

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

CRIMINAL APPEAL NO. 508 OF 1996

Mangu Maharu Chavan,
aged 35 years, resident of
Malegaon, Tal. Malegaon
Dist. Nasik.

... Appellant

V/s.

State of Maharashtra.
(At the instance of Police Station,
Malegaon)

... Respondent.

Mr. Sachin V. Dhakephalkar a/w. Mr. Mahesh Subramaniam, advocate
for appellant.

Ms. P.P. Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

DATE : FEBRUARY 26, 2021.

JUDGMENT (SMT. SADHANA S. JADHAV,J)

1 The appellant herein is convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and fine of Rs. 1,000/- I.d. to suffer R.I. for one year by Additional Sessions Judge, Malegaon in Sessions Case

No. 90 of 1991 vide Judgment and Order dated 17/8/1996. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) On 7/6/1991 Shobhabai, wife of the appellant was admitted in N.N. Wadia Hospital at Malegaon with history of burn injuries. Dr. Ansari P.W. 2 informed Malegaon Taluka Police Station telephonically that a patient was admitted in the hospital with history of burn injuries and being medico legal case, the police should make arrangement for recording of the statement of the injured.

(ii) The message was sent to Special Executive Magistrate (P.W.1) Mrs. Mrudula Mahashabde and she was requested to record the statement of the injured accordingly. P.W. 1 in the capacity of the Special Executive Magistrate visited the hospital and found the patient to be conscious and oriented and recorded the statement of the injured which is at Exh. 34.

(iii) The injured Shobha had disclosed to the Special Executive

Magistrate that on 7/6/1991 at about 10 a.m. her husband had returned home in an inebriated state of mind. His mother and sister asked him not to treat Shobhabai properly. Her husband i.e. the present appellant had assaulted her. She was also assaulted by her mother-in-law and sister-in-law. In the meanwhile, her husband had poured kerosene on her person and had set her ablaze.

(iv) Upon hearing her cries, the neighbours had rushed to the spot and had extinguished the flames. Some one had informed her brother about the said incident. Her brother visited her house and had taken her to N.N. Wadia Hospital for treatment.

(v) On the basis of the said statement, Crime No. 176 of 1991 was registered at Malegaon Taluka Police Station. Investigation of the said offence was entrusted with P.W. 6 Chindhu Namdeo Mahajan. After filing of the charge-sheet, the case was committed to the Court of Sessions and prosecution had examined 6 witness to bring home the guilt of the accused.

3 P.W.1 Ms. Mrudula Mahashabde is the Special Executive Magistrate. She had received a letter from the police station. Pursuant

to which, she had recorded statement of the injured which is marked at Exh.33. She has deposed before the Court that she had inquired with the patient as to whether she was conscious and in a position to make a statement. Upon receiving an answer in affirmative, she had recorded the statement of the injured. She had obtained endorsement of the doctor on the statement, after recording the same. She has categorically admitted in the cross-examination also that the endorsement of the doctor as far as the consciousness of the victim was concerned was obtained only after the statement was recorded.

4 PW. 2 Dr. Ansari Mohd. Yakub had examined the patient on 7/6/1991 at about 3.45 p.m. He had informed the police station about the same. According to him, he had once again examined the injured. He found her to be conscious and in a position to give statement. Accordingly, he had informed the Magistrate and then statement of the victim was recorded. He had given the written endorsement on the said statement only after the same was recorded. Dr. Ansari Mohd. Yakub had stated before the Court that supplementary statement of the injured patient was recorded by the police. The said statement is at Exh. 46. PW. 2 claimed to have given

his opinion about the state of mind of the injured while recording the supplementary statement also. Shobha had succumbed to the burn injuries on the same day. While performing autopsy, it was opined that she had sustained 96% burn injuries. In the cross-examination, P.W. 2 categorically denied that it cannot be said that the patient who has suffered 96% burns would remain unconscious. He had denied the suggestion that the injured was not conscious at the time of admission in the hospital.

5 P.W. 3 Shobhabai More happens to be the sister-in-law of the deceased Shobha. According to her, she had accompanied Shobha to the hospital. While in transit, Shobha had disclosed to P.W.3 that she was assaulted by her husband and she had sustained fracture to her hand and that thereafter, her husband had set her ablaze. According to P.W. 3, family members of Shobha were not present in the house when she had been to her house.

6 Upon perusal of the supplementary statement of the deceased, which was recorded on the same day and is at Exh. 46, she has elaborated the incident in her supplementary statement and has

stated that she was assaulted by her mother-in-law and sister-in-law and that when the neighbours were trying to extinguish the flames, her husband had pretended to save her. Besides that there is no inconsistency in the two statements i.e. at Exh. 34 and Exh. 46.

7 PW. 4 Dadaji Suryavanshi had also accompanied the victim to N.N. Wadia Hospital, being a friend of the brother of the victim. Even according to him, oral dying declaration was made in which the victim had disclosed about squeezing of hand by her husband setting her ablaze.

8 PW. 5 Shelke is the investigating officer, whereas PW. 6 Chindhu had recorded supplementary statement of the injured which is at Exh. 46.

9 Learned Counsel for the appellant had vehemently submitted that the dying declaration at Exh. 34 cannot be relied upon for the simple reason that there is no cogent evidence to show that the victim was in a fit state of mind to give her statement. It is argued that the endorsement of PW. 2 on the said statement was obtained only

after it was recorded and hence, it is doubtful as to whether the victim was oriented and in a fit state of mind to make a statement. The learned Counsel submits that there is no independent evidence. The investigating officer has not recorded the statements of the neighbours who had extinguished the flames. That the oral dying declaration does not inspire confidence as the victim had suffered 96% of burn injuries. It is also argued that there was no motive on the part of the appellant to set his wife ablaze and in the absence of evidence of such a nature, the conviction recorded by the Additional Sessions Judge deserves to be quashed and set aside.

10 As against this, the learned APP submits that it is specifically stated in the dying declaration that the appellant was in an intoxicated state of mind at the time of incident and therefore, it would not be necessary to have a particular motive. Learned APP submits that the incident has occurred in the house and therefore, it would not be possible to record the statement of any independent witness who had reached the spot only after the victim was set ablaze. According to learned APP, the dying declaration of the victim deserves to be held as voluntary and truthful. However, looking at the

inconsistency in both the statements, it would be difficult to hold that the said statement of the victim is voluntary and truthful and therefore, does not inspire confidence of the Court.

11 Apart from the above said facts of the case, it is pertinent to note that the time of recording the statement at Exh. 34 is not mentioned in the statement.

12 In this case, while recording the statement of the accused under section 313 of the Code of Criminal Procedure, 1973, no question was put to the accused in respect of the contents of the dying declaration which is at Exh. 34. The precise reason could be that P.W. 1 has not stated the said contents before the Court and therefore, all that can be inferred is that a statement of the victim was recorded. It is apparent on the face of the record that the most incriminating circumstance against the accused has not been put to him rather he was not confronted with the incriminating circumstances for which he could be convicted for life.

13. It would be appropriate to place implicit reliance on the judgment of the Apex Court in the case of **Shaikh Maqsood v/s. State**

of Maharashtra¹, wherein it is held as follows :

“6. The purpose of [Section 313](#) of the Code is set out in its opening words- ‘for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.’ [In Hate Singh, Bhagat Singh v. State of Madhya Pradesh](#) (AIR 1953 SC 468) it has been laid down by Bose, J that the statements of accused persons recorded under [Section 313](#) of the Code ‘are among the most important matters to be considered at the trial’. It was pointed out that the statements of the accused recorded by the committing magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box and that they have to be received in evidence and treated as evidence and be duly considered at the trial. This position remains unaltered even after the insertion of [Section 315](#) in [the Code](#) and any statement under [Section 313](#) has to be considered in the same way as if [Section 315](#) is not there.

7. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.”

1 2009(6) SCC 583

The Supreme Court has further held that -

“The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting [Section 313](#) of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

14 In the present case, the Special Executive Magistrate has failed to testify before the Court the narration of facts which were disclosed to her by the victim, which would lead to the transaction in which she had sustained burn injuries and had subsequently died. It is for this reason, there is failure on the part of the prosecution to bring the contents of the statement before the Court and the most incriminating circumstance against the accused. The accused had no opportunity to give any explanation about the most incriminating circumstance against him. It is in view of this that the appeal deserves to be allowed.

15 Hence, following order is passed :

ORDER

- (i) The appeal is allowed.

- (ii) The conviction and sentence passed against the appellant for the offence punishable under section 302 of the Indian Penal Code recorded by the Additional Sessions Judge, Malegaon in Sessions Case No. 90 of 1991 vide Judgment and Order dated 17/8/1996 is hereby quashed and set aside.

- (iii) The accused – appellant is acquitted of all the charges levelled against him.

- (iv) The bail bond stands cancelled.

- (v) Fine amount, if paid, be refunded.

- (vi) The appeal is disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)