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

CRIMINAL APPEAL NO. 1105 OF 2015

Jagannath @ Mahesh Nagnath Mane

Age : 37 years, Occ.: Driver,
R/o. Hatture Wasti,
Majorwadi, Solapur.
(At present lodged at Yerwada
Central Prison, Pune)

Appellant
.. (Ori. Accused)

Versus

The State of Maharashtra.

(Vide Sessions Case No.315 of 2011 arising out
of C.R. No.189 of 2011 registered at Vijapur
Naka Police Station, Solapur.)

.. Respondent

Ms. Ameeta Kuttikrishnan, Advocate for the Appellant.
Mr. S.S. Hulke, APP for the Respondent – State.

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

DATE : 26th August 2022.

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

. This Appeal questions the legality of the Judgment and Order dated 18.07.2012 passed by the Court of Sessions, Solapur in Sessions Case 315 of 2011 arising out of Crime No. 189 of 2011 convicting the appellant for offence punishable under Section 302 of Indian Penal Code (for short “**IPC**”) and sentence to suffer rigorous imprisonment for life and to pay fine of Rs. 2,000/- and in default to suffer simple imprisonment for one month. Appellant is also convicted for offence punishable under Section 504 IPC and sentenced to suffer

rigorous imprisonment for 6 months and to pay fine of Rs. 500/- and in default to suffer simple imprisonment for one month.

2. Prosecution case in brief is based upon one oral dying declaration and two written dying declarations.

3. The prosecution case is as under:

3.1. On statement given by wife (Geeta) of Appellant Crime No. 189 of 2011 came to be registered for offences punishable under Sections 307 and 323 IPC. After demise of Geeta the Investigating Officer (for short "I.O.") PW-7 substituted Section 302 in place of Section 307 of IPC.

3.2. In her statement Geeta stated that Appellant, she had one son, Deepak age 4 years old; that she was working in a hotel and Appellant was working as a driver; that Appellant was addicted to drinking and used to suspect her character and therefore beat her.

3.3. Geeta stated that on 09.08.2011, i.e., date of incident, she went for work at 9:30 a.m. and returned home at 7 p.m.; thereafter she was doing household work when Appellant came home in a drunken condition and started abusing and beating her on account of her chastity; there was an argument and she tried to reasoned with him; however he was enraged and poured kerosene on her body; even then she tried to convince him otherwise and she did not think that he will set her on fire, but he asked her to sit at one place, ignited a

matchstick and set her a blaze; she tried to save herself by running out of the house but he prevented her from going out by standing at the door; at that time neighbours arrived at the spot of incident and doused the fire by throwing water on her. Geeta was admitted to the Civil Hospital.

4. Investigation of crime was entrusted to PW-7 – I.O. who issued letter vide Exh.20 to PW-4 - Special Executive Magistrate and called upon her to record Geeta's dying declaration; PW-4 arrived at hospital at 11:20 p.m. and recorded dying declaration of Geeta which is at Exh.26. Recording of this dying declaration was completed at 11:55 p.m.

5. PW-7 - I.O. thereafter recorded the second dying declaration of Geeta at 11:55 p.m. and completed recording of the same at 12:20 a.m. Geeta passed away on 10.08.2011 at 4:15 p.m.

6. PW-7 – I.O. conducted the inquest panchanama vide Exh.29 and referred the dead body of Geeta for post mortem. He visited spot of incident at about 8:00 p.m. on 10.08.2011 and prepared the spot panchanama; recovered and seized one plastic can, one matchbox, burnt pieces of saree and mat. Appellant was arrested on 10.08.2011 and referred for medical examination. Articles seized were sent to Chemical Analyzer, Pune for chemical analysis; statements were recorded; during investigation CA report, post mortem report and medical certificate of Appellant was received and after completion of

investigation chargesheet was submitted in the Court of Judicial Magistrate First Class, Solapur. Learned Magistrate after compliance of Sections 207 and 209 of the Code of Criminal Procedure, 1973 (for short “**CrPC**”) committed the case to the Court of Session as offence punishable under Section 302 IPC is exclusively triable by the Court of Session. Charge was framed against Appellant for offence punishable under Section 302 IPC and was read over and explained to him in vernacular. He pleaded not guilty and claimed to be tried, his defence being of total denial.

7. To bring home guilt of Appellant, prosecution examined 7 witnesses; no defence witnesses were examined, statement of Appellant was recorded as provided under Section 313 of Cr.P.C.

8. PW-1 is the treating doctor who attended to Geeta when she was admitted to the Civil Hospital. He has given his endorsement on the two written dying declarations i.e. Exh.26 and Exh.37, stating that Geeta was well oriented and conscious while recording her statements. PW-3 is the doctor who conducted the post mortem of the dead body of the Geeta. He has deposed that Geeta had superficial to deep skin burn injuries all over her body with singeing of scalp, axillary pubic, eyebrow and eyelash hair; vene-section was done over right ankle joint; that Geeta was having 92% burn injuries sufficient to cause the death of a person and she died due to shock of burn injuries. PM report is placed in evidence at Exh.22. In his cross-examination he has

deposed that all organs of deceased Geeta were congested and injuries sustained by Geeta were of third degree. PW-5 is the spot pancha, who has evidenced recovery and seizure of one rockoil can, one matchbox, burnt pieces of saree and mat vide Exh.28. PW-6 is the pancha witness for seizure of clothes of Appellant vide Exh.33 and PW- 7 is the I.O.

9. PW-7 has deposed that on his instruction and letter to the Nayab Tahsildar, Solapur vide Exh.25, Nayab Tahsildar recorded first dying declaration of Geeta. This dying declaration was recorded by the Nayab Tahsildar (SEM). The statement given by Geeta in this dying declaration is that Appellant repeatedly suspected her character and quarreled with her and at 8:30 p.m. on the date of incident he poured kerosene on her and set her ablaze; that neighbours doused the fire and her parents-in-law brought her to the hospital. There is an endorsement of PW-1, the treating doctor on this dying declaration which record that the Geeta was conscious and oriented; this endorsement is marked in evidence as Exh.13 and proved by PW-1 in his evidence. Thereafter, PW-7 has deposed that he verified with the doctor about the physical position of the Geeta and he himself recorded her second dying declaration after taking the endorsement from the doctor at 11:55 p.m. that Geeta was conscious and oriented and after recording her statement took a second endorsement at 12:00 midnight which is the time of completion of this dying declaration. In

the second dying declaration Geeta has one again categorically deposed that her husband i.e., Appellant suspected her character, abused her and poured kerosene on her and set her on fire at 8:30 p.m.; that neighbours came to the spot and extinguished the fire; that after reading dying declaration to her she told PW-7 that it was correct and endorsed the same with her right hand thumb impression. This second dying declaration is marked in evidence as Exh.33 and the two endorsements given by the treating doctor about Geeta's consciousness and orientation are marked in evidence as Exh.14 and Exh.15 respectively.

10. PW-2 is the brother of Geeta who has identified her dead body as a witness to the inquest panchanama. In his deposition, he has stated Geeta used to inform him that Appellant ill treated her; he has deposed that he visited Civil Hospital on a morning of 10.08.2011; at that time, his parents were with him; he met Geeta and she told him that at 7:00 p.m. on the previous day Appellant came to her in a drunken condition and abused her, beat her and poured kerosene on her body and set her ablaze and thereafter stood in the door of the house and prevented her from going out of the room; he has further deposed that Geeta informed him the neighbours came to her help and extinguished the fire by throwing water on her and one Mr. Nagesh Dethe, husband of the sister of the Appellant carried her to Hospital. In his cross-examination, PW-2 has further stated that Geeta used to

regularly complain about the Appellant accusing her and suspecting her character, that Geeta were taken to the Civil Hospital by Nagesh Dethe and her mother-in-law Taramati. This statement of Geeta to PW-2 is the oral dying declaration given by her.

11. We have heard Ms. Ameeta Kuttikrishnan, Advocate for the Appellant and Mr. S.S. Hulke, learned APP for Respondent - State and with their able assistance perused the evidence and Exhibits in the present case.

12. Ms. Kuttikrishnan submitted that this Court ought to consider that Geeta in her statement has stated that she was doing her household work when the Appellant came home in inebriated state and since there is no direct evidence of the incident, Geeta could have suffered an accidental incident and the Appellant may have attempted to save her in the process. She has urged the Court to consider this aspect.

13. ***PER CONTRA***, Mr. Hulke vehemently argued that, this is a case based on one oral dying declaration and two written dying declarations which have been proved to the hilt by prosecution witnesses; he submitted that medical evidence given by PW-1 (treating doctor) and PW-3 (autopsy doctor) clearly corroborate and support the prosecution case proved by the other prosecution witnesses. He has therefore, prayed for dismissal of Appeal.

14. In the case of ***Uttam vs. The State of Maharashtra***¹, the Apex Court while examining and considering the veracity of a dying declaration under Section 32 of Indian Evidence Act, as an exception to the general Rule contained in Section 60 of the said act, 'that hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, it is considered to be trustworthy has held, in paragraph No.11 of its judgment held as under:-

"11. Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival. On an assumption that at such a critical stage, a person would be expected to speak the truth, courts have attached great value to the veracity of such a statement. Section 32 of the Indian Evidence Act, 1872 states that when a statement is made by a person as to the cause of death, or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased victim to the witness, is a relevant fact and is admissible in evidence. It is noteworthy that the said provision is an exception to the general Rule contained in Section 60 of the Evidence Act that 'hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, is it considered to be trustworthy."

15. In the case of ***Sham Shankar Kankaria Vs. State of Maharashtra***², the Apex Court while considering the validity of and evidentiary value of a dying declaration in case based on conviction of accused on the basis of dying declaration has held that:

1 2022 SCC Online SC 749 : MANU/SC/0787/2022

2 (2006) 13 SCC 165 : MANU/SC/8463/2006

“7. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

8. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.”

16. In view of the above settled legal position, in the present case it is seen that the defence of accidental injury stands completely ruled out in view of the fact that there is no circumstantial evidence to corroborate this fact; that nowhere in evidence it has come on record that Geeta could have sustained burn injuries due to busting of stove; spot panchanama at Exh.28 nowhere depicts that there was any stove in broken or burst condition; there is no evidence of any preparation of food and therefore theory of accident to Geeta is ruled out. CA report placed in evidence vide Exh.44 in the present case reveals residue of kerosene upon the shirt of Appellant; as such this

circumstance clearly proves that the Appellant poured kerosene on Geeta and set her ablaze. Though defence has pleaded that Appellant had minor burn injuries to his wrist, hand and leg, the doctor who examined him after his arrest did not find any burn injuries on his body. Therefore, had the Appellant indeed attempted to rescue Geeta from the fire/flames then he would also have sustained burn injuries. The evidence of PW-1 and PW-3, stands clearly proven. The two written dying declarations are with the doctor's endorsement as required by law and stand proven in evidence. In the backdrop of the evidence and findings discussed hereinabove, we are of the considered view that the prosecution has proved the guilt of Appellant of committing the offence of murder of Geeta punishable under Sections 302 and 504 IPC. We find no infirmity with the judgment dated 18.07.2012 passed by the learned Trial Court and do not deem it fit to interfere with the same.

17. Criminal Appeal No.1105 of 2015 is dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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AJAY TRAMBAK
UGALMUGALE
Date: 2022.09.05
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