

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

CRIMINAL APPEAL NO. 729 OF 2015

Sunil Rawan Bhadane

Age: 38 years, Occu.: Pan Shop,
R/o Borkund, Tq. & Dist. Dhule

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. Joydeep Chatterji, Advocate for appellant
Mr. R.B. Bagul, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.
RESERVED ON : 29th NOVEMBER, 2022
PRONOUNCED ON : 05th DECEMBER, 2022**

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This is an appeal from conviction. The appellant has been convicted for committing murder of his wife and, therefore, sentenced to suffer life imprisonment and fine of Rs.5,000/- with default stipulation. The appellant, alongwith his parents, sister and her husband were also prosecuted for the offence punishable under Section 302 of the Indian Penal Code (I.P.C.). They have been acquitted. The State has not preferred appeal against their acquittal. As such, the challenge in the present appeal is to the appellant's conviction for the offence punishable under Section 302 of the I.P.C. and consequential sentence.

2. The facts giving rise to the present appeal are as follows :-

Latabai (deceased) was the wife of the appellant. Their marriage took place six years before the incident dated 10th October, 2011. The couple did not have a child. The appellant and his parents would suspect Latabai's character. On 09th October, 2011, there was a quarrel between the appellant and the deceased over the same. Parents-in-law of the deceased were also involved in the quarrel. On following day, again there was a quarrel between the appellant and the deceased. It was 10:30 a.m. Parents of the appellant left the house for field, but not before asking the appellant to set the deceased ablaze.

3. It is also the case of the prosecution that the appellant poured kerosene on the person of Latabai and set her ablaze. P.W.5 – Digambar was in relations with the deceased from her parental side. He would reside in the very village. He learnt about the incident. He immediately rushed to the house of the appellant to find Latabai to have suffered extensive burns. The appellant was present there. Digambar rushed Latabai to the hospital. Latabai had related the incident to him. In the hospital, the Executive Magistrate (P.W.2) and Police Naik (P.W.3) recorded statements of the deceased. Both of them had verified Latabai to have been conscious and fit to make statements. On the next day i.e. on 11th October, 2011, Latabai succumbed to the burns.

4. Based on the statement of Latabai, initially crime vide C.R. No. 327 of 2022 came to be registered under Section 307 read with Section 498(A) of the I.P.C. against the appellant and in-laws of the deceased. On her demise, Section 302 of the I.P.C. came to be invoked in place of Section 307. During investigation of the crime, scene of offence panchanama (Exh.28) was drawn. Statements of the persons, acquainted with the facts and circumstances of the case, were recorded. Mortal remains of Latabai was subjected to autopsy. On completion of investigation, the appellant and in-laws of the deceased were proceeded against by filing the charge-sheet.

5. On committal of the case, trial Court framed the charge (Exh.7). The appellant pleaded not guilty. The prosecution examined seven witnesses and produced in evidence certain documents. On appreciation of evidence, trial Court convicted the appellant as stated above.

6. Learned counsel for the appellant would submit that the deceased had suffered 95% of the burns. She must not have been conscious to make a statement either to her father or any one else. The oral dying declaration made to P.W.5 is inconsistent with either dying declarations of the deceased. None of them, therefore, would be reliable to base a conviction of the appellant for serious offence of murder, moreso when the deceased was not available for cross-examination. The medical officer (P.W.1), who conducted

postmortem examination, admitted the deceased to have suffered 100% of burns to her both upper limbs. The same indicates that thumb impressions of the deceased could not have been obtained. The thumb impressions on the so called dying declarations must have been of someone else. He would further submit that thumb impressions on both the dying declarations have not been attested. The medical officer (P.W.6), who examined the deceased, did not affix his certification to both the dying declarations to state the deceased was conscious oriented and fit to make a statement, after those were recorded. According to learned counsel, the appellant too suffered extensive burns. He was admitted to the hospital. This fact has been consciously ignored by the investigating officer and even not taken note of by the trial Court. According to learned counsel, the written and oral dying declarations relied on by the prosecution are not fit to act upon. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that the appellant and the deceased were the only persons at home at the material time. The appellant did not offer any explanation as to how did the deceased suffered burns. All the four dying declarations are consistent with each other in material particulars. The deceased was on the death bed. She had no reason to falsely implicate the appellant. According to learned A.P.P., the trial Court has passed a well reasoned judgment calling for no interference therewith.

8. Considered the submissions advanced. Perused the evidence relied on. Admittedly, the appellant and the deceased were the only persons at home at the material time. The deceased suffered extensive burns (95%). P.W.5 – Digambar was resident of the very village in which the appellant and the deceased would reside. He was in relations with the deceased from her parental side. As soon as he learnt about the incident, he rushed to the house of the appellant. He found Latabai to have suffered extensive burns. The appellant was very much present there. The deceased told him that in the house itself the appellant doused her with kerosene and set on fire. It is he (P.W.5), who admitted Latabai to the Civil Hospital, Dhule immediately. In response to the questions put to him in the cross-examination, it is in the evidence that he alongwith his brother were in the hospital till father of Latabai arrived. He met him. The father then met his daughter – Latabai. His police statement is silent to disclose that Latabai had told him that her parents-in-law had asked the appellant to set her ablaze. His evidence would further suggest that Latabai had told him that the appellant too suffered burns when he tried to extinguish fire.

9. P.W.2 – Madhukar Thosar, Nayab Tahasildar-cum-Executive Magistrate, claim to have recorded the statement of the deceased. It is in his evidence that he had received the letter from police station officer on 10th October, 2011 requesting him to record the statement of Latabai. He,

therefore, rushed to the hospital. He assured himself that Latabai was in conscious state of mind. He asked her name and village to verify the same. Then he recorded Latabai's statement (Exh.25). It is further in his evidence that before recording of Latabai's statement, he requested the doctor to duly examine and certify her to be fit and conscious to make the statement. P.W.6 - medical officer, accordingly examined her and gave his endorsement to that effect on Exhibit 25 itself.

10. P.W.3 – Police Naik testified that on the directions of police station officer, he rushed to the hospital. He recorded Latabai's statement after he got her checked by the doctor to certify her to be conscious to make a statement. The statement recorded by him is at Exhibit 27. Then we have evidence of P.W.4 – Pralhad, father of the deceased. It is in his evidence that on having heard about Latabai to have suffered burns, he rushed to the hospital. Latabai related him the appellant to have set her ablaze.

11. Evidence of P.W.6 – Dr. Priti suggests that she was on duty as Casualty Medical Officer at Civil Hospital, Dhule on 10th October, 2011. On request of both, P.W.2 and 3, she examined Latabai, found her conscious oriented and then gave endorsement to that effect on both the documents (Exh.25 and 27).

12. It is true that to base a conviction on dying declaration, the prosecution is required to prove that the declarant was conscious oriented and fit to make the statement. It is also required to prove that the statement was true and was not the outcome of tutoring or prompting.

13. Both, P.W.2 – Madhukar Thosar and P.W.3 – Vijay Patil are the independent witnesses. They have no reason to falsely name the appellant in the statements recorded by them. The dying declarations (Exh.25 and 27) were recorded by both of them within hours of the incident. Medical Officer (P.W.6) had certified deceased – Latabai to have been conscious oriented to make the statement. There is nothing to indicate this Court to have any reason to disbelieve her version. It is true that Latabai had suffered extensive burns. Her both upper limbs were burnt completely. The medical officer (P.W.1), who conducted postmortem, testified that some of the injuries to the upper limbs were superficial. Neither the medical officer, who conducted the postmortem, nor the one who had examined the deceased and certified to be conscious oriented, was suggested that due to both the upper limbs have been extensively burnt, it was impossible to obtain thumb impressions of the deceased on her dying declarations. Therefore, whatever submissions made by learned counsel before this Court cannot be relied on.

14. P.W.4 – Pralhad, father of the deceased, has also given evidence in detail as to how the appellant had ill-treated the deceased suspecting her

character. It was specifically in his evidence that the deceased had lodged a report earlier against the appellant and her in-laws for ill-treatment. The matter was, however settled. There was no denial thereto in the cross-examination. The evidence on record undoubtedly suggest that the deceased was conscious and fit to make statement/s. Accordingly, she related her father, relations, Executive Magistrate and even Police Naik that she was set ablaze by her husband over an issue of suspecting her character. All the four dying declarations are consistent in material particulars. The Court has no reason to doubt the same.

15. The question is of what offence the appellant would be guilty. Admittedly, the appellant suffered burns while he attempted to extinguish fire. He too was admitted to the hospital. In the facts and situation of the case, it is, therefore, to be observed that the incident had a prelude of a quarrel between the appellant and the deceased. On setting the deceased ablaze, the appellant himself attempted to extinguish fire. In the process, he suffered burns. It is, therefore, to be inferred that he had no intention to kill the deceased. It would, therefore, not be an offence of murder punishable under Section 302 of the I.P.C. but an offence under Section 304 of the I.P.C. The appellant is in jail for over ten years. He would, therefore, be sentenced to suffer imprisonment for the term already undergone.

16. In view of above, the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) The order convicting the appellant for the offence punishable under Section 302 of the I.P.C. and sentencing to life imprisonment and fine of Rs.5,000/-, is hereby set aside.
- (III) The appellant is convicted for the offence punishable under Section 304 of the I.P.C. and, therefore, sentenced to suffer imprisonment for a term already undergone and pay a fine of Rs.5,000/-. In default of payment of fine amount, he shall suffer rigorous imprisonment for fifteen days.
- (IV) Bail bonds of the appellant to stand cancelled.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

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