

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

CRIMINAL APPEAL NO.247 OF 2013

Anil Ramdas Borse

Age 28 years

(at present undergoing sentence at
Nashik Jail) of District Nashik Indian
Inhabitant and residing at 8-A-9 Patil
Park, Jadhav Sankul, Chinchole Shivar,
Nashik.

... Appellant

V/s.

State of Maharashtra

(At the instance of Ambad Police Station,
Nashik)

...Respondent

Mr. Sachin Gite for the Appellant.

Mrs. M. M. Deshmukh, APP for the Respondent-State.

**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 24 AUGUST 2021.

JUDGMENT (Per Nitin Jamdar, J)

The Appellant had challenged the judgment and order passed by the learned Sessions Judge, Nashik in Session Case No.207 of 2011 dated 24 January 2013, whereby the Appellant/Accused is convicted for the offence punishable under

Section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life.

2. The prosecution's case, in brief, is as follows: A Medico-Legal Case No.398 of 2011 was registered when the deceased Aarti Anil Borse was admitted to Civil Hospital, Nashik because of burn injuries. The police attended the hospital to record the statement of Aarti Borse. Aarti gave a statement, recorded as the First Information Report, that she with her husband-accused and two children were residing in rented premises at Nashik. On 13 June 2011, when she had asked the Accused-Appellant to allow her to go to her sister's home at Chopda, the Appellant quarreled with her suspecting her relations with the husband of her sister living at Chopda. Aarti stated that the Appellant kicked her and gave blows, poured kerosene on her and set her on fire. A dying declaration was recorded by the Special Executive Magistrate, where Aarti gave the same cause of her death. During hospitalization and treatment, Aarti Borse succumbed to burn injuries. Crime registered initially under Section 307 was converted to Section 302 of the Indian Penal Code. Police Authorities carried out an investigation. Statement of the Special Executive Magistrate who recorded the dying declaration was recorded. Spot panchanama was prepared, and the articles were seized. The statement of relatives of the deceased, the neighbours of the Appellant and

doctors were recorded. Muddemal was sent to Chemical Analyzer, and after the investigation charge sheet was filed.

3. On committal, Session Case No.207 of 2011 came to be registered. The charge was framed under Section 498-A, 302, 323, 504 of the Indian Penal Code. The Appellant pleaded not guilty and claimed to be tried. The learned Sessions Judge by the judgment and order dated 24 January 2013, after considering the evidence and the arguments, convicted the Appellant under Section 302 of the Indian Penal Code and acquitted the accused of the offence punishable under Section 498-A, 323 and 504 of the Indian Penal Code. The Appellant has thus come in appeal.

4. We have heard Mr. Sachin Gite, the learned Counsel for the Appellant and Ms. M. M. Deshmukh, the learned Additional Public Prosecutor.

5. Spot panchanama Exhibit 14 is on record. PW-10-Kondiram Popere, Senior Police Inspector, has stated that he had gone to the spot of the incident, prepared panchanama and seized kerosene can and burnt match sticks. The incident took place in the house of the accused and the deceased. Exhibit 14 shows that there was five litres can with its cap lying separate, and there was the smell of kerosene in the room. Match sticks were lying around and pieces of burnt fabric. Walls were blackened, and electric fitting showed that there were scorched by flames. Nothing has

been shown to discredit the prosecution evidence that the deceased suffered burn injuries in her house. The prosecution has proved the spot of incident

6. As regards the injuries, post mortem report Exhibit 31 is on record. PW-7-Dr. Deepak Rajput, the Medical Officer, Civil Hospital, Nashik, was examined. He deposed that the deceased Aarti Borse suffered 90% burn injuries, and the death was due to septicemic shock due to extensive superficial to deep burns 90%. There is nothing in the cross-examination to discredit the version. The prosecution has proved that Aarti Borse succumbed to 90% burn injuries.

7. Before we turn to the dying declaration given by the deceased, we will refer to the ocular evidence. The prosecution has examined witnesses to demonstrate that the appellant and the deceased were in the house when the incident occurred. PW-1-Nitu Singh was the neighbour of the Appellant. She deposed that the incident happened on 13 June 2011 at around 12 to 2.00 p.m. PW-1-Nitu Singh stated that she at the relevant time noticed smoke coming out and when she came out of the house, the room of the accused was locked. People were calling him, but no one opened the door. When the door was tried to be forcibly opened, the accused opened the door, and then he started shouting that his wife is burnt. The Appellant tried to go away, but others told

him to take his wife to the hospital. Her testimony is not shaken at all in the cross-examination. Therefore prosecution has proved that the accused and the deceased were together inside the closed room when Aarti suffered 90% burn, which was the cause of her death was established by the prosecution. The deceased and two children (aged 2 years old and two months old baby) were present when the deceased suffered 90 % burn injuries. Since what happened inside the closed house of the Appellant and how the deceased received serious burn injuries being in the special knowledge of the Appellant could have been explained by the Appellant. In his statement under Section 313 of the Criminal Procedure Code, the Appellant has only stated that the prosecution case is false.

8. The learned Counsel for the Appellant argued that there was no motive on the part of the accused to commit the crime. He submitted that PW-1-Nitu Singh admitted that the conduct and appearance of the deceased and accused as well. The deceased did not complain regarding anything and was found happy in cohabitation. First, her evidence will have to be considered along with the evidence of the relatives of the deceased. Second, PW-1-Nitu Singh is one of the neighbours of the Appellant. There could be various reasons as to why the deceased did not complain to the neighbour about the ill-treatment, and it could be that the deceased outwardly showed

composure and happiness. PW-4-Ashabai Choudhari is the mother of Aarti. She deposed that the accused used to beat Aarti on suspicion and PW-4 had informed Aarti to make adjustments in married life, and she expressed a hope that a proper relationship would work out between Aarti and the accused. PW-4-Ashabai Choudhari deposed that a year before the incident, the Appellant had severely beaten the deceased Aarti and Aarti left the house and report was lodged to the police. The report is at Exhibit 21. PW-4 also deposed that she had called Aarti on the telephone a day before the incident, and she informed PW-4 of the cruelty by the Appellant. PW-5-Jitendra Suresh Choudhari, the brother of the deceased, also deposed that the Appellant-Accused used to suspect deceased Aarti and subjected her to cruelty. Therefore the contention that there was no motive to commit the crime cannot be accepted.

9. Now, coming to the dying declaration, the deceased Aarti had given three statements. First, PW-4-Ashabai Choudhari, the mother of the deceased, deposed that when she had gone to the hospital and asked deceased Aarti, Aarti told her that the Appellant severely beat her and poured kerosene and set her on fire. This is the first oral declaration made by the deceased. Second, the deceased Aarti gave a declaration to PW6-Kamlakar Joshi, Special Executive Magistrate in Civil hospital, Nashik, on 13 June 2011. The third is the statement made by the deceased

Aarti to PW-8-Sandip Patil in the Shriji Private Hospital, Nashik. The incident was on 13 June 2011, and Aarti succumbed to injuries on 19 June 2011.

10. As regards the statement/declaration made to PW-8-Sandip, which is at Exhibit 33 is concerned, the learned Counsel for the Appellant submitted that the statement which is treated as a FIR is recorded on 13 June 2011 is too elaborate, and it is not possible that it would be so. The learned Counsel submitted that PW-8-Sandip Patil admitted in the cross-examination that he had not taken the signature of any person identifying the patient on the statement. The learned Counsel submitted that PW-8-Sandip Patil had not issued any order in writing entrusting the investigation to him, and he did not make any entry in the police diary. We do not find any merit in the submission. PW-8-Sandip Patil deposed that the Medical Officer was present when he recorded the statement of Aarti. Exhibit 33 is the endorsement that the patient is in a position to give a statement. PW-9-Dr. Kalyani Suresh Challani gave a certificate/endorsement at Exhibit 38. PW-9-Dr. Kalyani Challani produced on record a register showing the entry of Aarti having been brought to the hospital. The Register is at Exhibit 39. There is no reason why the Doctor who treated Aarti would depose against the Appellant. She had specifically deposed that she has examined deceased Aarti and found that she could speak. She denied the suggestion

that Aarti was not well oriented or physically and mentally not fit to give a statement at the relevant time. PW-8-Sandip Patil, on the basis of Exhibit 33, registered the offence.

11. PW-6-Kamalakar Joshi was working as Nayab Tahasildar. Upon receiving a letter (Exhibit 25), he went to Civil Hospital, Nashik and with the assistance of the medical officer PW-7-Dr. Deepak Rajput conducted further formalities. The Medical officer examined Aarti and endorsed accordingly regarding Exhibit 26. PW-6-Kamlakar Joshi deposed that he removed all persons, including police, from the room and made the deceased aware of the statement. He asked Aarti as to how she got burnt. Aarti stated that the Appellant set her on fire. He deposed that she put a thumb impression on the dying declaration. PW-6-Kamalakar Joshi deposed that he identified the thumb impression and accordingly proved the statement of the deceased at Exhibit 28. The dying declaration at Exhibit 28 is clear. Deceased Aarti specifically stated that the Appellant set her on fire. She also stated that the Appellant doused the flames and brought her to the hospital. There is intrinsic consistency and ring of truth in this statement where she has acknowledged that the Appellant extinguished the flames and brought her to the hospital.

12. The learned Counsel for the Appellant sought to contend that there is no counter signature on the thumb impression of the deceased. He submitted that from the endorsement at Exhibit 26 and 27, it could not be concluded that Aarti was mentally and physically fit to give the statement. There is no merit in this contention as PW-5-Jitendra, the brother of the deceased, had stated that PW-6-Kamalakar Joshi, the Special Executive Magistrate was present in the Civil Hospital. PW-7-Dr. Deepak Rajput deposed that on 13 June 2011, PW-6-Kamalakar Joshi, Special Executive Magistrate was with him for examination of deceased Aarti. He deposed that he found Aarti in condition to give a statement, and he placed his endorsement accordingly at Exhibit 26. He placed another endorsement at Exhibit 27 after completion of the statement. Nothing is brought in his cross-examination as to why his statement that he has examined Aarti and gave endorsement should not be believed. As regards the ability of Aarti to speak and give a statement, PW-3-Sakhubai Choudhari, aunt of Aarti, PW-4-Ashabai Choudhari, PW-5-Jitendra Choudhari, the brother, PW-6-Kamalakar Joshi, the Special Executive Magistrate, PW-7-Dr. Deepak Rajput and PW-9-Dr. Kalyani Challani specifically deposed that Aarti was in a position to give a statement when she was brought to the hospital.

13. The learned APP submitted that in view of this consistent evidence, it is clear that the Appellant-Accused had poured kerosene on deceased Aarti and set her on fire, and there is no reason why dying declaration, evidence of neighbours and the relatives should be disbelieved.

14. The evidence on record proves that the Appellant and the deceased were in the house where the deceased suffered 90 % burn injuries. She gave a dying declaration to the Special Executive Magistrate, and the endorsement of the Medical Officer is present. The relatives of the deceased having deposed regarding cruelty meted out to deceased Aarti. The accused has given no explanation as to what occurred inside the house where the incident took place.

15. Considering the evidence in totality, it will have to be held that the prosecution has proved that the Appellant is guilty of committing murder of his wife Aarti and has been rightly convicted under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life by the learned Sessions Court. There is no merit in the Appeal. The Appeal is accordingly dismissed.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)

Digitally signed
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