

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

**CRIMINAL APPEAL NO. 566 OF 2014
WITH
CRIMINAL APPLICATION NO. 1059 OF 2019
WITH
CRIMINAL APPEAL NO. 566 OF 2014**

Sunil Ramesh Kamble
V/s.

.. Appellant.

The State of Maharashtra

... Respondent

Adv. Abdeali Kothawala a/w. Adv. Aashay B. Topiwala i/b. Adv.
Vrushali Salve for the Appellant.
Mr. V. B. Konde-Deshmukh, APP for the respondent-state.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 2nd January, 2023

P.C.:

1. This Appeal is u/s. 374 of Cr.PC against the judgment of conviction awarded by the learned Additional Sessions Judge, Pune in Sessions Case No. 834 of 2012, vide judgment and order dated 16/06/2014 thereby convicting the Appellant/Accused u/s. 235(2) of the Cr.PC for the offence punishable u/s. 302 of IPC thereby sentencing him to life imprisonment and fine of Rs.5,000/- and in default, simple imprisonment of six months.
2. The case of the prosecution is as under:
3. Deceased-Geeta in 1993 was married to one Somnath and

was blessed with two sons. Somnath left the company of deceased-Geeta in view of matrimonial differences. As such in 1998 deceased-Geeta performed second marriage with the Appellant/Accused and started residing in the house of the Appellant/Accused at Shelar Chawl, Yerawada, Pune. Deceased-Geeta was working as a sweeper in Corporation whereas the Appellant/Accused was addicted to alcohol and was a jobless person.

4. On 25/08/2012 the Appellant/Accused demanded Rs.2,000/- from the deceased-Geeta. As she was short of money, she informed him that the same will be paid to him after receiving her salary. The Appellant/Accused continued with his demand and threatened deceased of dire consequences. The deceased-Geeta in discharge of domestic duties, was cleaning utensils near the door of her house at which moment the Appellant/Accused came from behind, poured kerosene and set her on fire. The deceased-Geeta used water which was meant for washing utensils to douse the fire. As a sequel of above, she was shifted by Lalita, her sister to Shrimal hospital and thereafter to Sasson Hospital.

5. A.S.I., Ulhas Sonawane, P.W. 5 who is examined at Exhibit-22 rushed to the hospital and recorded her dying declaration in the

presence of doctor i.e P.W. 7-Dr. Aniruddha Mohite.

6. Based on the above, C.R. No. 376 of 2012 came to be registered for the offence punishable u/s. 307 of IPC. The incident had occurred on 25/08/2012 and the deceased-Geeta died due to her burn injuries on 29/08/2012 at 22.15 hours.

7. A.P.I. Ashok Sonawane took over the investigation and recorded the statement of the witnesses. Dr. A. B. Shinde and Dr. N. S. Burungale have performed the autopsy and found 38% of burn injuries. The cause of death certified was "shock due to burn".

8. After the investigation Appellant/Accused was charge-sheeted and charge came to be framed against him at Exhibit-5 for the offence punishable u/s. 302 of IPC on 24/01/2014.

9. P.W. 1-Vishwanath, father of the deceased, P.W. 2- Lalita, sister of the deceased, P.W. 3-Sulbha, Social worker, witness to the dying declaration, P.W. 4-Sujit, witness to the spot panchnama have turned hostile as they have not supported the case of the prosecution. P.W. 5-Ulhas Sonawane, ASI who recorded the statement of the deceased was examined at Exhibit-22, who has proved the report made to the police station i.e. Exhibit-23 dated 25/08/2022. Dr. Amol B. Shinde, P.W. 6 conducted the post mortem

and has proved the cause of death as 'shock due to burn' by proving post mortem report at Exhibit-25 by deposing at Exhibit-24. P.W. 7-Dr. Aniruddha Mohite, who treated the deceased-Geeta examined at Exhibit-26 and has deposed in support of the recording of dying declaration, the mental and physical health condition of the deceased-Geeta at the time of recording of evidence. P.W. 8-Ashok Sonawane, first investigating officer examined at Exhibit-27 who has proved articles A to C i.e. muddemal article plastic can, match box, yellow colour burned sari, inquest at Exhibit-32. API-Mahukar Salunkhe, P.W. 9, second investigating officer deposed at Exhibit-34 proved arrest panchanama at Exhibit-37 and arrest report at Exhibit-38.

10. Even if the witnesses i.e. P.W. 1 to 4 have turned hostile, the Sessions Court having appreciated the cause of death as reflected in the post mortem report, the dying declaration (Exhibit-17) has recorded the findings that the dying declaration was proved and as such ordered conviction of the Appellant/Accused. As such, this Appeal.

11. Learned counsel for the Appellant/Accused would urge that the prosecution has miserably failed to establish its case for securing conviction beyond reasonable doubt. According to him,

the Appellant/Accused is falsely implicated as the alleged witnesses as P.W. 1 to 4 have not supported the case of the prosecution. According to him, in absence of the corroborative evidence, the evidence of the doctor and the police officer cannot be considered to be worth relying for achieving conviction.

12. According to him, the conviction based on the only piece of evidence viz. dying declaration dated 25/08/2012, is not sustainable as there are various infirmities and discrepancies. It is also claimed that P.W. 7-Dr. Aniruddha Mohite in whose presence the alleged dying declaration was recorded has not put his endorsement at the end of dying declaration. Hence, whether the deceased was in fit state of mind at the time of completion of recording of dying declaration cannot be established. According to him, the timings of recording of dying declaration and conclusion is not established, hence it has to be inferred that the dying declaration is fabricated piece of evidence. Learned counsel for the Appellant/Accused has also attacked the certification by P.W. 7- Dr. Aniruddha Mohite about the fitness of the deceased in the matter of making dying declaration. So as to substantiate the aforesaid claim he has drawn support from the Division Bench judgment of this Court in the matter of **Manik vs. State of**

Maharashtra reported in **2012 SCC OnLine Bom 1902** particularly paragraph nos. 28 to 31 and 36 to 43.

13. Based on the above, it is claimed by learned counsel for the Appellant/Accused that the opinion of the declarant i.e. deceased-Geeta was in the fit state of health and mind to make declaration is at all not established from the testimony of treating doctor P.W.

7. According to him, the P.W. 7 has not assessed the capacity of the declarant deceased-Geeta to make such declaration as the fact about her orientation and alertness is not established. Learned counsel for the Appellant/Accused has also relied on the judgment of Aurangabad Bench in Criminal Appeal No. 610 of 2012 so as to substantiate his claim that the deceased-Geeta was not oriented at the time of giving declaration about cause of her death and such inference can be drawn from the evidence of P.W. 7-doctor.

14. Learned APP while opposing the aforesaid claim would urge that the defence of the Appellant/Accused is that of complete denial, as it is claimed that the Appellant/Accused is falsely implicated in the offence in question.

15. P.W. No. 1-Vishwanath, father of the deceased-Geeta though turned hostile has stated in the cross-examination that there used

to be quarrels between the Appellant and deceased-Geeta. P.W. No. 2-Lalita, sister of the deceased-Geeta has turned hostile, whereas P.W. No. 3-Sulbha, a social worker who also turned hostile in her cross-examination denied of having acquaintance with the deceased-Geeta. She has however admitted that the statement of deceased -Geeta dated 25/08/2012 bears her signature, which is at Exhibit-17. In response to Court's question, she has admitted that she is graduate and has able to read and right Marathi language. She further admitted that she has signed the documents after reading the contents therein.

16. In this background, if we appreciate Exhibit-17, dying declaration dated 25/08/2012 of deceased-Geeta recorded in the presence of said witness, P.W. No. 3-Sulbha by the police official, same in categorical terms implicates the present Applicant/Accused. In the said dying declaration, deceased-Geeta has stated that the Applicant/Accused was not in employment and was addicted to liquor. She has stated that the Applicant/Accused has demanded money. It is claimed therein that since she refused to honour it she was threatened of dire consequences. She has stated that while she was washing utensils, the Applicant/Accused came from behind, poured kerosene and set her on fire, which act

of the Applicant/Accused was witnessed by her. She has also stated that she has poured water which was kept there for washing utensils so as to douse the fire. The Appellant/Accused thereafter ran away from the spot of the incident. She accordingly informed the incident to her sister and as such sister who with the help of her son-Rohit shifted Geeta to hospital. She has specifically stated that the Appellant/Accused has poured kerosene and set her on fire so as to kill her.

17. The Exhibit-17-dying declaration is signed by the deceased-Geeta. Before the signature on the same, P.W. 7- Dr. Aniruddha, who is examined at Exhibit-26 specifically stated that he has started treating deceased-Geeta in block no. 25 of Sassoon Hospital. He has stated that in the presence of police he has examined the deceased-Geeta and found her conscious and oriented and was in well state of mind for giving statement. P.W. 7 has specifically stated that the police has recorded the statement of the deceased-Geeta, read over the contents of it to her after recording the same, which she has admitted to be correct and thereafter she has signed the dying declaration by putting her signature at the end of the same.

18. P.W. No. 5-ASI, Ulhas Sonawane who was examined at

Exhibit-22 has specifically stated about he after receiving information in the police station about the deceased-Geeta having suffered burn injuries, visited the Ward No. 25. According to him, the deceased-Geeta was examined by P.W. 7-doctor and disclosed that she is physically and mentally fit to give her statement. He has stated that thereafter he has started recording the statement of deceased-Geeta as per her say and she has stated about the alleged quarrel based on non-fulfillment of demand of Rs.2,000/-. He has also stated that deceased-Geeta disclosed him that when she was cleaning the utensils, the Appellant/Accused came from behind, poured kerosene and set her on fire. He admits to have recorded the aforesaid statement of deceased-Geeta which bears his signature, signature of Geeta and also that of medical officer, P.W. 7. As such, from the testimony of the P.W. 5 and P.W. 7, the Exhibit-17, the dying declaration was duly proved.

19. The testimony of Dr. Amol, P.W. 7 who was examined at Exhibit-24, P.W. No. 6 specifically speaks of deceased-Geeta having suffered 38% of burn injuries on her head, neck, face, abdomen, chest, back, right & left upper limb, right & left lower limb, genital. The fact remains that the deceased-Geeta had not suffered any injury to her figures so as to infer that she was in

position to put her signature. At least the evidence of P.W. 6-doctor to that extent supports the case of the prosecution as nothing adverse could be inferred therefrom. In the cross-examination, the evidence of P.W. No. 7-Dr. Aniruddha in whose presence the dying declaration was recorded, has stated that deceased-Geeta was in severe pain and he has given her pain killer. He has denied the suggestion given by learned counsel for the Appellant/Accused that deceased-Geeta was administered sedative. Though learned counsel for the Appellant has given suggestion that deceased-Geeta was not examined after recording of her statement, the said witness has denied the same. He has also denied the suggestion that the police has not recorded the statement of deceased-Geeta in his presence. As such, he appeared to be the witness to the recording of the statement of deceased-Geeta by P.W. 5. He has also denied the suggestion that deceased-Geeta was not in a position to give her statement because of the burn injuries as she was not mentally fit to give her statement.

20. In the aforesaid background, what can be notice is Exhibit-17-dying declaration was appropriately recorded in presence of P.W. 7-Dr. Aniruddha by P.W. 5-A.S.I., Ulhas Sonawane. Both these witnesses have in categorical terms proved the recording of dying

declaration in the natural atmosphere, after the proper medical examination of the deceased-Geeta before and after recording of her statement, the mental and fit state of mind and health of the deceased-Geeta at the time of recording of the dying declaration at Exhibit-17.

21. It is not the case of the Appellant/Accused that the signature of the deceased-Geeta was obtained on the dying declaration by any misrepresentation or she has not signed the dying declaration at Exhibit-17. As such, the signature of the deceased-Geeta on dying declaration at Exhibit-17 has to be ordered to have been proved.

22. The aforesaid observation can be substantiated from the evidence of P.W. 5-investigating officer, who has recorded the dying declaration, P.W. 6-doctor who has performed post mortem and P.W. 7-doctor in whose presence and upon whose certification of fitness, the dying declaration was recorded. The fact that the dying declaration was under the signature of the deceased-Geeta sufficiently speaks of her mental and physical health.

23. As such, the contentions of the learned counsel for the Appellant/Accused by relying on the judgment of this Court in the matter of **Manik (supra)** so as to claim that the dying declaration

made by the deceased-Geeta was non-voluntary cannot be accepted. The opinion of P.W. 7, the treating doctor in whose presence the dying declaration recorded by P.W. 5 sufficiently establishes the orientation of the deceased-Geeta so as to give dying declaration. The examination of P.W. 7 before and after recording the statement of deceased-Geeta sufficiently establishes the fact about the deceased-Geeta being in fit state of mind to give such dying declaration.

24. There is no requirement of law that the dying declaration recorded or made to police officer is not admissible. However, the dying declaration recorded by the police officer for forming the same to be basis for achieving the conviction by the prosecution needs to be analyzed with more caution and circumspection.

25. In the case in hand what can be noticed is, dying declaration at Exhibit-17 recorded by P.W. 5, investigating officer was in the presence of P.W. 7-Dr. Aniruddha Mohite, a treating doctor. Even if P.W. 3, a witness to the dying declaration, has admitted her signature has not support the case of the prosecution, still the evidence of P.W. 5 and P.W. 7 sufficiently establishes the lawful recording of the dying declaration. The recording of the dying declaration appears to be voluntary and truthful as in the light of

the observations made hereinabove.

26. Merely because the dying declaration is not recorded in question and answer form does not make it illegal or infirm to accept as a reliable piece of evidence as long as the evidence of P.W. 5 and 7 establishes the mental capacity of the deceased-Geeta to give declaration as could be inferred from the testimony of the aforesaid two witnesses, it cannot be said that the dying declaration is unreliable piece of evidence.

27. So as to substantiate the aforesaid finding support can be drawn from the judgment of the Apex Court in the matter of ***Ramawati Devi vs. State of Bihar*** reported in ***AIR 1983 SC 164***. The paragraph no. 7 of the aforesaid judgment is worth to referring to, which read thus:

"7. In our opinion neither of these two decisions relied on by the appellant is of any assistance in the facts and circumstances of this case. These decisions do not lay down, as they cannot possibly lay down, that a dying declaration which is not made before a Magistrate, cannot be used in evidence. A statement, written or oral, made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, becomes admissible under section 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary

value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case. In the instant case, the dying declaration has been properly proved. It is significant to note that in the course of cross-examination of the witness proving the dying declaration, no questions were put as to the state of health of the deceased and no suggestion was made that the deceased was not in a fit state of health to make any such statement. The doctor's evidence also clearly indicates that it was possible for the deceased to make the statement attributed to her in the dying declaration in which her thumb impression had also been affixed. In the instant case, it cannot also be said that there is no corroborative evidence of the statement contained in the dying declaration. The evidence of P.Ws. 1, 4, 5 and 8 clearly corroborates the statement recorded in the dying declaration. We do not find any material on record on the basis of which the testimony of these witnesses can be disbelieved. It may also be noticed that none of these witnesses including the Police Officer who recorded the statement could be attributed with any kind of ill-feeling against the accused. The High Court has elaborately dwelt on this aspect and has carefully considered all the materials on record and also the arguments advanced on behalf of the appellant. We are in agreement with the view expressed by the High Court and in our opinion the High Court was right in upholding the conviction of the appellant."

28. The fact remains that it is not the case of the Appellant/Accused that the investigating officer-P.W. 5, P.W. 6-doctor who has performed post mortem or P.W. 7-Dr. Aniruddha Mohite who has examined the deceased-Geeta and certified her

mental and physical condition of making statement as any animosity or differences with the Appellant/Accused so as to implicate or depose falsely against him. As such, the testimony of the P.W. 5, 6 and 7 coupled with Exhibit 17-dying declaration sufficiently establishes the guilt of the accused beyond reasonable doubt. That being so no case of causing interference of the Appellate jurisdiction is made out.

29. The Appeal as such fails and stand dismissed.

30. Pending application also stands disposed of.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)