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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 806 OF 2015

Mr. Dashrath Arun Sasane

Age : 30 years, Hindu,
Indian inhabitant, Occu.: Cobbler,
R/o:- Govindwadi, Patripool,
Kalyan (E).

Appellant

... (Orig. Accused)

Versus

The State of Maharashtra.

(Through Dadar Police Station
in CR.No.281/2013)

Respondent

... (Orig. Complainant)

Mr. Nikhilesh D. Pote, Advocate for Appellant.

Mr. S. S. Hulke, APP for Respondent – State.

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

**RESERVED ON : 04th August, 2022.
PRONOUNCED ON : 08th September, 2022.**

JUDGMENT (PER: MILIND N. JADHAV, J.)

. This Appeal questions the legality of the Judgment and Order dated 07.02.2015 passed by the learned Special Judge, appointed under the P.C. Act, Court of Sessions for Greater Bombay in Sessions Case No.1138 of 2013 convicting Appellant under Section 235(2) of the Criminal Procedure Code, 1973 (for short “**Cr.P.C.**”) for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short “**IPC**”) and sentencing him to suffer imprisonment for life.

2. Shorn of unnecessary details, the prosecution case which emerges from record is as under: -

2.1. Appellant is husband of deceased victim Sharmila Dasrath Sasane (hereinafter referred to as "Sharmila"). Appellant is convicted under Section 302 IPC for committing murder of Sharmila by setting her ablaze.

2.2. According to prosecution, on 08.09.2013 at about 17:00 hours information was received by Dadar Police Station, from KEM Hospital on telephone regarding Sharmila sustaining burn injuries by setting herself on fire and having been admitted to the hospital by her mother-in-law Smt. Laxmi Sasane. PSI Yashwant Rao Shinde PW-9 along with police constable 00791 visited KEM Hospital and after consulting the Doctor on duty about the condition, consciousness and orientation of Sharmila, which was certified by the Doctor as satisfactory, recorded her dying declaration (Exh.41). This dying declaration was given on 08.09.2013 between 09:30 p.m. to 10:00 p.m. In this dying declaration Sharmila narrated that on 08.09.2013, though she was having fever and did not wish to go to work (labour job), Appellant forced her to go to work and earn her daily wages of Rs. 500/- for the day; thereafter, when she returned home in the evening Appellant insisted that she should give him Rs.200/- for buying Liquor; Sharmila refused to part with any money, hence Appellant got enraged, abused her physically and took the can of kerosene lying in the house, poured it on her and threatened that if she did not give him money he would set her on fire. Despite this

Sharmila refused to give him money, hence Appellant lighted a match stick and set her ablaze; she started shouting but Appellant told her that since she did not give him Rs.200/- she should die. Thereafter, fire was extinguished by neighbors and she was taken to hospital by Appellant.

2.3. On the basis of the above statement, C.R. No. 281 of 2013 was registered at Dadar Police Station at 00:05 hrs, on 09.09.2013, for offences punishable under sections 307 and 504 IPC. Spot panchanama (Exh.32) was conducted and partly burnt clothes of Sharmila smelling of kerosene were seized in the presence of PW-5 pancha witness. That apart, one 5 litre plastic can containing half litre kerosene, one match box, half burnt match stick, one black beads broken mangalsutra, one yellow bangle and one white anklet were seized from spot of incident in presence of pancha witnesses.

2.4. On 09.09.2013, Appellant was arrested; clothes worn by him at the time of incident were recovered and seized vide panchanama Exh.29; seized articles were sent by Investigating Officer (I.O.) for chemical analysis. C. A. Report was obtained vide Exh.48.

2.5. On 10.09.2013 in the presence of PW-1 – Special Executive Magistrate, second dying declaration of Sharmila was recorded which was marked in evidence as (Exh.13.) This dying declaration was recorded at about 02:45 p.m. I.O. recorded statements of several persons and collected documents relating to non-cognizable offence

about quarrels between Appellant and Sharmila registered in the years 2011 and 2012.

2.6. On 18.09.2013, during the course of medical treatment Sharmila expired; I.O. carried out inquest panchanama and referred her dead body for post-mortem and added Section 302 IPC to the FIR registered earlier; charge sheet was filed against Appellant in the Court of Metropolitan Magistrate, Dadar on 18.11.2013 for offences punishable under Sections 302 and 504 IPC; since offence under section 302 is exclusively triable by the Court of Sessions, the Metropolitan Magistrate committed the case to the Sessions Court for trial.

2.7. Charge was framed below Exh.3 against Appellant for offences punishable under Sections 302 and 504 IPC and contents thereof were read over and explained to him in vernacular; Appellant pleaded not guilty and claimed to be tried, his defense being that of false implication in the case.

3. To bring home guilt of Appellant, prosecution examined 10 witnesses and relied upon oral as well as documentary evidence, viz; the two dying declarations (Exh.13 and Exh.41).

4. It is seen that PW-9 I.O. was examined by prosecution in respect of the first in point of time dying declaration (Exh.41) recorded by him on 10.09.2013 in KEM Hospital, perusal of the same shows that it was recorded in the printed format by PW-9, Sharmila

has recorded that Appellant set her ablaze; that on the date of incident at about 07:00 p.m. Appellant demanded money from her for drinking liquor and on her refusal to give him money abused her and physically assaulted her on face and chest; that two days before, her mother had given 5 litres kerosene to her; that Appellant took the kerosene can and threatened her that if she did not give him money he would pour kerosene on her and set her ablaze; that on her refusal to give him money he carried out his threat, set her ablaze and cursed her. This dying declaration is endorsed by on duty Medical Doctor with this endorsement "***P.T. is able to speak and give statement***". This endorsement is marked in evidence as Exh.43; This dying declaration is witnessed by PW-9 and bears the right-hand thumb impression of Sharmila. Defense has argued that endorsement by medical doctor on duty is insufficient and therefore the dying declaration suffers from infirmity. According to Advocate for Appellant medical doctor on duty has not certified that Sharmila was conscious and oriented and therefore this dying declaration cannot be accepted as valid dying declaration in law.

5. Prosecution has through PW-1, Executive Magistrate placed on record Exh.13 the second written dying declaration recorded by him; it is marked in evidence as Exh.13; it was recorded on 10.09.2013 at 2:45 p.m.; it bears endorsement of the Executive Magistrate and thumb impression of Sharmila. Advocate for Appellant

has argued that this dying declaration also does not bear endorsement of the treating doctor as to whether Sharmila was conscious and oriented; PW-1 in his evidence however has admitted that this dying declaration does not bear the endorsement.

6. In this context deposition of P.W.-2 Dr. Manoj Bachav, Medical Officer, in KEM hospital, Parel assumes importance. He has deposed that on 08.09.2013 Sharmila was admitted to hospital at 08.00 p.m.; he examined her at 09:00 p.m. along with Dr. Satoskar; he has produced on record medical case papers/dairy of Sharmila's hospitalization and treatment from the time of her admission till she was declared dead at 04:15 p.m. on 18.09.2013 alongwith discharge note. These medical papers have been produced in evidence and marked as Exh. Nos. 15, 16- Collectively 23 and 28 respectively. Perusal of medical case papers reveal that Sharmila was brought by her husband for admission to hospital on 08.09.2013 at about 08:30 p.m.; on her admission doctor has recorded the cause of her burns at home being accidental; at that time, she had burns over her face, part of chest, genetalia, and upper part of legs. At about 09:35 p.m. it has been recorded by the doctor that burns were caused by Appellant after throwing kerosene on her and setting her ablaze. It is pertinent to note that at this hour the on duty medical doctor has endorsed in the medical case paper (Exh.20) that "there is no loss of consciousness, convulsions or head injury". There is another endorsement on

(Exh.17) of the medical case papers that the homicidal burns were caused by her husband by pouring kerosene over her at home. Sharmila was admitted with approximately 35% burn injury on 08.09.2010 and she succumbed and passed away on 18.09.2013 due to septicemia. Discharge note issued by the department of plastic surgery, KEM hospital (Exh.19) records that, “homicidal burns as told by patient by husband done by pouring kerosene on her at home in the evening on 08.09.2013...”.

7. PW-3 - Mahendra Namdeo Wankhaede, Assistant Professor, Forensic Medicine, KEM hospital has deposed that he has on 19.09.2013 issued the medical cause of death certificate of Sharmila stating cause of death as “Septicemia due to thermal burn (unnatural)” (Exh.35) He has conducted postmortem of dead body of Sharmila and found the Following injuries:

- A. (a) *Epidermal to dermo-epidermal antemortem thermal burns present over skin surfaces.*
(b) *Margins Inflamed,*
(c) *Floors reddened,*
(d) *Yellowish – greenish pus pockets present at multiple places,*
(e) *Singeing of scalp hair present.*
- B. Involved Burnt surfaces are as follows:

Part	Burns	Area spared
Head, Neck, Face	5%	Part of Scalp

<i>Chest and Abdomen</i>	<i>7%</i>	<i>Part around umbilicus & chest</i>
<i>Right Upper Limb</i>	<i>7%</i>	<i>Palm & arm at places</i>
<i>Left Upper Limb</i>	<i>4%</i>	<i>Palm & arm at places</i>
<i>Back</i>	<i>2%</i>	<i>Lower back & part of upper back</i>
<i>Right Lower Limb</i>	<i>8%</i>	<i>Part of limb</i>
<i>Left Lower Limb</i>	<i>6%</i>	<i>Whole</i>
<i>Perineum</i>	<i>1%</i>	<i>Nil</i>
<i>Total</i>	<i>40%</i>	

8. PW-4 - Dr. Saswat Kumar Dandawat, Registrar of KEM hospital, attended to Sharmila in the emergency ward on 08.09.2013. He has deposed that when Sharmila was brought to hospital she was conscious and in a position to tell the history herself; that he examined her and when police arrived to record her statement, he on their request gave his opinion/endorsement that Sharmila was conscious and fit to give statement in his own handwriting and signed the same. This endorsement is marked in evidence as (Exh.43).

9. Mr. Nikhilesh D. Pote Advocate appearing for Appellant has vehemently submitted that prosecution has failed to prove its case beyond reasonable doubt; that Appellant had set Sharmila ablaze by pouring kerosene on her; that there is no eye witness to the incident and, at the time of incident Appellant was not present in the house (hut); that Appellant was accompanying PW-1 (his friend) and following Ganpati procession at a place away from the spot of

incident; that only after learning about the incident he rushed home and rescued Sharmila; that Sharmila had suffered accidental burn injuries and they were not homicidal. Hence, he has prayed for setting aside the impugned Judgment passed by the Trial Court.

10. ***PER CONTRA***, Mr. S. S. Hulke learned APP, appearing for State in his reply, has drawn our attention to the deposition of PW-8 mother of Sharmila who has deposed that Appellant is a habitual drunkard and used to abuse and assault Sharmila; that he was responsible for her murder; that the two written dying declarations (Exh.13 and Exh.41) not only corroborated with each other but are also in consonance with the medical case history papers of Sharmila's admission and treatment in hospital from 08.09.2013 and 18.09.2013. He has therefore prayed for dismissal of Appeal.

11. We have heard both the advocates and with their able assistance perused the entire record of the case. It is seen that prosecution case is based on the dying declarations. The dying declarations given by the Sharmila were recorded by PW-1 and PW-9. It is further supported and corroborated by medical evidence deposed by PW-2 and PW-3 and recovery evidence from the spot of incident.

12. We may note that prosecution has to prove guilt of accused beyond all reasonable doubts; law does not permit the court to convict accused on suspicion or on the basis of preponderance of probabilities.

Court has to be extremely careful while dealing with dying declaration as the maker thereof is not available for cross examination, which poses a great difficulty to the defence. In short, before relying on dying declaration, court is duty bound to satisfy itself that the dying declaration is a voluntary and truthful version of the maker. If the court is fully satisfied on these issues, then there is no difficulty to base conviction nor court is required to look for corroborative evidence.

13. The Apex court in the case ***Puran Chand Vs. State of Haryana***¹ has held that the court has to examine the dying declaration scrupulously with a microscopic eye to find out whether it is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration.

13.1. The Apex court in an often-quoted Judgment, in the case of ***Kushal Rao Vs. State of Bombay***² has in paragraph Nos.16 and 17 of the said judgment laid down the principles regarding appreciation of evidence on dying declaration. On the same lines we may usefully refer to the observations of the Apex court in the case of ***Vikas Vs. State of Maharashtra***³ wherein after referring to the earlier case law

1 (2010) 6 SCC 566

2 AIR (1958) SC 22

3 (2008) 2 SCC 516

including the judgment of *Kushal Rao* (supra), the Apex court summed up principles governing dying declaration as under:

- (i) *There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.*
- (ii) *If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.*
- (iii) *This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.*
- (iv) *Where dying declaration is suspicious it should not be acted upon without corroborative evidence.*
- (v) *Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.*
- (vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction.*
- (vii) *Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.*
- (viii) *Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.*
- (ix) *Normally the court in Order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness*

has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

- (x) *Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.*

14. In the view of the above settled legal position and the evidence adduced by the prosecution in the present case, it is seen that when the incident took place Appellant and Sharmila were the only persons present in the house (hut). Though defense has argued that death of Sharmila occurred due to bursting of stove (accidental death), however evidence on record does not support this theory. Seizure of articles from the spot of incident does not show stove in the spot panchanama. As alluded to hereinabove and thoroughly discussed, the dying declaration recorded by PW-9 i.e. (Exh.41) along with the endorsement of PW-2, the medical doctor on duty, in our considered opinion deserves to be accepted without any hesitation or doubt. Recovery evidence shows recovery and seizure of kerosene can, match box, one half burnt match-stick along with some articles belonging to Sharmila and there is no dispute regarding seizure and thus recovery evidence supports the evidence of I.O. Similarly, seizure of clothes of accused marked in evidence as (Exh.30) and the C.A. Report (Exh.48) clearly show detection of kerosene on the articles viz; burnt maxi, T-shirt, bermuda pant and blueish liquid in the plastic can and this

evidence fully corroborates the prosecution case. Though evidence of PW-6 and PW-7 regarding occurrence of incident and presence of Appellant at the spot does not support the prosecution case, however, the learned Trial Court has elaborately dealt with their evidence in its Judgment and concluded that though their testimony is not entirely helpful, evidence of both these witnesses show that there is inconsistency, discrepancy and improvement in their depositions. In this context, we need to weigh the Medical evidence on record deposed by PW-2 and PW-3 both Doctors who treated Sharmila in KEM Hospital. That apart, medical history case papers exhibited in evidence will not lie; there was no reason for Sharmila to give any incorrect reason for the injury caused to her on more than one occasion after her admission to the hospital. It is extremely important to note that in the post-mortem report of Sharmila opinion of probable cause of death is shown as "Septicemia due to thermal burns (unnatural)"; contents of the cause of death stated in the death certificate (Exh.25) corroborates with the PM report and the medical history case papers which clearly depict the sketched part of the body of Sharmila where the burn injuries were caused.

15. Hence, taking into consideration the Medical evidence i.e. the Medical history case papers, evidence of PW-2 and PW-3 Doctors and the two written dying declarations, it does not create any doubt

that death was caused because of septicemia due to burns. The substantive evidence of both the Medical doctors is fully reliable and needs to be accepted. The other medical evidence placed on record clearly show that Sharmila was conscious, able to speak, sound and gave her statements. This medical evidence coupled with the circumstantial evidence discussed hereinabove show that prosecution has established its case beyond all reasonable doubts that Appellant has committed murder of his wife Sharmila because she failed to give him money to buy liquor and he in the bargain abused her, assaulted her and set her ablaze. We do not find any infirmity in the impugned Judgment and it does not call for any interference.

16. In view of the above, Criminal Appeal No.806 of 2015 stands dismissed.

17. Before parting with the Judgment, we would like to place on record appreciation for the efforts put in by Nikhilesh D. Pote, learned Advocate appointed by High Court Legal Services Committee, Mumbai for espousing the cause of Appellant; he was thoroughly prepared in the matter and rendered proper and able assistance to the Court.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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