



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.335 OF 2019

Vilas s/o Dagduji Gendewad,
Age 35 years, Occ. Nil,
R/o Swami Raghvendra Colony,
Latur, Tq. & Dist. Latur

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Inspector,
Shivaji Nagar Police Station,
Latur, Tq. & Dist. Latur
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad

... RESPONDENT

.....
Mr. P.P. More, Advocate for appellant
Mr. S.D. Ghayal, Addl. P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 31st January, 2024

Date of pronouncing judgment : 7th February, 2024

JUDGMENT (PER R.G. AVACHAT, J.)

The appellant in this appeal takes exception to his conviction for offence punishable under Section 302 of the Indian Penal Code and consequential sentence of imprisonment for life and fine with default stipulation, vide judgment and order dated 19/10/2018, passed by learned Sessions Judge, Latur in Sessions

Case No.43/2014.

FACTS :-

2. The case of the prosecution, as is revealed from the police papers (Charge Sheet) is – Smt. Jyoti (deceased) had married Ramling Bidwe. The couple was blessed with two children- Rudra and Dhruv. All of them would reside in a two room premises of the appellant, on rent. Ramling was not keeping well for long. His both kidneys were not functioning. He passed away. Intimate relationship developed between the appellant and Jyoti (deceased). When parents of the appellant realised the same, they asked Jyoti to quit the premises. Jyoti thereafter started residing in a premises of Smt. Anita (P.W.5). The appellant continued to visit the deceased.

3. The appellant visited Jyoti (deceased) by little past 4.00 p.m. on 15/8/2013. He picked up a quarrel with her questioning where she was on the previous evening. He suspected her to have relationship with someone else. The appellant first slapped her. Minor quarrel ensued between the two. The appellant doused kerosene on her person and set her ablaze. Both the sons of the deceased were asleep. On hearing commotion, they got up. Rudra went to the house of his maternal grandmother Jagdevi (P.W.2) to call her. She came. Jyoti was rushed to Civil Hospital. P.W.7 Lahu was on duty at Police Chowki, Civil Hospital. He requested doctor

on duty to examine Jyoti as to whether she was fit to make a statement. The Medical Officer (M.O.) on duty Dr. Gagan (P.W.14) examined Jyoti and opined she was conscious oriented. P.W.7 Lahu thereafter recorded her statement-cum-F.I.R. (Exh.46).

Similarly, P.W.9 Saudagar, Executive Magistrate also recorded her statement a while after P.W.7 Lahu recorded the F.I.R.

4. Based on the F.I.R., a crime vide C.R. No.151/2023 was registered for offence punishable under Section 307 of the Indian Penal Code. Jyoti succumbed to the burns. Section 302 of the Indian Penal Code came to be invoked. Upon investigation of the crime, the appellant was proceeded against by filing a Charge Sheet before the Court of Chief Judicial Magistrate, Latur.

5. Learned Chief Judicial Magistrate, Latur committed the case to the Court of Sessions (Trial Court). The Trial Court framed the Charge (Exh.26). The appellant pleaded not guilty. It is his defence that the deceased committed suicide as she was unable to make both the ends meet.

6. The prosecution examined 15 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced to suffer life imprisonment as stated above.

7. Heard. Learned counsel for the appellant would submit

that there is no eye witness account. The case is based on two dying declarations (DDs.), one made to a police official and the other to the Executive Magistrate. The deceased had suffered more than 92% of burns. She was not in conscious state of mind. There are inconsistencies between the two DD. The D.D. recorded by the Executive Magistrate is in the nature of a printed format. The blanks have been filed therein. The format had even contained a clause suggesting a patient whose D.D. is to be recorded, is in fit state of mind. According to learned counsel, this Court, in case of **Paikuji s/o Shankar Ataram Vs. State of Maharashtra (2012 ALL MR (Cri) 2453)**, frown upon the practice of relying on such D.D. i.e. in prescribed format. According to learned counsel, the D.D. recorded by Police officer indicates the incident took place by 5.00 p.m. while in the D.D. recorded by the Executive Magistrate, the time of incident is stated to be 8.00 p.m. This is a material inconsistency rendering it doubtful to rely upon the D.Ds.

According to learned counsel, prelude of the incident is also material one. The same is missing in the D.D. recorded by the Executive Magistrate. He relied on **Suresh s/o Arjun Dodorkar (Sonar) Vs. State of Maharashtra (2005 ALL MR (Cri) 1599)**. He would further submit that, since the declarant was not available for subjecting to cross-examination, and there being no other evidence relied on by the prosecution, the appellant deserves to be granted the relief based on reasonable doubt. Learned counsel

ultimately urged for allowing the appeal.

8. The learned A.P.P. would, on the other hand, submit that the (M.O.) on duty had examined the deceased before and after recording of her both the D.D. Although the D.D. recorded by Executive Magistrate is in a prescribed format, the material portion thereof is in the handwriting of the Executive Magistrate who recorded the same as narrated by the deceased. The timing of the incident appearing in the D.D. recorded by him is nothing but a mistake since the deceased had already been admitted to the hospital by little past 5.00 p.m. According to learned A.P.P., there is oral evidence as well to indicate presence of the appellant at the house of the deceased at the material time. According to him, in the facts and circumstances of the case, the D.D. needs to be relied on to sustain the conviction. He ultimately urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence and the documents on record. There is voluminous evidence to indicate the deceased along with her husband and two children would reside in a two room premises of the appellant, on rent. The husband of the deceased passed away due to failure of his kidneys. The deceased started working as a maid to earn her living. An intimate relationship developed between the deceased and the appellant. She had to quit the premises of the appellant

since the parents of the appellant realised the relationship between the two. The deceased, therefore, took a room on rent, belonging to P.W.5 Anita. The post mortem report (Exh.84) suggests the deceased died of septicemic shock due to burn. She had suffered 93% superficial to deep burns. The question is, whether the deceased met with homicidal death or was it a case of suicide or accident.

10. P.W.1 Parmeshwar is the witness to the scene of offence panchanama (Exh.33). He did not stand by the prosecution. The said panchanama has been proved by the evidence of P.W.15 Sujata. The crime scene is the room occupied by the deceased. P.W.2 Jagdevi, mother of the deceased testified that, Jyoti would reside in the premises of the appellant on rent. On the demise of her husband, she shifted to the premises belonging to Anita (P.W.5). It is in her evidence that, the appellant had illicit relationship with the deceased. He would visit her residence in her (P.W.2's) absence. It is further in her evidence that, on the fateful day, by 5.30 p.m., she was in Datt Temple. Her grandson Dhruv, son of the deceased came to her. She accompanied him to the room to find Jyoti to have suffered extensive burns. It is she who rushed Jyoti to the hospital. The cross-examination of P.W.2 Jagdevi indicates that Jyoti had suffered extensive burns. She had not stated in her statement to the police that the appellant was present in the room while she returned from the temple.

11. P.W.3 Sanjay was the son of maternal uncle of the deceased. It is in his evidence that, on receipt of a phone call of one Baburao Karale, he rushed to the room to see Jyoti to have suffered extensive burns. The appellant was present in the room in which Jyoti had suffered burns.

12. P.W.4 Basawraj testified that he had reached to the hospital on having learnt about the incident. According to her, Jyoti was in I.C.U. She was under treatment. She was able to speak. She told him to have been set ablaze by the appellant.

13. P.W.5 Anita, landlady in whose premises the deceased was residing on rent did not support the prosecution. Evidence of P.W.6 Shrawan is of little assistance since he in his official capacity as a Circle Officer had drawn sketch of the scene of offence.

14. P.W.7 Lahu was Assistant Sub-Inspector on duty at Civil Hospital, Latur. It is in his evidence that, on having learnt of admission of a burn patient, he went to the concerned Ward. He requested the doctor on duty to examine the patient and certify whether she was conscious to make a statement. A communication made by P.W.7 Lahu in that regard is at Exh.48. His evidence indicates that, he recorded the statement of Jyoti (F.I.R. - Exh.49). It is further in his evidence that, after the statement was recorded, the (M.O.) again gave an endorsement that Jyoti was fit and

conscious-oriented to make the statement.

15. On the demise of Jyoti, her statement-cum-F.I.R. became the D.D. The same reads -

“She had acquaintance with the appellant since she was residing in his premises on rent. On the demise of her husband the appellant assured her to maintain herself and her children. The appellant was treating her as his wife. He would give fatherly treatment to her children. A minor quarrel had, however, ensued on the previous day. It was 15/8/2023, the deceased was home. The appellant questioned her where she was on the previous evening. He slapped her after having suspected her to have relationship with someone else. The appellant then obtained kerosene from a stove and poured it on her person. He then set her ablaze. Her both sons were asleep. On hearing her cries, the landlady Sunita arrived. She doused fire with water. Meanwhile, her mother was brought by her son Rudra. Her mother brought her to the hospital.”

16. The other D.D. recorded by P.W.9 Saudagar, Executive Magistrate is at Exh.61. It is in his evidence that, he was serving as Naib Tahsildar-cum-Executive Magistrate, Tahsil Latur. He received a requisition (Exh.50) from Mr. N.V. Kamble, A.S.I. attached to Police Chowki, Civil Hospital, Latur. He, therefore, rushed to the Civil Hospital and requested the M.O. on duty to examine the patient to find whether she was conscious-oriented to make a statement. It is further in his evidence that, the M.O. accordingly examined her and gave endorsement to that effect on his

requisition letter (Exh.62) and even on the D.D. (Exh.63). It is further in his evidence that, he then recorded the statement of the deceased as narrated by her, which reads as follows :

“I was residing in a premises of the appellant on rent. On the demise of my husband, relationship developed between me and the appellant. Today a quarrel took place between us. The appellant assaulted me. He poured kerosene on my person and ignited with a match stick. My mother brought me to the hospital.”

17. Post recording of the D.D. (Exh.63), the M.O. again certified her to be conscious-oriented. Our attention was adverted to the cross-examination of the P.W.9 Saudagar, Executive Magistrate to indicate that, relations of the deceased were around her. They were asked to leave her before recording of her D.D. Learned counsel meant to say that the deceased might have been tutored by her relations. Main attack on the D.D. was on account of it being in a prescribed format. True, the D.D. also bears a printed matter indicating a person whose D.D. is to be recorded, is fit and conscious to make the same. True, in case of Paikuji (supra), this Court frown upon the practice of recording D.D. in a printed format. There is, however, on record a request letter issued by A.S.I. Kamble, whereon the M.O. had given his separate endorsement suggesting the deceased was conscious-oriented to make a statement. Then a comparison between the two D.Ds. was sought

to be made to suggest the D.D. recorded by police official contained a prelude. True, in case of Suresh Dodorkar (supra), there was inconsistency as to prelude in both the D.Ds.

18. In case of Abhishek Sharma Vs. State (Govt. of N.C.T. of Delhi) – (Criminal Appeal No.1473/2011, decided on 18/10/2023), the Hon'ble Supreme Court held,

“9. Having considered various pronouncements of this Court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations :

- 9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;
- 9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be ‘material’ for its credibility to be shaken;
- 9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.
- 9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.
- 9.5 Each declaration must be scrutinized on its own merits. The Court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”

19. Dr. Gagan, (M.O.) (P.W.14) was categorical to testify that on the request of A.S.I. Kamble and the Executive Magistrate he examined the patient and found her to be conscious-oriented to make a statement. He placed on record all the medical papers of the deceased. He was categorical to deny that due to 99% of burns suffered by the deceased, she was not conscious to make a statement.

20. In our view, the M.O. is an independent witness. The victim, a widow and mother of two children would have no reason to permanently leave the world, leaving behind her two minor children to fend themselves. Intimate relationship between the appellant and the deceased has been proved by the evidence of her mother and two other witnesses. While the incident took place, presence of the appellant at the crime scene at the material time has also been made out. We do not find any inconsistency between the two

D.D. Both the D.D. are consistent in material particulars. In the first D.D., somewhat detailed description of the prelude of the incident has been given. True, there is variance about the time of the incident. In the first D.D., the incidence is said to have taken place by little past 5.00 p.m. while the second D.D. records the time as 8.00 p.m. There is voluminous evidence to indicate that the deceased was rushed to the hospital little past 6.00 p.m. The time—8.00 p.m. recorded in the D.D. (Exh.63) must be taken to be a mistake in recording the same.

21. It is reiterated that, the evidence on record undoubtedly lead us to infer the appellant to have been in intimate relationship with the deceased for long. The deceased quit his premises since the appellant's parents realised relationship between the appellant and the deceased. The appellant continued to visit her. At the material time, he was present in the house of the deceased. Both the D.D. are consistent in material particulars. Those have been recorded after the M.O. on duty examined her and certified to be conscious-oriented. Presence of relatives around the victim before recording of D.D. is but natural. One has to take note of a fact that when such incident happens, it is the relations or friends of victim who rush him/ her to the hospital and remain around until the treatment commences. The tenor of the cross-examination of the Executive Magistrate Saudagar (P.W.9) indicates that the suggestions were given to him indicating that the victim was

speaking in low voice. She was taking gaps in uttering two words. The same suggests victim could speak. Setting a person ablaze and making no efforts to save such a victim by the culprit himself goes a long way to infer that the culprit intended to ensure the consequences of his act. In the case in hand, the victim suffered 99% burns. The appellant poured kerosene on her person and set her ablaze indicates him to have intended to kill her. She died as a result thereof. The Trial Court was right in convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code. We do not find any reason to interfere with the impugned judgment and order. The appeal therefore fails. Hence the order :

ORDER

The Criminal Appeal is dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-