

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.465 OF 2021
ALONG WITH
CRIMINAL INTERIM APPLICATION NO.1440 OF 2021
IN
CRIMINAL APPEAL NO.465 OF 2021

Jairam Kisan Bhoye]
Age : 54 years,]
R/o. Mhasoba Nagar,]
Peth Road,]
Panchavati, Nashik]..... Appellant/Applicant

versus

State of Maharashtra]
Through the office in charge]
of Panchavati Police Station.]..... Respondent.

Mr. Nilesh J Rath i/by Mr. Piyush U Raje for the Appellant/Applicant.
Mr. Y M Nakhwa, APP for the Respondent/State.

CORAM : S. S. SHINDE,
N. R. BORKAR, JJ
Reserved on : 03rd JANUARY 2022
Pronounced on : 27th JANUARY 2022

JUDGMENT : (PER S. S. SHINDE, J)

1 By this Appeal the Appellant challenges the judgment and order dated 06th March 2021 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.170 of 2016 thereby convicting the Appellant for the offences punishable under Sections 302 and 323 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine.

2 The prosecution story, in brief, can be stated thus :-

Deceased Kantabai Jairam Bhoje, who was the resident of Mhasoba Nagar, Panchavati, Nashik, had four sons and one daughter from her first husband. Her first husband Baban Javale expired prior to 16 years of the incident. She was doing business of vegetable vendor. While doing the said business, she came to know accused Jairam Kisan Bhoje. Thereafter they got married as per the religious rites and rituals and started residing together. On 24/01/2016, the wife of Dipak Baban Javale, who is the son of the deceased from her first husband, gave a birth to a daughter. Therefore on the very same day at 10.30 am, the deceased went to the house of Dipak to see the new born child and stayed there. On 25/01/2016 at 1.15 pm her second husband Jairam Kisan Bhoje i.e. the accused came to Dipak's house and told Kantabai (now deceased) that her sons are major, married and she should not give visit to their place; and upon saying so, he caught hold of her hand and took her to her matrimonial house at Mhasoba Nagar. On the same day at about 10.30 pm, the accused questioned the deceased as to, why she went to her son's house without informing him, and abused, assaulted and slapped Kantabai. He poured petrol on her person, which he had already brought from his Maruti Van. As per prosecution case, the drops of petrol fell on the lamp lit before the Devghar (a sort of frame or enclosing case for an idol, a shrine) because of which the lamp flared up and her saree caught fire, and because of that she sustained burn injury on her stomach, chest and face. Accused opened the door

of house from inside and came out of the house. Kantabai followed him. The accused ran away from the house, however, the neighbours extinguished the fire. Her husband did not admit her in the hospital and he went away. Thereafter, the neighbours brought her to Civil Hospital.

3 On the basis of Exhibit 53, FIR being CR No.46/2016 came to be registered at Panchavati Police Station for the offences punishable under Sections 307, 323, 504 and 506 of the Indian Penal Code.

4 On 27/01/2016 the deceased Kantabai was shifted to Shatabdi hospital, where she succumbed to the injuries on 31/01/2016 and therefore Section 302 of the Indian Penal Code was added to the registered CR No.46/2016.

5 Initially investigation was carried out by Balaram Bhaskar Palkar (PW 10), and subsequently investigation was handed over to Vidyasagar Shrimanwar (PW 12), and after completion of investigation, charge-sheet came to be filed before the concerned Judicial Magistrate First Class. As the offence under Section 302 is triable by the Court of Sessions, the concerned Judicial Magistrate First Class committed the same for trial before the concerned Sessions Court. Thereafter a charge came to be framed against the Accused at Exhibit-3, and same was explained to him, for which he pleaded not guilty and

claimed to be tried. The defence of the accused was of total denial and that, according to him Kantabai committed suicide. The Accused did not lead any evidence in his defence.

6 In order to bring home the guilt of the accused and to prove that the deceased died an unnatural death and that too homicidal one, the prosecution has examined 12 witnesses, including Bastiram Ramchandra Kasbe (PW-2), Dipak Baban Javle (PW-3), Dr. Shrawan Narayan Gaikwad (PW-4), Sunil Baban Javale (PW-5), Taibai Vishwanath Pawar (PW-6), Dr. Mahesh Arun Khairnar (PW-7), Dr. Chittaranjan Eknath Thakare (PW-8), Gitesh Shivaji Sonawane (PW-9) and API Deshmukh (PW-11).

7 The learned counsel appearing for the Appellant/Accused submitted that though the prosecution case is based on dying declarations and circumstantial evidence, the prosecution has miserably failed to prove the chain of circumstances as required by law. It is submitted that both the written dying declarations are not consistent with each other, because they were recorded at one and the same time. The learned counsel for the Appellant submitted that the dying declaration though admissible in evidence cannot be held as conclusive evidence when the same is contradicted by the evidence placed on record. He further submitted that, the accused has right of cross examination and, the Trial Court ought not to have lost sight of the fact that

Kantabai i.e. the dying person making the declaration was not subjected to cross examination. It is submitted that the presence of the son of the deceased during recording of the dying declaration is not disputed, and therefore, the dying declaration was not free from influence and tutoring, and recorded in breach of procedure and therefore the said dying declarations were concocted and tutored. He further submitted that PW-3 and PW-5 are interested witnesses. That probably Kantabai might have caught fire accidentally and thus sustained burn injuries, as there was a dispute between the deceased and accused. The Trial Court did not appreciate the forensic lab report which negates the presence of petrol hydrocarbons. The results mentioned in Chemical Analyzer's report shows that the detection of petroleum hydrocarbons residues on the articles are negative, and therefore, the story of the prosecution that Kantabai died homicidal death is highly unreliable. The Trial Court has lost sight of the fact that the accused tried to extinguish the fire and also accompanied Kantabai in ambulance to the hospital. There is no iota of evidence of any witness having personally seen the Appellant beating or causing hurt to the deceased, therefore, the conviction under Section 323 of the Indian Penal Code cannot be sustained. He lastly submits that the Sessions Court did not appreciate the evidence on record properly. The impugned judgment and order passed by the learned Additional Sessions Judge is not legal and proper, and the same is required to be quashed and set aside. He therefore submits that the Appeal may be allowed. In support of aforesaid

submission, the learned counsel for the Appellant placed reliance upon the ratio laid down in the following judgments in :-

- 1] Khushal Rao vs The State of Bombay; MANU/SC/0107/1957
- 2] Laxman vs State of Maharashtra; (2002) 6 SCC 710
- 3] Nirmala Maruti Gunjal & ors. vs The State of Maharashtra;
MANU/MH/1515/2011;
- 4] P. Mani v/s. State of Tamil Nadu; MANU/SC/8064/2006;
- 5] Vadivelu Thevar vs. The State of Madras; MANU/SC/0039/1957;
- 6] Ashwini Rammehar Sharma vs. The State of Maharashtra;
MANU/MH/0812/2019;
- 7] State of Kerala vs. Rasheed; MANU/SC/1235/2018;
- 8] Doongar Singh & ors. vs. The State of Rajasthan;
MANU/SC/1505/2017;

8 The learned APP appearing for the Respondent/State submits that the prosecution has proved its case by adducing material evidence on record to bring home the guilt of the accused. It is submitted that the written dying declarations recorded by PW-2 and PW-11 are cogent, reliable and trustworthy. It is therefore urged that, there is sufficient evidence and material brought on record by the prosecution to prove that the death of the deceased is homicidal and not accidental, and that the accused committed murder of his wife. The

learned APP submitted that, there is corroborative evidence in the nature of medical report and chemical analyzer's report adduced by the prosecution to show the involvement of the accused in the alleged murder of his wife. The impugned judgment and order passed by the learned Additional Sessions Judge is well reasoned judgment, and needs no interference at the hands of this Court.

9 Heard the learned counsel for the Appellant and the learned APP for the Respondent/State. With their able assistance we have perused the notes of evidence placed on record by the Appellant, and the reasons recorded by the learned Additional Sessions Judge in the impugned judgment.

10 In order to prove the case, the prosecution has mainly relied upon two written dying declarations at Exhibits – 20 and 53 and two oral dying declarations made by deceased Kantabai Jairam Bhoje to PW-3 Dipak Baban Javale and PW-5 Sunil Baban Javale, who are the sons of the deceased from her first husband.

11 In order to prove the dying declarations at Exhibit 20, the prosecution has examined PW-2 – Bastiram Ramchandra Kasbe, working as Executive Magistrate. In his deposition before the Court, he stated that in the year 2016 he was Circle Officer and attached to Pathardi. On 26th January,

2016 at 12.00 noon, he received phone call from police station outpost situate at Civil Hospital with a request to record a dying declaration of one patient. Accordingly he reached to the outpost and collected a letter requesting therein to record the statement of the said patient. Thereafter he went to the hospital and met the doctor at Civil Hospital and told him that he wants to record statement of patient. Accordingly PW-2 met the doctor at civil hospital and informed him that he wants to record dying declaration of the patient. The Doctor came along with him. The Doctor examined the patient and opined that the patient is in condition to give the statement. The witness (PW-2) instructed the doctor and other relatives of the patient to go outside. The patient informed her name as Kantabai Jairam Bhoje. PW-2 asked her, whether she knows Marathi language and she answered in affirmative. PW-2 further asked Kantabai about the manner in which the incident had taken place. She told him that when her husband and herself were in house, there was quarrel between them. She further informed that her husband poured petrol on her. One lamp was lighted in the house, and the petrol fallen on the flame of the said lamp and because of which the lamp flared up. Thereafter, her husband opened the latch and ran away from the house. While burning, she too ran away out of the house. She further informed that she was trying to catch her husband. Thereafter the neighbours came there and thrown blanket on her and extinguished the fire. Thereafter neighbours called ambulance and admitted her in civil hospital. She stated that she has complained against her

husband Jairam. As the hands of Kantabai were burnt, the witness (PW-2) obtained impression of right toe on her statement. The son of Kantabai namely Suresh Baban Jawale from her first husband was present who identified the impression. This witness (PW-2) again obtained signature of doctor at the end of the statement, and put his signature on the said statement. He stated that the statement was recorded as per the narration given by Kantabai, and the contents of the said statement are true and correct.

He was extensively cross examined by the defence advocate. He stated that it is true that Exhibit 19 bears signature of API Deshmukh attached to Panchavati Police Station. He denied the suggestion that while recording the statement by him of Kantabai, simultaneously Mr. Deshmukh was recording the statement of Kantabai on different paper. He asked doctor and relatives to go outside before recording the statement of Kantabai. He ensured that the relatives left the said room where Kantabai was admitted. He denied the suggestion that relatives of Kantabai were dictating him to record the statement in a particular manner. PW-2 in his cross examination stated that, it is mentioned in Exhibit 20 that doctor put his endorsement at 13.35 hours. He denied the suggestion that he took 45 minutes to one hour to record the statement. He denied the suggestion that he recorded incomplete statement of Kantabai. He further denied the suggestion that the contents of the statement were not read over to Kantabai. He also denied the suggestion that he has

recorded the statement of Kantabai at the behest of her son begotten from her first husband.

Upon considering the deposition of PW-2 – the Executive Magistrate, in its entirety, the same inspires confidence and deserves to be accepted.

12 The next witness examined by prosecution to prove the dying declaration is Dr. Chhitaranjan Eknath Thakare (PW-8). In his deposition he stated that he was attached to Nashik Civil Hospital from the year 2014 till 2018. On 26.01.2016 he was on CMO duty. He stated that one burned patient Smt. Kantabai Jairam Bhoje was referred to him. The police approached him and asked him whether patient was in condition to give statement. He examined the patient and found that she was in condition to give statement. Accordingly he has given endorsement. Thereafter Executive Magistrate approached him and asked him about the condition of the patient as he wanted to record her statement. He examined the patient and gave endorsement on Exhibit 20. He stated that he found her to be in condition to give statement. That endorsement is separately marked as Exhibit 34. Thereafter Executive Magistrate recorded statement of Smt. Kantabai. After the statement was over, he again examined Kantabai and again below the statement he gave his endorsement. When the witness was shown that

endorsement at Exhibit 20, he stated that it bears his signature and the contents of the same are true and correct. It is separately marked as Exhibit 35. He stated that even after her statement was over, Kantabai was mentally fit.

This witness (PW-8) was extensively cross examined by the advocate for the defence. PW-8 admitted in his cross that, he has not provided medical treatment to Kantabai, and he does not know what treatment was provided to Kantabai before he had examined her. He did not recollect whether the patient was stating that she is feeling cold. He also did not recollect whether patient was stating that cold water should be poured upon her. PW-8 further stated in his cross examination that in all three endorsement it is not mentioned that patient was well-oriented and mentally fit. At the time of recording his deposition, this witness (PW-8) did not recollect whether first police came or the police and executive magistrate came together. He also did not recollect whether at the time of recording of statement by police, Executive Magistrate came at the place when police were recording statement. He denied the suggestion that he has given all three endorsement without examining patient. He stated that he has not brought any case papers relating to Kantabai. He denied the suggestion that as the case papers disclosed that Kantabai was not in position to give statement, therefore, he has not brought medical case papers. He also denied the suggestion that because of burns, there is hallucination. He admitted that because of burn injuries, there is

dumbness. However, he denied the suggestion that because of dumbness, patient is not in a position to give statement.

It is true that PW-8 has given some admissions in cross examination which would slightly weigh in favour of the defence, however, he denied the suggestion that he had given all three endorsements without examining the patient. He also denied the suggestion that because of dumbness, patient is not in a position to give statement.

The Supreme Court in the case of *Laxman (supra)* held that, where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor, the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he had recorded the dying declaration.

13 The next witness examined by the prosecution is PW-11 Mr.Brahmadev Maruti Deshmukh. He stated in his deposition that, in the year 2016 he was attached to panchavati police station as PSI. On 26.01.2016 he was on PSO duty from 9.00 am to 9.00 pm. During his duty hours, he received information from the hospital that one lady is burnt and its MLC No.904. Thereafter he himself and other staff went to civil hospital, Nashik to record statement of lady. He asked the doctor whether lady was in condition to give statement, and the doctor replied in affirmative. The doctor examined the lady and put his endorsement which is at Exhibit 33. She stated that from her earlier marriage, she had 4 sons and 1 daughter. Her one son Dipak had begotten daughter and therefore she had been to see that daughter. Her husband Jairam Bhoje was aggrieved and there was quarrel between them on 25.1.2016 at 5.15 pm. Jairam Bhoje took her at his house at Mhasoba Nagar. Again on petty issue, there was quarrel between them. The petty issue was with respect to the earlier quarrel. She further stated that her husband brought petrol, poured upon her and ignited her and that she was brought to civil hospital by persons residing in her neighbourhood. PW-11 stated in his deposition that he has recorded her statement accordingly, and obtained impression of right toe as her hands were burnt. He admitted his signature and contents of the said statement. The said statement is at Exhibit 53. PW-11 further stated that there were burn injuries on her chest, stomach and hands.

He issued letter to Executive Magistrate and even he has recorded statement. Thereafter he went to the police station and lodged the offence. He stated that as per directions of the superiors, the investigation was given to PSI B.B. Palkar and further investigation was carried out by Mr. Palkar.

This witness (PW-11) was extensively cross examined. He denied the suggestion that Dipak Jawale met him at Panchavati Police Station to give information about this incident. He stated that he has not given any request letter in writing to the doctor and, their police station received information about 12.00 noon from the hospital. He further stated in his cross examination that he has not collected medial reports of the patient before recording her statement. He asked questions to Kantabai to verify her consciousness before recording her statement. He admitted that Exhibit 53 does not mention about the questions being put to Kantabai. However, he denied the suggestion that Kantabai was not in proper mental state to give statement. He also denied the suggestion that Kantabai's children have given the statement as Kantabai's children were instructing him what to write in the statement. PW-11 further stated that while recording statement of Kantabai he himself, his two staff, doctor and nurse were present. He denied the suggestion that Executive Magistrate was also recording the statement in his presence. He also denied the suggestion that the impression of toe was taken together by himself and Executive Magistrate. He denied further suggestion that both endorsement of

doctor on the Exhibit 53 are taken on one and the same time. He admitted that Exhibit 53 does not mention that Jairam ignited. He denied the suggestion that he is depositing falsely that even Executive Magistrate subsequently recorded statement.

Aforesaid discussed evidence of PW-11 inspires confidence. It appears that, he independently ascertained about consciousness and orientation of Kantabai to give such dying declaration. However, he fairly admitted that Exhibit 53 does not mention that Jairam ignited.

14 In so far as two oral dying declarations are concerned, the prosecution has examined PW-3 - Dipak Baban Javale and PW – 5 Sunil Baban Javale, who are the sons of the deceased begotten from her first husband.

PW-3 Dipak Baban Javale in his deposition stated that Kantabai is his mother and after his father expired she got married to the accused. On 24.01.2016 his mother came to his house as a daughter was begotten to him. She stayed for night and on the next day at 5.00 to 5.30 pm Jairasm came to our house and asked his mother as to why she is attending his house. He told her that her sons are married and she should not meet them. He also abused her. PW-3 stated that Jairam was annoyed and therefore caught hold of his mother and took her to his house. He stated that Jairam returned back to his

house at 1.00 am and told him that his mother has received burns and admitted in civil hospital. He and his other brothers went to civil hospital and asked his mother what had happened. His mother told him that there was quarrel and Jairam assaulted her and poured petrol on her person and burnt her. She further informed that sprinkles of petrol fell on burning lamp and because of which lamp flared up and she sustained injury. She further told him that Jairam ran away from the house by opening latch and she too followed him. She further told him that the neighbours extinguished the fire and admitted her in civil hospital. He stated that his mother had given statement to police officers and thereafter to one Government Officer and during her medical treatment, she died on 31.01.2016.

In his cross examination, he denied the suggestion that he is deposing falsely that all the statements are recorded as per his say. He also denied the suggestion that during the course of dispute, Kantabai was abusing and threatening the accused that she will ignite herself. He further denied the suggestion that the accused admitted Kantabai in the hospital and had come to him. PW-3 stated that when he met his mother in the hospital at 2.00 am she revealed him about the incident. He stated that in the afternoon at 12.00 of 26.01.2016 he was at Panchavati Police Station, and at that time, he had told to police what was revealed to him by his mother. He also denied the suggestion that his mother did not disclose anything to him.

It is crystal clear from the evidence of PW-3 that Kantabai disclosed about prelude of the incident and after quarrel such incident had happened. What is important is that, Kantabai told him that sprinkles of petrol fell on burning lamp and because of which lamp flared up and she sustained injury.

15 The next witnesses is PW-5 Sunil Baban Javale, who is the brother of PW-3. This witness PW-5 has narrated the same story in his examination in chief, as deposed by his brother (PW-3) in his testimony regarding his brother blessed with daughter and visit of his mother as also the accused to the house of his brother. PW-5 further stated that on 26.10.2016 at 1.00 am accused again came to Dipak's house and told that their mother is admitted at Civil Hospital as she sustained burn injuries. Thereafter they went to civil hospital where she was undergoing medical treatment. They asked their mother how she sustained injuries. She told them that accused was quarreling with her and she was even slapped. She further told that accused went outside the house, brought petrol from the Maruti Car owned by him, latched the house from inside and poured petrol over her. She told that the lamp before the God was ignited, and as few drops fell on the lamp because of which the lamp flared up, and her sari caught fire. She further told that she was shouting and caught hold legs of Jairam. Jairam gave jerk and ran away from the house. She

followed him. Thereafter neighbours put out the fire, procured the ambulance and she was admitted in the hospital. PW-5 stated in his deposition that all these facts were told by her mother to them.

In his cross examination, PW-5 stated that they asked the doctor and nurse about condition of their mother. He denied the suggestion that their mother has not disclosed them about the incident. He further denied the suggestion that they instructed their mother to narrate about incident as per their instructions and she accordingly stated so before the police. He further denied the suggestion that they were witnessing statement given by his mother to the police.

It is clear from reading of evidence of PW-5 that, Kantabai made oral disclosure about the said incident and manner in which the said incident had happened. If the evidence of PW-2, PW-11, PW-3 and PW-5 read in its entirety, there is no slightest doubt that incident had happened and the accused played vital role. The dying declarations (Exhibit 20 and Exhibit 53) and two oral dying declarations have been duly proved by the prosecution, however, there are certain mitigating circumstances in favour of the accused which needs to be considered herein after. In that respect an evidence of PW-6 and PW-9 is relevant.

16 The prosecution has also examined Smt. Taibai Vishwanath Pawar (PW-6) who is the neighbour. She stated that on 25.01.2016, after completing her duty she returned back to her house. When she was cooking, she heard noise coming from the house of Kantabai, and the noise was with respect to quarrel. Again she heard loud noise and therefore she came out of the house. Her sari was burning. Vijay, Gitesh and others put off the fire with the help of quilt. Kantabai had sustained burn injuries on face, chest, hands and stomach. Vijay called ambulance and Kantabai was shifted to the hospital. PW-6 further stated that no one accompanied Kantabai in the ambulance. PW-6 further stated that she can identify the husband of Kantabai. When fire was put off, Jairam had come.

17 The next witness examined by prosecution is Gitesh Shivaji Sonawane (PW-9). He stated that on 26.01.2016 there was Sai Bhandara and therefore he was arranging stage at Mhasoba Nagar on 25.01.2016. Jairam Bhoje came running out of his house which is near to the place of stage. Behind him, his wife who was burning came running. Thereafter PW-9 and his friend Vijay Lokhande put quilt on her and extinguished the fire. Ambulance was called and she was put in ambulance and was taken to civil hospital.

18 The prosecution has also examined Dr. Shravan Narayan Gaikwad as PW-04 who has examined the accused Jairam. PW-04 stated in his

deposition that on 26.01.2016 he was on duty at Civil Hospital. Police came with jairam Kisan Bhoje for his medical examination at 6.10 pm. PW-04 examined him. He had epidermal burns on both the foots. History given was accidental burns on 25.01.2016 at about 10.15 pm. The age of injuries may be prior to 12-24 hours. The nature of injury was simple. Doctor (PW-4) noted the information in MLC registered and thereafter issued certificate. In his cross examination PW-4 stated that such injuries can take place while saving other person.

19 The prosecution has examined Investigating Officer Balram Bhaskar Palkar as PW-10. He stated that on 26.01.2016 investigation of CR No.46/2016 for the offence punishable u/s.307, 323, 504, 506 of IPC was given to him. Thereafter he visited the spot, carried out spot panchanama in presence of two panchas, at the spot he seized one burnt lamp, one bottle containing petrol, ladies slipper which was half burn and one cloth. These articles were seized. He arrested the accused Bhoje. The accused had received burn injuries on his legs, therefore, he was given treatment. Even the clothes of accused were burn. He seized those clothes in presence of panchas. On 26.01.2016 and 17.01.2016 he recorded the statement of witnesses. He stated that on 27.01.2016 the son of the injured produced clothese of the injured in police station. The clothes were one saree and one quilt. These articles were seized in presence of panchas and prepared panchanama. He

further stated that he came to know on 31.01.2016 that injured Kantabai died and he added Section 302 of IPC to the offence and submitted his report to the JMFC.

In his cross examination PW-10 stated that twice he had visited civil hospital after investigation was handed over to him. He took the accused for medical to civil hospital on 26/01/2016 On 27/01/2016 he went to civil hospital to see injured. The injured was kept in burn ward.

20 After completion of recording of evidence, the Trial Court has recorded the statement of the Appellant/Accused under Section 313 of the Criminal Procedure. In the context of the deposition of PW-3 Dipak Javale, Question No.13 was put to the Appellant/Accused that, PW-3 in his deposition has stated that Jairam was annoyed and therefore caught hold of his mother and took her to his house, and Jairam returned back to his house at 1.00 am and told him that his mother has received burns and admitted in civil hospital. In his reply to the said question, the Appellant/Accused answered that “caught hold the hand and dragged, is false. I went to inform that Kantabai is burnt in night”. Further question No.14 is also put to the Appellant/Accused that, PW-3 in his deposition has stated that he and his other brothers went to civil hospital and asked his mother what had happened, and she told him that out of quarrel, Jairam assaulted her and poured petrol on her and burnt her. The

Appellant/Accused replied to this question that it is false. In the statement under Section 313 of the Criminal Procedure Code, the trial Court has also put question No.37 to the Appellant/Accused in the context of the deposition of Investigating Officer Balram Bhaskar Palkar (PW-10) that, it has come in the evidence of PW-10 that you had received burn injuries on your legs, therefore, you were given treatment, and letter (Exhibit 41) was given to Medical Officer. The Appellant/Accused answered the said question No.37 that, “it is true”. So also trial Court has also put Question No.38 to the Appellant/Accused that, even your clothes were burned, and your those clothes were seized in presence of panchas under panchanama (Exhibit 42). The Appellant/Accused answered the said question No.38 that, “it is true”

21 Column 17 of Post Mortem Notes (Exhibit 76) mentions the percentage of burn injuries to various parts of the body. The cause of the death recorded in the post-mortem report (Exhibit 76) by the doctor is, “shock due to flame Burns (59%).

22 In so far as Chemical Analyzer’s report (Exhibit 60) is concerned, articles seized during the course of investigation were sent to Chemical Analyzer. Under the heading Results of Analysis, the CA has recorded that “the results of the tests for the detection of petroleum hydrocarbons residue in/on exhibit nos. (1), (2), (3), (4), (5), (6) and (7) are negative.” However, this

fact in our view would not affect the prosecution case in view of other convincing evidence on record.

23 So far as presence of the Appellant/Accused at the time of incident is concerned, the defence does not dispute the said fact. It is also not in dispute that there was quarrel between the Appellant/Accused and the deceased Kantabai. There is cogent and reliable material available on record to show that on 25/01/2016 the accused had come to the house of Dipak (PW-3) and taken away Kantabai to his house, and that there was quarrel going on between the accused and Kantabai in their house at Mhasoba Nagar, and that the witnesses PW-6 and PW-9 stated about the presence of the accused and the burn injuries received by Kantabai. It is required to be noted that the Appellant/Accused admitted in his statement under Section 313 of the Criminal Procedure that he received injuries to his legs and that the treatment given to him.

24 Considering the evidence and the material brought on record by the prosecution, it is established that Kantabai had sustained burn injuries because of which she died. The case of the prosecution is based upon two written dying declarations recorded by Executive Magistrate (PW-2) and API Deshmukh (PW-11) and the oral dying declarations given by deceased Kantabai to her sons (PW-3) and (PW-5). To corroborate the fact that there was

a quarrel between the deceased and the accused and that the deceased received burn injuries, the prosecution led the evidence of Taibai (PW-6) who is the neighbour. She stated that she heard noise coming from the house of Kantabai, and the noise was with respect to quarrel. PW-6 also stated that she saw that the sari of deceased was burning and that Kantabai had sustained burn injuries on face, chest, hands and stomach. Another witness Gitesh (PW-9) who has stated that he saw Jairam Bhoje (the accused) came running out of his house and behind him, his wife who was burning came running.

25 In the light of discussion in foregoing paragraphs there is no doubt that Appellant was responsible for death of Kantabai. However, there was no premeditation or planning and as stated by PW-6 and PW-9 they heard the quarrel, and in the said quarrel, as stated by Kantabai, accused committed an offence. Doctor (PW-4), who examined the accused deposed that, he noticed burn injuries on the legs of the accused. Even Investigating Officer has stated so. The prosecution witness (PW-9) in his cross examination stated that, accused went along with them in the hospital carrying Kantabai in van. Therefore, taking over all view of the matter we are of the view that, the Appellant/Accused would not have intended to inflict the injuries which Kantabai sustained on account of his act. Therefore, we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder.

26 We, therefore, alter the conviction from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code, and we impose a sentence of rigorous imprisonment of 10 (ten) years on the Appellant/Accused. Hence the Appeal is partly allowed and disposed of accordingly.

27 In view of disposal of Appeal, Criminal Interim Application No.1440 of 2021 does not survive and the same to stand disposed of as such.

(N. R. BORKAR, J)

(S. S. SHINDE, J)