep burns on chest and abdomen – 14%
5. Superficial to deep burns on back – 10%
6. Superficial to deep burns on right lower extrimity – 14%
7. Superficial to deep burns on left lower extrimity - 14 %

This witness stated that total burns were 77%. This witness further stated that police and Special Executive Magistrate came to the hospital. Police recorded statement of Ratnabai, in his presence and in presence of Special Executive Magistrate and at that time Ratnabai was conscious and was in condition to give statement. This witness further stated that he was present through out while recording the statement of Ratnabai. Then this witness put endorsement on the statement. Then this witness stated that police obtained thumb impression of Ratnabai on the statement in his presence.

15. PW-1 further stated that Kanji Laxman Chauhan (accused No.1) came with memo of Bhiwandi Town Police Station to the hospital on 04.09.1997 at 05.15 am. He gave history i.e. sustained burns on 04.09.1997 at

about 04.30 am while saving his wife. He was conscious. His general condition was satisfactory. He had severe burning sensation and pain. This witness further stated that accused no. 1 sustained total burns of 14%. He further stated that on 04.09.1997 at about 05.30 am Laxman Jiva Chauhan came with memo of Bhiwandi Town Police Station to the hospital. He examined him. He gave history that he sustained burns on 04.09.1997 at 04.30 a.m while saving his daughter-in-law. He was conscious and his general condition was satisfactory.

16. In the cross-examination, PW-1 stated that it is not necessary that in case 75% to 100%, the patient suffers neurological shock. Then this witness stated that the statement of Ratnabai was recorded in OPD. Then certain suggestions were given to this witness that the statement was not recorded in his presence and Ratnabai was not mentally fit to give the statement, these suggestions were denied.

17. Dr.Sudhakar Jadhav (PW 2) is the Medical Officer at Thane Civil Hospital. In examination-in-chief, this witness stated that he was working as Medical Officer in Thane Civil Hospital from the year

1996. On 07.09.1997 he was on duty as the medical officer. On that day, dead body of one Ratnabai Chavan was brought by police to the hospital for postmortem examination. Then he carried out the postmortem examination since 01.10 pm to 02.20 pm on 07.09.1997 and found following antemortem burn injuries:

1. 9% burns on head, neck and face.
2. 9% burns on right upper limb.
3. 9% burns on lower upper limb.
4. 18% burns on chest and abdomen.
5. 18% burns on back.
6. 18% burns on right lower limb.
7. 18% burns on left lower limb.
8. 1% burns on perineum.

This witness stated that the total burns were 100%. All the burns were superficial to deep. Besides the burns, there was no external injuries. As per his opinion, cause of death was septicemic shock due to 100% superficial to deep burns.

In the cross-examination, this witness stated that there was no skin which was not burnt. The burns sustained by Ratnabai were severe. He further stated that in case of 75% to 100% burns, the patient may or may not sustain neurogenic shock.

18. Sumanbai Pandurang Baisane (PW 3), is the real sister of deceased Ratna. In examination-in-chief this witness stated that Ratna was her younger real sister. Ratna was married and her husband's name is Walmi. This witness further stated that Ratna was not living with her husband from two years before her death. This witness and Ratna were residing together at Khadipar, Bhiwandi and both were resided together for one month. Thereafter, Ratna alone used to go for labour work. Then this witness stated that one women told her that Ratna was found roaming with one man. The man is accused No.1 who is present in the Court. Then the accused no.1 took Ratna to his house. Then this witness had gone to the house of accused no.1 to call Ratna. At that time, the accused did not allow her to enter the house. The accused no.1 said that he would employ Ratna. Ratna told her that she would not come as she was living with accused no. 1. This witness further stated that the accused no. 1 and Ratna were residing at Bhiwandi. After one month, Ratna sustained the burns in the house of accused no.1 at Bhiwandi. Ratna was removed to Thane Civil Hospital. Then this witness

stated that she received telegram about Ratna sustaining the burns at her village Janva through police. Then she came along with her maternal uncle to Bhiwandi. Then they went to Thane Civil Hospital, at that time Ratna had died.

In the cross-examination, this witness admitted that she came to Thane in the morning on the day when Ratna died. She came to Thane after sunrise. When she had gone to the house of the accused to take Ratna, she told her that the accused would give her service. Ratna talked to her on the door way. This witness stated that Ratna said to her that whatever might be the caste, the accused no. 1 was going to help her, Ratna told her that she would not come to me, came on record by way of an omission.

19. Mrs.Sandhay Pandharinath Pawar, is the Special Executive Officer who recorded the statement of Ratna at Thane Civil Hospital. In examination-in-chief, this witness stated that on 04.09.1997, police came to me on the evening and asked her to come to Thane Civil Hospital to record statement. Then this witness accompanied police to the hospital. Then this witness

met with Ratna and disclosed her identity and told her that she intended to record her statement. This witness stated that she told the medical officer that she intended to record statement of Ratna Chavan. The medical officer, came to the patient Ratna and examined her. The medical officer said to her that she could record her statement. Then she asked Ratna as to how she sustained burns. Then she asked her questions. Then she obtained her thumb impression and put her signature and seal. Then medical officer put his signature and seal on the statement after she showed it to him. This witness, and one women were present while recording the statement. This witness stated that the woman, who was with her scribed the statement on her request as her hand had been injured.

In the cross-examination, this witness stated that Ratna was on upper floor and the cabin of the medical officer was on the lower floor. This witness obtained right hand thumb impression of Ratna on her statement as her left hand thumb had sustained burns. Then this witness admitted that the woman, who scribed the statement was not known to her. The woman came

across to her in the hospital. Then certain suggestions were given to this witness that Ratna was not physically and mentally in condition to give the statement, these suggestions were denied.

20. Vimal Prakash Bawiskar (PW 5) is the cousin of deceased Ratna. In examination-in-chief, this witness stated that Ratna was her cousin. She came to know from police that Ratna has sustained burns. On second day, she went to the hospital. Ratna told this witness that accused no. 1 poured kerosene and set her on fire.

In the cross-examination, this witness stated that Ratna was completely burnt below the face. Police came to her on 04.09.1997 and recorded her statement. Then she went to the hospital on 06.09.1997. Then this witness stated that she stated before police that Ratna told her that the accused no. 2 caught hold of her and accused no. 1 poured kerosene and set her on fire, this statement came on record by way of omission.

21. Deepak Vasantrya Dekate (PW 6), is the panch witness to the spot panchnama. In examination-in-chief this witness stated that Bhiwandi Town Police Station had called him at Barakholi Vaje Mohalla on 04.09.1997

to act as panch witness with another panch witness. This witness further stated that one Parsharam Chavan showed them one room. Then this witness saw the room. Smell of something burnt was in the room. There was kitchen adjoining the room. Then they went into kitchen. There was one kerosene can in the kitchen. There was one burnt quilt in the kitchen. One burnt Saree of red and yellow colour was found attached to the quilt. Then police seized all the articles. Panchnama was drawn.

22. Shaikh Rahim Shaikh Abdulla (PW 7) is the investigating officer. In examination-in-chief, this witness stated that in the year 1997 he was attached as Police Inspector (Crime) to Bhiwandi Town Police Station. On 04.09.1997 PSI Shendage (PW 8), recorded report of Ratnabai Chauhan. This witness further stated that on the same day Special Executive Officer Sandhya Pawar recorded statement of Ratnabai Chauhan. On the same day he visited a place of occurrence. He drew panchnama of the place of incident in presence of two panchas. Then this witness stated about the steps taken by him in the process of investigation such as,

recording the statement of witnesses, drawing the various panchnamas, collecting the postmortem reports, and filing of charge-sheet.

In the cross-examination, this witness stated that it is not mentioned in FIR at what time crime is registered. This witness further stated that Vimal Baviskar did not state before him that Ratna told her that the accused No. 2 Hansa caught her and the accused kanji poured kerosene and set her on fire. It transpired in his investigation that Vimalbai met Ratna on 05.09.1997 and not on 04.09.1997 and he did not record statement of Vimalbai after 04.09.1997 and before death of Ratna.

23. Firstly, we consider the issue that the death of Ratna being accidental or homicidal ? Learned Trial Court has dealt with this issue in detail in paragraph 7, 8 and 9 of the judgment. It is not in dispute that the deceased Ratna was residing with accused nos. 1 and 2 under same roof. It is also not in dispute that on 04.09.1997 Ratna was in the house of accused no. 1 and at about 04.30 a.m she sustained 100% burns in the house of accused no. 1. Dr. Ansari (PW 1), the Medical

Officer in IGM Hospital, Bhiwandi stated that Ratna was brought by police constable D.M. Shirsat to the hospital. Then Ratna gave the history to him that her husband i.e. accused no. 1 and his first wife poured kerosene and set her on fire on 04.09.1997 at about 04.30 a.m. Considering this evidence, it is proved that the Ratna died homicidal death.

24. The another issue is, whether the prosecution proves that both the accused have committed murder of Ratna?. To consider this issue, we have to refer to evidence of certain witnesses and the first dying declaration, which is first in point of time recorded by PSI Shendage (PW 8).

25. At the cost of repetition, we may state that Ratna was firstly taken to IGM Hospital, Bhiwandi, where PSI Shendage (PW 8) recorded dying declaration in presence of Special Executive Officer and Medical Officer. Dr. Ansari (PW 1). Ratna stated that her husband i.e. accused no. 1 and his first wife poured kerosene and set her on fire on 04.09.1997 at about 04.30 a.m. It also came on record that in the Register at Exh. 15, maintained in IGM Hospital, Bhiwandi

wherein it has been recorded that burns were caused by husband and his first wife by pouring kerosene.

26. In the spot panchnama, it can be seen that panchnama was drawn up in the morning and at that time there was kerosene smell in the kitchen. One can containing kerosene, one burnt saree, and one burnt quilt, were found in the kitchen and the flooring was cleaned. If we consider this aspect of the matter, it can be said that Ratna did not sustain 100% burns accidentally or her attempt was to commit suicide. It is important to note that both the accused persons had not taken the defence that the Ratna had committed suicide. It was further found that floor was cleaned.

27. It is the the submission of learned Counsel appearing for the Appellant that the deceased was tutored by Sumanbai (PW 3) and Vimal (PW 5). In their evidence, it is reflected that both the witnesses were called by police. Vimal (PW 5) in her deposition stated that she was at Bhiwandi, and police informed her about the incident and then she went to Ratna at Thane Civil Hospital on second day. The first dying declaration was immediately recorded at IGM Hospital,

Bhiwandi only in presence of Dr. Ansari (PW 1), Special Executive Officer and PSI Shendage (PW 8). Thus, it can safely be said that deceased had no occasion to meet with these two witnesses and was not tutored. Considering this aspect, we are unable to accept the submission that the dying declarations are doubtful or victim was tutored.

28. The accused no. 1 in his statement under Section 313 of Cr.P.C. stated that he had carried deceased Ratna to hospital but, there is no supportive evidence to it. On the contrary, the evidence of PSI Shendage (PW 8) clearly shows that Ratna alone came to Bhiwandi Town Police Station in burnt condition and he deputed one constable to shift her to IGM, Hospital. Dr. Ansari (PW 1) also stated in his evidence that the deceased Ratna was brought to hospital by one constable Shirsat.

29. Considering the above referred material and evidence, it can be stated that the death of deceased Ratna is a homicidal death and the Appellants are the author of crime.

30. Considering the evidence brought on record, we

are unable to accept the submissions of learned Counsel for the Appellants and we find considerable merit in the submissions of learned APP. Thus, Appeal is devoid of merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)