

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1191 OF 2013

Santaji Waman Gopale	]	
Age :- 38 Years, Occ. Service	]	
R/at :- Shirgaon, Tq. Maval,	]	
Dist. Pune.	]	
(now in Yerwada Central Jail, Pune)	]	... Appellant

V/s.

The State of Maharashtra	]	
Through Talegaon Dabhade Police Station	]	
Dist. Pune.	]	... Respondent

Ms.Ankita Pawar for Appellant.
Ms.S.D. Shinde, A.PP for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON : 19th January 2023.
PRONOUNCED ON : 21st February 2023.**

JUDGMENT (Per : A.S. Gadkari, J.) :-

1. Appellant has questioned correctness of Judgment and Order dated 25th September 2013 passed in Sessions Case No. 66 of 2011 by the learned Additional Sessions Judge, Pune, convicting him under Section 302 of the Indian Penal Code (for short, "I.P.C.") and sentencing to suffer life imprisonment and to pay a fine of Rs.2,000/-, in default of payment of fine to further suffer rigorous imprisonment for three months. The trial Court has

held Appellant to be entitled for set-off for the period of detention already undergone by him as per Section 428 of Criminal Procedure Code (for short, "Cr.PC.").

2. Heard Ms.Pawar, learned Advocate for Appellant and Ms.Shinde, learned A.P.P. for Respondent-State. Perused entire record.

3. Brief facts of the case are as under :-

3.1 Appellant is the elder brother-in-law of deceased Smt.Jayashree Sampat Gopale. The husband of deceased Jayashree namely Mr.Sampat W. Gopale (PW-1) is the younger brother of Appellant. Appellant, his elder brother Bajirao W. Gopale and his younger brother Sampat W. Gopale though were residing separately, their houses were adjoining to each other.

The date of incident is 22nd September 2010. It is the case of prosecution that, the Appellant was having ill-eye towards deceased Smt.Jayashree i.e. wife of Sampat Gopale. Prior to the date of incident, on earlier two-three occasions, due to the fact that the Appellant was having ill-eye towards deceased and his unlawful advances towards her, quarrel took place between Sampat Gopale and Appellant. Appellant had also tried to outrage modesty of deceased Smt.Jayashree on some occasions. Smt.Jayashree (deceased) never gave response to the Appellant. The husband of Smt.Jayashree (deceased) namely Sampat (PW-1) and his elder brother Bajirao had tried to convince Appellant in not doing such acts, but the Appellant did not pay any heed to it and continued with his acts.

Appellant was also addicted to liquor and under its influence he used to abuse deceased Smt.Jayashree.

3.2 On 22nd September 2010 at about 11.00 a.m. when Smt.Jayashree was at her house, Appellant came there under the influence of liquor, abused her and beat her with a belt. Smt.Shaila, wife of Appellant intervened and rescued Smt.Jayashree. Again at about 3.30 p.m. on the same day, Appellant called Smt.Jayashree to his house. Wife of Appellant, Smt.Shaila was also present in the house. Appellant took a plastic can containing kerosene and poured it on the person of Smt.Jayashree and set her ablaze by igniting matchstick from a matchbox. Smt.Jayashree was engulfed in fire and raised hue and cry. People in the neighbourhood gathered at the scene of offence and doused the fire. Smt.Jayashree was thereafter taken to General Hospital at Talegaon-Dabhade by Bajirao Gopale and Smt.Shaila Gopale along with other neighbourers. Smt.Jayashree was given first aid at the said hospital and was referred to Sassoon General Hospital at Pune for further treatment, where she was admitted in 'Burn Ward' having Ward No.25.

3.3 Police Head Constable (P.H.C.) Shri. Shashikant R. Waghole (PW-7) was attached to Sassoon Hospital's Police Chowky, Pune. PHC Shri Waghchoure informed him that, Smt.Jayashree Sampat Gopale was set ablaze by her brother-in-law and was admitted in 'Burn Ward' of the said Hospital. Therefore PHC Shri Waghole went to Ward No.25, met the doctor

on duty and informed him that he was intending to record the statement of Smt.Jayashree Gopale. Dr.Vicky G. Jain (PW-3) was on duty. He asked a few questions to Smt.Jayashree and thereafter noted that, Smt.Jayashree was well oriented and in a fit state of mind to give statement. PHC Waghole (PW-7) recorded dying declaration (Exh.50) of Smt.Jayashree on 22nd September 2010 at about 7.00 p.m.. Dr.Vicky Jain (PW-3) put his endorsement (Exh.27) on the left side of the said statement that the patient was conscious and can give statement. A crime bearing No. 182 of 2010 under Section 302 and 504 of I.P.C. came to be registered against Appellant.

3.4 Investigation of the said crime was entrusted to Assistant Police Inspector (API) Shri Satish Hodgar (PW-6) attached to Talegaon-Dabhade Police Station.

API Shri Hodgar (PW-6) also conducted Spot Panchanama (Exh.41) on 23rd September 2010 between 7.00 am to 8.30 am and seized half burnt yellow colour saree having smell of kerosene; half burnt petticoat; one white colour plastic can with half filled kerosene; one empty matchbox and one half burnt matchstick from the scene of offence. API Shri. Hodgar also seized clothes of Appellant i.e. one trouser (full pant) partly burnt at left leg with a few yellow colour pieces of cloth stuck to it and one violet colour full shirt partly burnt at the backside, with a few yellow colour cloth pieces on it. API Shri Hodgar sent the said articles to Forensic Science Laboratory, Pune for Chemical Analysis.

3.5 API Shri Hodgar went to Sassoon Hospital on 23rd September 2010 and recorded dying declaration (Exh.42) of Smt. Jayashree Gopale at about 1.45 pm. Dr.Vicky Jain (PW-7) put his endorsement (Exh.28) at the left side corner of the said statement stating that, the patient was conscious to give statement.

3.6 Smt.Jayashree Gopale succumbed to injuries on 26th September 2010. Dr.Nitin A. Patil (PW-4) along with Dr.A.B. Shinde attached to Sassoon Hospital, Pune conducted autopsy on the dead body of Smt.Jayashree between 7.00 am to 8.00 am. He noticed total 82% superficial and deep burns of on the dead body. He gave opinion as to probable cause of death of deceased as 'Death due to shock, due to burns'.

3.7 After receipt of Chemical Analyzer's Report and other documents, API Shri. Satish Hodgar (PW-6) submitted chargesheet against the Appellant in the Court of Judicial Magistrate First Class (J.M.F.C.) at Vadgaon-Maval on 22nd December 2010 under Section 302 and 504 of I.P.C.. As the offence under Section 302 of I.P.C. is exclusively triable by the Court of Sessions, the learned J.M.F.C., Vadgaon-Maval committed the said case to the Court of Sessions at Pune as contemplated under Section 209 of Cr.P.C. for trial.

3.8 Trial Court framed charge below Exh.2 on 19th June 2012. The said charge was read over and explained to the Appellant in Marathi vernacular, to which he pleaded not guilty and claimed to be tried. To prove

the guilt against the Appellant, prosecution examined in all 7 witnesses, namely, (i) Sampat Waman Gopale, PW-1, (Exh.15)-husband of deceased, (ii) Sachin Dagadu Aarte, PW-2, (Exh.21)-Panch of Seizure Panchanama (Exh.22), (iii) Dr.Vicky G. Jain, PW-3, (Exh.26)-Doctor who attended deceased on 22nd & 23rd September 2010, (iv) Dr.Nitin Anantrao Patil, PW-4, (Exh.32)-Doctor who along with Dr.A.B. Shinde performed post-mortem (Exh.33) on the dead body of Smt.Jayashree, (v) Rohidas G. Yenpure, PW-5, (Exh.38) – Brother of deceased, (vi) Satish B. Hodgar, PW-6, (Exh.40)- Investigating Officer, conducted Spot Panchanama (Exh.41), recorded dying declaration dated 23rd September 2010 (Exh.42), (vii) PHC Sashikant R. Waghole, PW-7, (Exh.49), recorded dying declaration dated 22nd September 2010 (Exh.50).

3.9 The statement of Appellant under Section 313 of Cr.PC. was recorded below Exh.53. The defence of the Appellant which can be gathered from the cross examination and his statement under Section 313 of Cr.PC. was that, the Appellant incurred expenditure for construction of house of Sampat Gopale (PW-1) i.e. husband of deceased Smt.Jayashree and had also gave money to Rohidas Yanpure (PW-5) i.e. brother of deceased Smt.Jayashree for purchasing motorcycle. Neither the husband nor brother of deceased repaid the said amount. Appellant demanded the said amount from the husband and brother of Smt.Jayashree and on that count there used to be quarrels between deceased Smt.Jayashree and Appellant. It was also the

defence of Appellant that a '*Laman Diva*' (oil lamp) was burning in his house, saree of Smt.Jayashree came in its contact and caught fire. He and his wife extinguished the fire and at that time, he also sustained burn injuries.

3.10 The learned Trial Court after recording evidence and hearing the learned Advocate for the respective parties, has convicted and sentenced the Appellant by its impugned Judgment and Order dated 25th September 2013.

4. Ms.Pawar, learned Advocate for Appellant submitted that, though the Investigating Agency had recorded statements of Bajirao W. Gopale and Shaila Santaji Gopale, the said witnesses have not been examined by the prosecution. That, in his statement recorded under Section 313 of Cr.PC. the Appellant has pointed out the motive at the behest of deceased and her brother (PW-5) for falsely implicating him in the present crime. That, the Appellant has also offered an explanation for causing fire to the saree of deceased Jayashree in his answer to question No.27 recorded under Section 313 of Cr.PC.. That, there is inconsistency in the two dying declarations at Exh.42 and Exh.50 regarding the place of incidence. The deceased herself had taken contradictory and inconsistent stands in the said two dying declarations. Therefore there is reason to give rise of suspicion about the truthfulness of the said two dying declarations. In support of her contentions, she relied on the decisions of the Hon'ble Supreme Court in the case of *Makhan Singh Vs. The State of Haryana*, reported in AIR 2022 SC 3793 : MANU/SC/1003/2022 and *Mahiboobsab Abbasabi Nadaf Vs. State of*

Karnataka, reported in AIR 2007 SC 2666 : (2007) 13 SCC 112. She therefore prayed that, present Appeal may be allowed by acquitting the Appellant from the offence.

5. Per contra, Ms.Shinde, learned A.P.P. opposed the Appeal and submitted that, there is no inconsistency in the said two dying declarations at Exh.42 & 50. That, the basic facts mentioned therein are consistent and therefore the said dying declarations can safely be relied upon. That, Dr.Vicky Jain (PW-3) has put his endorsement at the end of both the dying declarations stating that, the patient was conscious and fit to give statement and therefore there is no reason to have any doubt about the mental condition of Jayashree, while giving her dying declarations. That, the Spot Panchanama (Exh.41) fully corroborates the dying declarations and therefore the said two dying declarations, i.e. Exh.42 & 50, are trustworthy and reliable. She further submitted that, the evidence led by Sampat W. Gopale (PW-1), i.e. husband of Petitioner, in his examination-in-chief is fully reliable. The Appellant has failed to give any explanation about the pieces of saree of deceased found on his trouser. She relied upon following three decisions in support of her contentions, namely, (i) *Laxman Vs. State of Maharashtra, reported in (2002) 6 SCC 710* ; (ii) *Balbir Singh & Anr. Vs. State of Punjab, reported in 2006 12 SCC 283 : 2007 1 SCC (Cri) 715 : 2006 0 Supreme (SC) 898* and (iii) *Babasaheb Shankar Waghmare & Anr. Vs. The State of Maharashtra, reported in 2014 All MR (Cri) 251.*

She submitted that, there are no merits in the Appeal and the same may be dismissed.

6. The facts mentioned in para Nos.3.1 to 3.6 above are deduced from the evidence of the concerned witnesses on record.

Sampat W. Gopale (PW-1) is the husband of the deceased Jayashree. He has deposed that, the Appellant was having ill eye towards his wife and on the said count, on earlier two-three occasions there was quarrel between him and the Appellant. That, the Appellant was also trying to outrage modesty of deceased Jayashree. That, he and his eldest brother Bajirao Gopale had tried to convince Appellant not to do such acts, but Appellant did not pay any heed to it. Appellant was addicted to liquor and under the influence of it he used to abuse deceased Jayashree. That, on 22nd September 2010 he went to attend his duty. At about 3.45 p.m., he received a phone-call of his nephew Vinod, who informed him that his wife Jayashree had sustained burn injuries and was admitted at General Hospital at Talegaon-Dabhade for treatment. He immediately rushed to the hospital and upon medical advise took Jayashree to Sassoon Hospital, Pune for further treatment. When Jayashree was admitted to Sassoon Hospital at Pune, he asked her what had happened. Jayashree told him that, on the said day at about 11.00 a.m. while she was at her house the Appellant in an inebriated condition came there, quarreled with her and had beaten her. That, the Appellant's wife Shaila intervened in the quarrel and rescued her from the

Appellant. That, on the same day at about 3.30 p.m. Appellant again came at his house and called her there. That, when Jayashree had been to the house of the Appellant, the Appellant took a can containing kerosene from his house, poured kerosene on her person and thereafter immediately ignited it with a matchstick. As soon as the Appellant ignited fire, her saree and blouse caught fire and she sustained burn injuries and started shouting/screaming. After hearing her shouts, the wife of Appellant poured water on her person, extinguished the fire and thereafter she was carried to hospital for treatment.

In his cross examination by the Appellant, PW-1 gave favourable answers, which would suit the Appellant. Perusal of his deposition would indicate that, the PW-1 has tried to absolve Appellant by taking his side in his elaborate cross-examination. However, the basic fact of an 'Oral Dying Declaration' given by Jayashree to PW-1 about the actual incident which caused her burn injuries has not been shaken at all.

7. Shashikant R. Waghole (PW-7), Police Head Constable then was attached to Sassoon Hospital Police Chowky Pune, recorded the dying declaration (Exh.50) of Jayashree when she was admitted to Sassoon Hospital on 22nd September 2010 in the afternoon. In the said dying declaration, Jayashree has briefly stated that, the Appellant was her brother-in-law and used to threaten her that one day he would not keep her alive. That, on 22nd September 2010 at about 3.30 p.m. after consuming liquor, Appellant came home. He was having a can of kerosene in his hand.

Appellant started abusing her in filthy language. At that time, Smt.Shaila (wife of Appellant) ran away out of the house. Appellant again abused Jayashree and told her that, he would not leave her alive today and poured kerosene from the can on her person and set her on fire by lighting a matchstick. The persons from neighbourhood immediately rushed there and doused the fire. She was thereafter admitted to Sassoon Hospital. That, she had legal complaint against Appellant. This dying declaration is duly endorsed by Dr.Vicky Jain (PW-3) stating that, the patient was conscious and could give statement. The said endorsement is marked as Exh.27.

8. API Satish Hodgar (PW-6) was the Investigating Officer of the present crime. He has deposed that, on 23rd September 2010 the investigation of the present crime was handed over to him. He then went to the scene of offence i.e. the residential house of Appellant and drew Spot Panchanama (Exh.41). He then went to Sassoon Hospital for recording dying declaration of Jayashree. The doctor present there examined Jayashree and gave him permission to record her statement. He recorded the dying declaration of Jayashree (Exh.42) as per her narration. The concerned doctor i.e. Dr.Vicky Jain (PW-3) put his endorsement (Exh.28) at the end of the dying declaration stating that, the patient was conscious to give statement. He has identified the Articles namely, saree, petticoat, kerosene can, matchbox, half burnt matchstick as 'Article Nos.1 to 5' and the clothes of Appellant as 'Article Nos.6 & 7'.

9. In the cross examination of PW-7 and PW-6, who are important witnesses, nothing beneficial to the Appellant has been elicited therefrom. The fact of recording dying declarations by them and the contents of the dying declarations have been proved by them beyond doubt. Though the dying declaration recorded (Exh.50) by PW-7 is a brief one, the second dying declaration (Exh.42) recorded by PW-6 is a elaborate one.

10. It is the settled position of law that, there is no specific format for recording dying declaration. There are various modes of making of dying declaration. A certification by doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established, otherwise also the effect of declaration being not recorded before a Magistrate would depend upon the facts and circumstances of each case and no hard and fast rule can be laid down therefor. When a statement of an injured is recorded in the event of her death, the same may also be treated to be a First Information Report. The veracity of two dying declarations cannot be doubted merely because one is narrated in detail and another is in brief. What is important to note is the basic substratum of the two declarations whether is same or not.

11. In the present case, the dying declaration (Exh.50) recorded by PW-7 has been treated as First Information Report. A minute perusal of both the dying declarations would clearly indicate that, those were recorded when Jayashree was in conscious state to give declarations. The basic substratum

of said two dying declarations i.e. Exh.42 & Exh.50 that, the Appellant on the fateful day poured kerosene on the person of Jayashree and ignited it with a matchstick is the same. Both the dying declarations clearly spelt out motive at the behest of the Appellant behind commission of the present crime. The dying declarations at Exh.42 & Exh.50 are undoubtedly reliable and trustworthy and inspires full confidence in the mind of this Court.

12. Apart from the said two dying declarations i.e. Exh.42 & Exh.50, there is an oral dying declaration given by deceased Jayashree immediately on her admission at Sassoon General Hospital to Sampat W. Gopale (PW-1), husband of deceased. There is no variance in the oral dying declaration than what has been stated in the two dying declarations at Exh.42 & Exh.50. The said oral dying declaration has also been proved in the evidence of PW-1. The basic substratum of the said two dying declarations and also the oral dying declaration is the same i.e. the Appellant poured kerosene and set her on fire on the date of incident.

13. Perusal of the Spot Panchanama/Scene of Offence Panchanama (Exh.41) reveals that, at the scene of offence one burnt yellow colour saree having smell of kerosene; one half burnt petticoat stuck with burnt pieces of saree; a half filled white colour plastic can with kerosene; a matchbox and a half burnt matchstick was found. The Spot Panchanama duly corroborates the version of deceased Jayashree and establishes the fact that on the fateful day the incident of her burning by Appellant has taken place.

14. The seizure of clothes of Appellant Panchanama (Exh.22) discloses that, the trouser which was on the person of Appellant on the said day was burnt at left leg and yellow colour cotton pieces were stuck to it. His shirt was also burnt at some places on its backside and yellow colour cloth pieces were stuck to it. The Appellant has not offered any explanation about the said fact. The explanation offered by the Appellant that, the saree of deceased Jayashree came in contact with a '*Laman Diva*' (oil lamp) and caught fire is not supported by any evidence and in particular by the Spot Panchanama (Exh.41), as no '*Laman Diva*' (oil lamp) was found there. The Spot Panchanama infact contradicts the version of the Appellant. The Chemical Analyzer's Report (Exh.36) clearly mentions that, the pieces of cloth adhered on partly burnt full pant and the shirt of Appellant were having kerosene residues on it and its test was positive.

15. It view of the above, it is clear that the prosecution has proved its case beyond reasonable doubt that, on the day of incident Appellant poured kerosene on the person of deceased Jayashree and ignited it with a matchstick due to which Jayashree got burnt and subsequently succumbed to the injuries caused due to it.

16. In view of the aforesaid deliberation, we are of the considered opinion that, there are no merits in the Appeal.

Appeal is accordingly dismissed.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]