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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 966 OF 2015****Haridas Raosaheb Bedare**

Age – 25 Years, Occ. - Agriculturist,
 R/o. Uchethan, Tal. Mangalwedha,
 District Solapur.
 [At present lodged in Kolhapur Sub-
 Jail at Kalamba]

.. Appellant
 (Org. Accused No. 1)

Vs.

The State of Maharashtra

| .. Respondent

Ms. Jai Vishal Kanade, Appointed Advocate a/w Mr. Rahul Shirgavkar
 for Appellant

Mr. H.J. Dedhia, APP for State

**CORAM : A.S. GADKARI &
 MILIND N. JADHAV, JJ.**

Reserved on : 26th August, 2022.

Pronounced on : 18th October, 2022

JUDGMENT (PER MILIND N. JADHAV, J.)

. In the present case, Appellant was initially represented by Advocate Mr. Jaydeep D. Mane who has filed his vakalatnama on behalf of Appellant. His last appearance in this appeal is on 24.10.2018. Thereafter the Appeal was called out for final hearing on 25.07.2022, when none appeared for the Appellant.

2. On 26.07.2022 when once again none appeared for Appellant, this Court passed the following order:-

“ None present for Appellant. Present Appeal was called out for hearing yesterday also i.e. on 25.07.2022, when none had appeared for the Appellant. The presence of Advocate for Appellant is necessary for final adjudication of the present Appeal.

2. In view thereof, Registry is directed to appoint an Advocate from the panel of High Court Legal Services Committee, Mumbai to represent and espouse the cause of Appellant. Registry is further directed that, at the time of appointment of concerned Advocate, copy of the paper book of the present Appeal be supplied to the appointed Advocate.

This be done within a period of three weeks from today.

3. List the Appeal on Final Hearing Board for the week commencing from 22nd August 2022.”

2.1. Accordingly, Ms. Jai V. Kanade was appointed to represent the Appellant by the Legal Aid Committee. Appeal was listed for final hearing in the week commencing from 22.08.2022. It was called out for final hearing on 25.08.2022. After it was called out, Ms. Kanade, learned Advocate appointed for Appellant commenced her arguments and submissions. However, when this Court reassembled after lunch for continuation with final hearing, Advocate Mr. Jaydeep Mane sought to intervene and informed the Court that though he had filed vakalatnama on behalf of Appellant, he had no objection if Ms. Kanade Advocate appointed through Legal Aid Committee continues to argue

the present final hearing. However he requested the Court that his appearance may also be reflected along with Advocate Ms. Kanade in the cause title since he had initially filed vakalatnama on behalf of Appellant.

2.2. We strongly deprecate this sharp practice. We informed Advocate Mr. Mane that since the law was set into motion for appointing Advocate from the Legal Aid Committee by Order dated 26.07.2022, we would still permit him to represent and argue on behalf of Appellant, subject to he paying costs for setting aside the order dated 26.07.2022 and arguing the Appeal before us without seeking any further adjournments. Mr. Mane was given time to ponder over the suggestion made by the Court. On 26.08.2022, he informed us that he was reluctant to accept the suggestion made by the Court, but still insisted that he would have no objection whatsoever if Advocate Ms. Kanade represented the Appellant, however in the final judgment & order, his name should also be shown as representing the Appellant along with Ms. Kanade. As noted earlier we strongly deprecate this sharp practice adopted by Advocate Jaydeep Mane.

2.3. We deem it necessary to record the aforesaid fact in order to place on record that, Advocate Mr. Mane has not represented the Appellant and had no role whatsoever to play in arguing or assisting

this Court in the present Criminal Appeal. We leave it at that.

3. This Appeal questions the legality of Judgment and Order dated 03.08.2015, passed by the learned Additional Sessions Judge, Pandharpur (referred to as “**trial Court**”) in Sessions Case No. 60 of 2011 convicting Appellant (accused No. 1) for offences punishable under:-

- (i) Section 302 Indian Penal Code, 1860 (for short “**IPC**”) and sentencing him to suffer imprisonment for life and to pay fine of Rs. 5000/-, in default, suffer simple imprisonment for the period of six months;
- (ii) Section 304-B IPC and sentencing him to suffer rigorous imprisonment for seven years and pay fine of Rs. 3000/-, in default, to suffer simple imprisonment for the period of two months; and
- (iii) Section 498-A IPC and sentencing him to suffer rigorous imprisonment for three years and to pay fine of Rs. 1,000/-, in default, to suffer simple imprisonment for one month; all sentences to run concurrently.

4. Appellant is convicted for committing murder of his wife Namrata (deceased) by setting her ablaze. Original Accused No. 2 and

3 have been acquitted for the offences punishable under Sections 302, 304-B, 498-A read with Section 34 IPC.

5. Prosecution case is based on an oral dying declaration and two written dying declarations given by Namrata, which have been accepted by the trial Court for convicting Appellant.

6. Facts which emerge from record of the case for consideration are as under:-

6.1. Namrata got married to Appellant on 13.12.2006 and they had two sons, viz. Harshavardhan aged 4 years old and Chaitanya aged 2 months old; they all were residing with orig. accused No. 2 – Dattatray Bedare (brother-in-law of Namrata) and orig. accused No. 3 – Raosaheb Bedare (father-in-law of Namrata) at Uchehan, Taluka Mangalwedha, District Solapur. All three accused used to abuse and ill-treat Namrata and demand Rs. 1,00,000/-, two tolas gold and colour T.V. Namrata informed PW-8 Prabhakar Bhosale, her father about the ill-treatment meted to her by the accused.

6.2. Six months before the incident, PW-8 alongwith 6 others visited Appellant's house where he witnessed that accused were demanding money from Namrata. PW-8 told them that he would fulfill their demands, but they should stop Namrata's ill-treatment. Thereafter, accused snatched Namrata's mangalsutra and told PW-8 that they will not accept her back until he fulfills their demands.

Hence, PW-8 had to take Namrata with him to his house. Two months thereafter Appellant and Dattatraya visited PW-8's house and brought back Namrata to their house after promising that, Appellant would treat her properly. However, Namrata's ill-treatment did not stop.

6.3. On 10.07.2011 at 14:00 hours, PW-8 – first informant received a phone call from Dattatraya informing him that Namrata was set ablaze by Appellant and he should rush there immediately. PW-8 and family members immediately rushed to Namrata's house and on reaching there, were informed that she was taken in injured condition to Civil Hospital, Solapur. PW-8 and other family members thereafter rushed to the Civil Hospital, Solapur and saw that Namrata was burnt. On seeing them, Namrata started crying and informed him that at around 4:00 p.m., Appellant doused her with kerosene and set her ablaze. This is the oral dying declaration which has come in evidence of PW-8.

6.4. Namrata succumbed to her injuries on 11.07.2011 at 5:00 a.m. in the morning. During her medical treatment, Namrata's statement was recorded separately by the Medical Doctor on duty and Special Judicial Magistrate. Based on the aforesaid facts, PW-8, first informant lodged report against the accused.

6.5. Spot panchanama (Exh. 49) was prepared by PW-9 Investigating Officer (for short “**IO**”) the items viz. Kerosene can, half

burnt matchstick, half burnt red colour saree with flowers and half burnt carpet were seized therefrom. Pursuant to Namrata's death, inquest panchnama (Exh. 52) was prepared and her dead body was sent for autopsy. Namrata's medical case record (Exh. 35) and postmortem notes (Exh. 41) were obtained by the I.O.

6.6. After completing investigation, chargesheet was filed against the three accused persons in the Court of Judicial Magistrate First Class Mangalwedha for offences punishable under Sections 302, 304-B, 498-A read with 34 IPC. Since the offences under Sections 302 and 304-B IPC are exclusively triable by the Court of Sessions, the case was committed by the learned JMFC to the Sessions Court for trial.

6.7. Charge was framed vide Exh. 17 against the accused persons for the offences punishable under the aforesaid sections. The contents of charge were read out to the accused including the Appellant in vernacular. The accused abjured their guilt and claimed to be tried. By the Judgment & Order dated 03.08.2015, the learned trial Court acquitted original accused Nos. 2 and 3 and convicted Appellant for the offences punishable under Sections 302, 304-B and 498-A IPC.

7. To bring home the guilt of Appellant, prosecution relied upon nine witnesses as under:-

SR. NO.	NAME	PARTICULARS
PW-1	Dr. Harshad Vishnu Tosniwal	Given medical treatment to Namrata

PW-2	Yusuf Babulal Khan	Special Judicial Magistrate who recorded the dying declaration of Namrata (Exh. 37)
PW-3	Dr. Anil Suryakant Hulsurkar	Performed the postmortem on dead body of Namrata (Exh. 40)
PW-4	Kakasaheb P. Wyawhare	Police Head Constable who recorded the dying declaration of Namrata (Exh. 42)
PW-5	Deepak Jalindar Bhosale	Witness who was present at the time of finalizing the marriage between Namrata and Appellant
PW-6	Tanaji Manohar Rokade	Panch witness on muddemal articles, seizure panchnama and spot panchnama (Exh. 48)
PW-7	Ramesh Bhausahab Patil	Panch witness on inquest panchnama (Exh. 51)
PW-8	Prabhakar Shivaji Bhosale	Complainant and father of Namrata
PW-9	Anil Haribhau Tanpure,	API, Investigating Officer.

8. PW-4 Kakasaheb Wyawhare, Police Head Constable attached to Solapur Taluka Police Station recorded the first dying declaration (Exh. 44) of Namrata between 10:30 p.m. to 11:45 p.m. on 10.07.2011. Exh. 44 bears two endorsements of the doctor on duty as under:-

“Exh 31 : *Pt is conscious & oriented & able to give valid statement”*

Exh 33 : *Pt is conscious & oriented & able to give valid statement”*

8.1. It bears the left hand thumb impression of Namrata.

9. PW-2 Yusuf Khan, Special Judicial Magistrate recorded the second dying declaration (Exh. 39) of Namrata between 11:30 p.m. to 11:55 p.m. It bears two endorsements of the doctor on duty as under:-

“Exh 32 : *Pt is conscious & mental & able to give valid*

statement.

Exh 34 : *Pt is conscious & oriented*”

9.1. It bears the left hand thumb impression of Namrata.

10. We have heard Ms. Kanade, learned Advocate for Appellant and learned APP for State and with their able assistance, perused the entire evidence on record.

11. Ms. Kanade, learned Advocate for Appellant submitted that perusal of the two written dying declarations viz. Exh. 39 and Exh. 44 scribed by PW-4 and PW-5 respectively would show that both the dying declarations appear to have been recorded at the same time and therefore they raise an element of suspicion. That, it would be improbable and impossible to record statement / dying declaration of Namrata when she was in a completely burnt condition with the Doctor, Police Officer and Magistrate all remaining present beside her, taking into account her critical medical condition. That, the dying declarations do not mention about any demand much less dowry demand and therefore conviction under Section 498-A is completely unjustified. That, it has admittedly come in evidence that immediately before the incident Appellant returned home under the influence of alcohol and was in an inebriated state. That, Appellant had carried and brought home “bazaar” which he gave to Namrata pursuant to which there was a quarrel between the two of them. That during the

quarrel Appellant assaulted Namrata with “phukri”, a funnel used for blowing the chullah (earthen fire) and being enraged in the heat of passion and on the spur of the moment fetched kerosene from inside and may have accidentally committed the act. She submitted that it needs to be noted that Appellant thereafter tried to extinguish the fire and himself took her to the hospital and got her admitted for treatment. That, the incident occurred in the kitchen and the probability of an accident also cannot be ruled out and Namrata may have caught fire accidentally while cooking. She submitted that both dying declarations are not supported by the contents of spot panchnama. That, the procedure for recording two dying declarations at the same time is unheard of. That Appellant had no intention to kill Namrata and since Appellant was in an inebriated state at the time of incident, the incident may have occurred either accidentally or in a fit of rage. According to her, prosecution has therefore not been successful in proving its case beyond all reasonable doubt and the Appellant therefore deserves an acquittal.

12. **PER CONTRA**, Mr. Dedhia, learned APP appearing for State has vehemently argued that the present case is based on the oral dying declaration given by Namrata to PW-8 (first informant) which stands proved by the deposition of PW-8. Further the two written dying declarations viz. Exh. 39 and Exh. 44 recorded by PW-4 and PW-5

both speak the same language and indict the Appellant wherein Namrata had narrated the incident critically. Further both dying declarations bear the endorsement of the medical doctor on duty and therefore, it cannot be stated that procedure for recording the dying declarations was not followed. He submitted that the contents of the two written dying declarations speak for themselves and both statements have been proved by the prosecution witnesses. That, the oral dying declaration given to PW-8 (father of Namrata) corroborates and supports the two written dying declarations and most importantly, the postmortem notes (Exh. 41) and medical case papers (Exh. 35) corroborate and support the prosecution case. He has therefore prayed for dismissal of the Appeal.

13. PW-3 Dr. Anil Hulsurkar conducted the postmortem (Exh. 40) and he has notified the following injuries on Namrata's body:-

“superficial to deep skin burn injuries at places over body with singeign of scalp, axillary, pubic, eye-lashes and eye-brow hairs. Evidence of therapethic venesection over left leg above ankle medial. Evidence of therapetic ointment application all over burn injuries. Area of burn in percentage is as follows:

1]	Head, neck and face	.. 9%
2]	Right upper limb	.. 5%
3]	Left upper limb	.. 5%
4]	Chest and abdomen	.. 3%
5]	Back	.. 10%
6]	Right lower limb	.. 10%
7]	Left lower limb	.. 10%
8]	Perineum and external genitalia	.. 0%

Total burn percentage .. 52%

There was also contusion over left thigh, laterally 5 x 4 cm and also there was smell of kerosene present. All the above injuries were antemortem. Internal visceral organs injuries were not present."

14. In the present case, it is seen that there are two dying declarations given by Namrata which are at Exh. 39 and Exh. 44 respectively. Both these dying declarations bear the endorsement of Dr. Harshad Toshniwal – PW-1. It is seen that the endorsements made by PW-1 on Exh. 39 are marked in evidence as Exh. 32 and Exh. 34 whereas the endorsements on Exh. 44 are marked as Exh. Nos. 31 and 33.

15. Since entire case is based on these two dying declarations, it would be apposite to consider them threadbare.

15.1. First dying declaration at Exh. 44 bears the thumb impression of Namrata and is recorded by PW-4 Police Head Constable. In this dying declaration, Namrata has stated as under:-

"My husband Haridas returned to the house, at 4.00 hours, at noon from Mangalwedha, after purchasing articles, and drinking liquor, and told me, in intoxicated condition, to throw articles, in sugarcane crop. He abused me. I have not thrown purchased articles. Therefore he had beaten up me, by "Fukari" on my thigh, and stated that he will burn me. He had gone in the house, brought kerosene, poured it, on my body, and he had ignited me. At that time my husband had extinguished the fire. At that time, my brother-in-law Dattatraya Raosaheb Bedare, brought me to Civil Hospital, at Solapur, by private jeep, and admitted me there. My statement is correct as told by me. it is read over to me. It is correct as told by me."

15.2. Second dying declaration at Exh. 39 bears the thumb impression of Namrata and is recorded by PW-2 Special Executive Magistrate. This dying declaration is in question and answer form. It records as under:-

“Q. : How and How and because of what, you are burnt ?

Ans. : Today at 4.00 hours at noon, my husband came from Mangalwedha, by purchasing articles. He came drinking liquor. In intoxication, he stated that, I should throw purchased articles, in sugarcane crop. I have not done it. He is enraged by it. He had beaten up me much, by "Fukari" on my hand, and thigh. Thereafter while abusing me, he had gone in house, and he brought out kerosene, poured it, on my body, and ignited me. After seeing me burning, he himself tried to extinguish the fire.

Q. : Any one else was illtreating you ?

Ans. : No.

Q. : Who brought you to the hospital ?

Ans. : My brother-in-law, Dattatraya Raosaheb Bedare, brought me to the hospital.

Q. : Against whom you are having complaint, because of incident occurred ?

Ans. : My husband had ignited me. He always beats me up, after drinking liquor.

Q. : Whether you are able to read and write ?

Ans. : Yes

Q. : Do you want to tell anything else ?

Ans. : No.

Q. : The above statement is read over to you, whether it is correct ?

Ans. : Above statement is read over to me. It is recorded as told by me. It is true and correct.”

15.3. It is pertinent to note that both the dying declarations, viz. Exh. 39 and Exh. 44 specifically record the start time of recording and

the endorsement of the Doctor after completion. Perusal of Exh. 44 shows that its recording started at 10:30 p.m. while the endorsement is made at 11:45 p.m. In the second dying declaration, Exh. 39 stating time is at 11:30 p.m. and the endorsement of doctor on completion is at 11:55 p.m. It is further pertinent to note that in the depositions of PW-2 and PW-4 i.e. the Special Executive Magistrate and Police Head Constable Mr. Wyavvhare, who recorded the above statements, it has specifically come in evidence that at the time of recording the said statements, they individually, the medical officer and Namrata were only present. Hence, this evidence will have to be accepted and the submission on behalf of Appellant that both dying declarations came to be recorded simultaneously is therefore rejected.

16. The aforesaid two written dying declarations are clearly corroborated and supported by the oral dying declaration given to PW-8. In his deposition PW-8 has stated that when he arrived at the hospital and met Namrata, she started crying and informed him that Appellant was responsible for dousing her with kerosene and setting her ablaze. There is evidence given by PW-8 pertaining to dowry demand and several instances have also come in evidence about the harassment and ill-treatment meted out to Namrata at the hands of Appellant.

17. In view of the consistency in both the written dying

declarations, Exh. 39 and Exh. 44 and they being duly supported and corroborated by the deposition of PW-8, it is clear that Appellant is the author of the crime. However, on a minute perusal of the evidence and the mitigating circumstances in the present case, it is seen that Appellant on the date of incident had returned home in an inebriated state. In Exh. 44 which is the dying declaration recorded by PW-4, Namrata has stated that at about 4:00 p.m., Appellant returned home intoxicated, abused her and told her to throw away the “bazaar” in the sugarcane field. However since she did not adhere to Appellant's command, he physically abused her with the phukari and repeatedly stated that he would set her ablaze and thereafter went inside the adjacent room, brought kerosene from there, doused her and set her ablaze. She has also stated that immediately thereafter Appellant tried to extinguish the fire.

18. In Exh. 39, which is recorded in question and answer form, Namrata has stated that at about 4:00 p.m., Appellant came home under the influence of alcohol and told her to throw away / dispose the “bazaar” which he had brought by throwing away the same in the field. She has further stated that since she did not obey his command, he became angry and physically abused her with the phukari on her arms and legs. She has further stated that he became agitated, went inside the adjacent room and brought kerosene from the other room,

doused her and set her ablaze. However after seeing that she was ablaze, he himself attempted to extinguish the fire. From the aforesaid contents of the two statements, it is discernible that admittedly Appellant was in an inebriated state of mind i.e. fully intoxicated when he arrived home at 4:00 p.m. on the date of incident. It is seen that thereafter Appellant had a quarrel with Namrata and physically abused her with the phukari on her arms and legs since she did not throw away the bazaar which was brought by the Appellant on his instructions. It is further seen that being enraged and angry at Namrata's defiance, he shouted at her that he would burn her, then in an enraged state of mind went inside the adjacent room, brought kerosene, doused Namrata and set her ablaze; however immediately thereafter he himself tried to extinguish the fire. Prosecution case with respect to dowry demand however does not find any place in the aforementioned two statements of Namrata. The medical case papers (Exh. 35) which have been proved in evidence by PW-1, the medical doctor who treated Namrata in the Burn ward at Civil Hospital, Solapur where she was admitted, show that she was admitted to the hospital by Dattatray and Appellant. On her admission the history was given by her husband i.e. Appellant that Namrata suffered accidental burns while cooking on the stove due to bursting of stove. The spot panchnama and recovery and seizure of articles from the spot of incident however does not support this theory

that Namrata could have suffered accidental burns due to bursting of stove.

19. In view of the aforesaid discussion and findings, it is apparent that Appellant did not have the intention to murder Namrata. That Appellant was in an intoxicated stated of mind at the time of occurrence of the incident is proved. That the Appellant did not plan or pre-meditate the incident to murder Namrata.

20. In the present case, trial Court has convicted and sentenced the Appellant for the offence of murder (as defined in Section 300 IPC) under Section 302 IPC. However, in view of the aforesaid discussion and findings, in our considered opinion, based on the facts and circumstances of the present case, the conviction and sentence passed by the trial Court calls for reconsideration due to the following reasons:-

20.1. Exception 4 to Section 300 IPC outlines a situation where culpable homicide does not amount to murder. There are three requirements for this exception to apply:

- (i) the act of killing is committed without premeditation;
- (ii) the act of killing is committed in a sudden fight in the heat of passion upon a sudden quarrel; and

- (iii) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

20.2. In the present case the aforesaid three requirements of Exception 4 to Section 300 IPC in our considered opinion stand satisfied as under:-

- (i) From appreciation of the evidence as a whole it is clearly discernible and seen that the act of killing / murder of Namrata was not planned or pre-meditated by the Appellant nor there was any preparation and / or intention harboured by Appellant to murder Namrata;
- (ii) That the evidence on record shows that the incident occurred as a result of the sudden quarrel between Appellant and Namrata. That Appellant admittedly was in an inebriated state under the influence of alcohol. That since Namrata did not obey the Appellant's command and defied his dictat to throw away the bazaar which he had brought, Appellant physically abused her with the phukari on her arms and legs and in a fit of rage and heat of passion on the spur of the moment cursed Namrata that he would burn her, immediately went inside the

adjacent room, fetched the kerosene can, doused Namrata with kerosene and set her ablaze;

- (iii) That after the incident, Appellant himself attempted to extinguish the fire and this fact is told by Namrata herself in her dying declarations. Thus, the Appellant did not act in a cruel or unusual manner and from the medical case papers (Exh. 35) it is seen that Appellant was one of the persons who admitted Namrata to the civil hospital for treatment.

21. On the basis of the above analysis and re-appreciation of evidence, we conclude that though Appellant had knowledge that his act would be likely to cause Namrata's death, but it is gathered that he had no intention to do so. Hence the act of Appellant does not travel beyond the offence of culpable homicide (as defined under Section 299 IPC) not amounting to murder.

22. Punishment for culpable homicide not amounting to murder where the act is committed without intention but with knowledge has been prescribed under Part II of Section 304 IPC. The above discussion of facts and evidence alluded thereto along with our observations in the present case clearly fall within the ambit of Part II of Section 304 IPC. As such, the learned trial Court has erred in convicting and sentencing the Appellant for the offence of murder

under Section 302 IPC read with 304-B.

22.1. In so far as the charge under 498A IPC is concerned, it is seen that save and except the deposition of PW-8, there is no other material on record to corroborate the said charge. In that view of the matter, we are inclined to set aside the conviction under Section 498-A of IPC against the Appellant.

23. Hence, the following order:-

- (i) The conviction of the Appellant under Section 302 IPC is set aside, instead Appellant is convicted under Section 304 (Part II) of IPC and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 50,000/-, and in default thereof to suffer further rigorous imprisonment for one year;
- (ii) Appellant stands acquitted under Sections 304-B and 498-A of IPC;
- (iii) Appellant is entitled for set off of the period already undergone in jail;
- (iv) Appellant was arrested on 11.07.2011. Since the Appellant has already undergone the sentence awarded herein above along with the default sentence, the Appellant shall be released from prison

immediately unless required in any other case /
cases;

(v) Appeal is partly allowed in the aforesaid terms.

24. Before parting with the Judgment, we would like to place on record our appreciation for the efforts put in by Ms. Jai Kanade, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant; she was thoroughly prepared in the matter and rendered proper and able assistance to the Court.

25. All the concerned to act on an authenticated copy of this order.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]