



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

CRIMINAL APPEAL NO. 597 OF 2022

Madhav Bhairoba Shirfule

Age: 60 years, Occu: Agriculture,

R/o: Kamari Taluka, Himayatnagar,

Dist. Nanded

... Appellant

Versus

The State of Maharashtra

Through Police Station Himayatnagar,

Taluka Himayatnagar, District Nanded

... Respondent

...

Mr. Madhukar M. Parghane, Advocate for the Appellant

Mr. S. D. Ghayal, Addl. P.P. for the Respondent - State

...

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

Decided on : 6th February, 2024

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. This is an Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.PC' for short] against the Judgment and Order dated 06/11/2015, passed by the learned Additional Sessions Judge, Bhokar, in Sessions Case No.02/2014 convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC' for short] and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.15000/-, in default, to undergo R.I. for two years.

2. Prosecution's case as revealed from the Police Report is as under:

2.1 Two months prior to the incident, the Appellant and his nephew - Dnyaneshwar Ananda Wankhede [acquitted Accused] committed theft in the house of deceased – Sanjay Nivrattirao Shirfule. Both of them confessed the crime before the villagers. At that time, the Appellant threatened deceased - Sanjay to eliminate his family. The report was lodged for the said threat with the Himayatnagar Police Station, in which, the Appellant was arrested. On that count, the Appellant was having grudge against deceased – Sanjay.

2.2 In the intervening night of 4/5.6.2013 when deceased – Sanjay and his wife - Satwashila were sleeping in the courtyard of their residence, the Appellant came inside by climbing the compound wall, poured the Petrol on both of them and set them ablaze and ran away. Deceased - Sanjay tried to catch-hold of the Appellant, however, he managed to flee. On hearing the screams of deceased - Sanjay, his neighbours came to his house and doused the fire on their person. Deceased - Sanjay and his wife deceased - Satwashila suffered burn injuries and were hospitalized. Their statements [Dying Declarations] were recorded in which they narrated the incident. Crime came to be registered against the Appellant and co-accused – Dnyaneshwar [nephew]. During the treatment, both of them succumbed to the injuries. Investigation was done and the Appellant along with said co-accused came to be Charge-sheeted.

3. The learned Trial Court framed the Charge against the

Appellant and co-accused for the offences punishable under Section 302 read with Section 34 of IPC. To prove the Charge, Prosecution examined in all twenty (20) witnesses. After the Prosecution closed its evidence, the statement of the Appellant and the co-accused came to be recorded under Section 313(1) (b) of Cr.PC. They denied the Prosecution's case. On appreciating of the evidence, the learned Trial Court passed the impugned Judgment acquitting the co-accused No.2 – Dnyaneshwar and convicting the Appellant as referred above in Paragraph No.1.

4. Heard Mr. M. M. Parghane, the learned Advocate for the Appellant and Mr. S. D. Ghayal, learned Addl. P.P. for the Respondent – State. Perused the evidence on record.

5. It is submitted by the learned Advocate for the Appellant that in the Medico-Legal Case [MLC], it is mentioned that, the incident occurred due to electrocution. Out of enmity the Appellant has been falsely implicated. He submitted that there are no eye witnesses to the incident and the circumstances brought on record by the Prosecution do not prove the Charge. He submitted that the co-accused has been acquitted and the Appeal needs to be allowed by setting aside the conviction of the Appellant.

6. It is submitted by the learned Additional P.P. that both the Dying Declarations are consistent, wherein, it is stated that the Appellant poured Petrol and set the husband and wife on

fire. He submitted that the death is due to burn injuries and not by electrocution. He submitted that the medical evidence corroborate the Dying Declarations and the learned trial Court has rightly convicted the Appellant and hence, the Appeal be dismissed.

7. The witnesses examined by the Prosecution can be categorized as follows:

- (i) The witnesses who have seen both the deceased in burning condition.
- (ii) The witness who recorded the Dying Declarations.
- (iii) The Medical Evidence.
- (iv) The Panch witnesses.
- (v) The Police witnesses.

8. The evidence of PW – 1 [Pundlik Vitthalrao Kadam], PW – 2 [Sangita Shivajirao Shirfule], PW – 3 [Madhav Govindrao Wadadkar], PW – 4 [Shivaji Ganpatrao Shirfule], PW – 5 [Savita Kerbarao Shirfule] and PW – 11 [Kerba Ganpat Shirfule] show that they were neighbours of deceased - Sanjay and deceased - Satwashila. Their evidence show that in the night of 04.06.2013 at around 11:45 pm when they were sleeping in their respective houses, they woke-up from their sleep due to shouts / cry for help / chaos and they came out of their respective houses and saw Sanjay engulfed in fire. Their evidence show that Satwashila was inside her house and was also engulfed in fire. These witnesses helped doused the fire. Their evidence show that some of them had taken the injured to the Hospital at Hadgaon and thereafter to Hospital at

Nanded and to the Hospital at Hyderabad. Though these witnesses were cross-examined by the Appellant and some improvements are made in the evidence by some of the witnesses, their testimonies in respect of the above incident remain un-affected.

9. The evidence of PW – 7 [Pandurang Nivruttrao Shirfule] show that he was the brother of deceased – Sanjay and was residing at Kamari, Taluka Himayatnagar, District Nanded. On learning about the incident, he reached the Hospital at Hadgaon where both the injured were admitted. This witness is cross-examined at length. What is clear from the evidence of this witness, is that he lodged the FIR with Himayatnagar Police Station and set the criminal law in motion. His other evidence in respect of incident is kept out of consideration, being hearsay and improvment.

10. Admittedly, the Prosecution's case primarily rests upon the statements [Dying Declarations] of deceased – Sanjay and deceased – Satwashila recorded by PW – 9 [Bhimrao Jalbaji Hatkar]. Such statements become relevant by virute of Section 32(1) of the Indian Evidence Act, 1872. The law in respect of Dying Declaration is well settled. The recent Judgment in the case of **Irfan alias Naka Versus State of Uttar Pradesh; 2023 SCC OnLine SC 1060**, wherein, the legal position in respect of Dying Declarations is considered as under:-

43. *The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man*

is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See: Laxman v. State of Maharashtra, (2002) 6 SCC 710]

45. *We should also look into the genesis of the occurrence from a different angle. It is not in dispute that the three deceased died on account of severe burn injuries. It is also not in dispute that the room in which they were sleeping caught fire on account of which they suffered severe burn injuries. It is also not in dispute that inflammable substance like kerosene was found from the room which ignited the fire. However, the moot question is who set the room on fire? Could it be said that the Prosecution has been able to prove beyond reasonable doubt that it was only and only the appellant-convict who set the room on fire by pouring the inflammable substance?*

49. *One of the earliest judicial pronouncements where the rule as above can be traced is the King's Bench decision of the King v. William Woodcock reported in (1789) 1 Leach 500 : 168 ER 352, where a dying woman blamed her husband for her mortal injuries, wherein Judge Eyre held this declaration to be admissible by observing: -*

"the general principle on which this species of evidence is admitted is, that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone: when every motive to falsehood is silent, and the mind is induced by the most powerful consideration to speak the truth; a situation so solemn, and so awful, is considered by the law as creating obligation equal to that which is imposed by a positive oath administered in a Court of Justice.

(b) *But a difficulty also arises with respect to these declarations; for it has not appeared and it seems impossible to find out, whether the deceased herself apprehended that she was in such a state of morality as would inevitably oblige her soon to answer before her Maker for the truth or falsehood of her assertions. Declarations so made are certainly entitled to credit; they ought therefore to be received in evidence; but the degree of credit to which they are entitled must always be a*

matter for the sober consideration of the Jury, under all the circumstances of the case."

(Emphasis supplied)

57. *This Court in Muthu Kutty & Anr. v. State by Inspector of Police, T.N. reported in (2005) 9 SCC 113, while discussing the decision in Woodcock (supra) referred to above had cautioned the courts to ensure that a dying declaration is reliable before relying on it, with the following observations : -*

"13. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

These aspects have been eloquently stated by Eyre, L.C.B. in R. v. Woodcock ((1789) 1 Leah 500 : 168 ER 352). Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

"Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'against the fire? What is the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false since it is true That I must die here and live hence by truth?"

(See King John, Act V, Scene IV)

The principle on which dying declaration is admitted in evidence is indicated in the legal maxim "nemo moriturus praesumitur mentire - a man will not meet his Maker with a lie in his mouth".

14. The situation in which a person is on the 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 that 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 eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. 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 the 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." (Emphasis supplied)

61. *In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.*
62. *There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:*
 - (i) Whether the person making the statement was in expectation of death?*
 - (ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"*
 - (iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?*
 - (iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*
 - (v) Whether the statement was not recorded properly?*
 - (vi) Whether, the dying declarant had opportunity to clearly observe the incident?*
 - (vii) Whether, the dying declaration has been consistent throughout?*
 - (viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?*
 - (ix) Whether, the dying declaration was itself voluntary?*
 - (x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?*
 - (xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

64. *It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.*

65. *In Sujit Biswas v. State of Assam reported in (2013) 12 SCC 406, this Court, while examining the distinction between "proof beyond reasonable doubt" and "suspicion" in para 13 has held as under:*

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the Prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

11. Likewise, in the case of **Purshottam Chopra and Another Vs. State (Government of NCT of Delhi); (2020) 11 SCC 489**, the principles relating to recording of Dying Declaration, its admissibility and reliability are laid down as under:

“(1) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

(2) The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

(3) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

(4) When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

(5) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

(6) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration, but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/ or attestation be obtained from other persons present at the time of recording the dying declaration.

(7) As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

(8) If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration”.

12. Another important Judgment in respect of Dying Declaration is in the case of **Laxman Vs State of Maharashtra; (2002) 6 SC 710**, wherein, the following observations are made:

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of

oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

13. Coming to the case in hand the evidence of PW – 17 [Vasant Sakharam Rathod] show that on 05.06.2013, he was posted at Shivajinagar Police Station as Bit-Marshal and at around 7:00 am, the Police Station Officer [PSO] informed him about the receipt of Medical Lego-Case [MLC] from Adhar Hospital and so he visited the Hospital and inquired about the MLC. His evidence show that he informed PW - 9 [Bhimrao Jalbaji Hatkar], Special Magistrate to record the Statement of

the injured, vide letter at Exhibit – 105. His evidence show that Mr. Hatkar [PW - 9] visited the Hospital and recorded the statements [Dying Declarations] of patients and forwarded the same to the Himayatnagar Police Station vide letter at Exhibit – 106. The cross-examination show that there is no serious challenge to the said evidence of this witness.

14. The evidence of PW – 12 [Dr. Sanjay Sahebrao Kadam] show that he was the Medical Practitioner and having the Hospital by name Aadhar at Nanded. On 05.06.2013, Sanjay and Satwashila were admitted to his Hospital for burn injuries and Mr. Bhimrao Jalbaji Hatkar [PW - 9], Special Magistrate visited his Hospital at about 12:45 pm for recording the statement of patients. His evidence show that he examined both the patients i.e. Sanjay and Satwashila and found them to be conscious to give the statements and made endorsement on the papers regarding the consciousness and mental fitness of patients to give statement vide endorsement on Exhibits – 54 and 55. After obtaining endorsement, the Special Magistrate [PW – 9] went to record the statements and after recording the statements, the Special Magistrate asked him again to examine the patients and so he examined both the patients i.e. Sanjay and Satwashila and found that both of them were conscious throughout the statements and accordingly made remarks and put his signature at the end of statements.

15. The cross-examination of PW – 12 [Dr. Sanjay Sahebrao Kadam] show that the history given at the time of admission

was that the incident occurred due to short circuit. Though, in the first part of cross-examination, it has come in the evidence of this witness that the history was given by the patients, in the further cross-examination, it has come that the history was given by the relatives. Thus, it is clear that the history in the case papers was given by the patients' relatives. The aspect of overwriting in the date at the bottom of Dying Declarations will not affect its veracity. Though it has come in the cross-examination that due to burn injuries, the patients were not physically fit, nothing has come that the patients were not mentally fit to give the statements. Therefore, the said version will not affect the evidence in respect of fitness of the patients to give the statements. The evidence of this witness - PW – 12 [Dr. Sanjay Sahebrao Kadam] clearly established that both the injured were admitted to his Hospital and were found conscious and mentally fit to give the statements.

16. The evidence of PW – 9 [Bhimrao Jalbaji Hatkar] show that on 05.06.2013, he was the Special Judicial Magistrate and received a letter from Shivajinagar Police Station with a request to record the statements of two burnt patients admitted in the Aadhar Hospital. Thereafter, he went to the Hospital and met Dr. Sanjay Sahebrao Kadam [PW – 12]. The Doctor examined both the patients i.e. Sanjay and Satwashila and endorsed about their fitness. Thereafter, he talked with the patients to ascertain whether they can speak. He was satisfied that both the patients were able to speak. He recorded the statements of

deceased - Sanjay and deceased - Satwashila, which were at Exhibits – 54 and 55, according to their version and read over the statements to both of them, obtained their toe impressions and thereafter, Doctor again examined both the said patients and endorsed that they were conscious / fit while recording the statements. His evidence show that he recorded the statement of deceased - Sanjay from 12:45 pm to 1:05 pm and recorded the statement of deceased - Satwashila from 01:15 pm till 01:30 pm.

17. The cross-examination of PW – 9 [Bhimrao Jalbaji Hatkar] show that the words nephew Dnyaneshwar Ananda Wankhede were inserted in between two lines in the statement of deceased - Sanjay. His evidence show that the witness volunteered that the said name i.e. Dnyaneshwar Ananda Wankhede was disclosed by the deceased - Sanjay after the statement was read over to him. What is seen from the said statement i.e. Exhibit – 54, that the insertion of the said word i.e. nephew - Dnyaneshwar Ananda Wankhede, was in the last but one paragraph, which was in respect of the incident prior to the incident of burning. The evidence of this witness does not show that there was any insertion or interpolation in the statements, wherein, the actual incident was recorded. In the cross-examination itself, it has come that there is no insertion of line in the rest of the contents of Dying Declaration.

18. The Dying Declations recorded by PW – 9 [Bhimrao Jalbaji Hatkar] are as follows:

महसुपूर्व जमाना दि. 5/6/2013.



१) कुरणाचे नाव: संजय निवृत्तीराव शिरफुळे, वय ५० वर्षे,
रा. मंगळव नगर काजखोशी, ता. हिमायतनगर
जि. नांदेड.

२) एम.एल.सी.नं: १७६/एसएचके/२०१३.
४ दवाखाना दि. ५/६/२०१३

३) पोलीस स्टेशनचे पत्र नं: ३५५८/
दि. ५/६/२०१३.

४) पत्र देणारे पो.हे.को: व्ही.एम.रावडे (१४३४)

५) डॉक्टरचे नाव: डॉ. संजय कदम.

Pt is conscious & mentally fit to give statement

5/6/13 at 12-45 PM

प्रश्न: आपले नाव काय?

Date: 12-12-2013 पेशाचे नाव: संजय निवृत्तीराव शिरफुळे

S.C. No. 2/2014

Exh. No. (.....)

Proved by P.W. (.....)

Read & Recorded

वय ४६ वर्ष, रा. काजखोशी,
ता. हिमायतनगर, जि. नांदेड.

प्रश्न: घटना कशी घडली? कोण घडली?

सुराणाचा जबाब: सोपे मध्ये घटना घडली आहे

तारिख ४ जून २०१३ रोजी मंगळवारी
रात्री साडे अकरा वाजता घटना घडली
आहे.

(Bhimrao Hatkar)
Special Judicial Magistrate
Nanded

Record copy
Bhimrao Hatkar
Dr. J. K. Patil

Record copy
Dr. J. K. Patil

पुर्त कर पाठवत

मागण्या अंगावर पेद्रोउ टाकते. माथव बाहेरचा
 शिरफुले यांनी मागण्या अंगावर पेद्रोउ टाकते.
 माथ्या आणि माथ्या पल्ल्या अंगावर पेद्रोउ
 टाकते. पेद्रोउ टाकून काडी लपवली व पेटवून
 दिले. पेद्रोउ लपवला. एकच मनुष्य होता.
 ती लपवण्या मागे लागली तो पळून गेला.
 माथ्या अंगावर व पल्ल्या अंगावर आग
 लागल्याने ती पाळट्या करत राहिली.
 दोन महिन्यांसाठी माथव बाहेरचा शिरफुले यांचा
 माथ्या आणि माथ्या अंगावर लागले. त्यांनी
 माथ्या माथ्या वर - वारी केली होती. त्यांनी
 मला धाकी दिली होती. कुसा मथ्यावर करित
 कुसा मुळीत मारीक करत राहिली होती.
 या प्रकारातून दुसर्ती वाढून त्यांनी मला
 जिवन जाळण्याचा प्रयत्न केला.
 बघात वाचून दाखविले. ती सांगितल्या
 प्रमाणे खरे अपल्याने माथ्या उजव्या पायावर
 अंगावर ती बघातपत्रावर उतरावली.

It was confirmed

through the statement

of the witness

5/6/12 at 1.05 PM

मध्य मध्यपूर्व जबाबी ती ओढविली आहे. बघात 12.05 PM
 सुरु होऊन 1.05 PM च्यावेळी.



(Signature)
 (Bhimrao Matkar)
 Special Judicial Magistrate
 Nanded

अध्यापक जवाब दि 5/6/2013

१) कलामे नाव: सत्यश्रीका अ. संजय शिरकुते

वय

२१० पंजाब नगर कामावाडी ना. हिमायतनगर
जी. नोदे



२) एम. एम. सी. नं: १७७/एचएसके २०१३.

व हॉस्पिटल: आचार हॉस्पिटल, शिवाजीनगर,
नोदे.

३) पोस्टल स्टेशनचे: १५५६/
पत्र नमूना दि. ५/६/२०१३.

पो. हे. को: वी. एस. राठोड, पो. स्ट. शिवाजी
नगर.

४) डॉक्टरांचे नाव: डॉ. संजय कदम, आचार हॉस्पिटल

Date, 12/12/2013
SC No. 21/16
Fch. No. 155
Forwarded by P.W. (155)
Sent & Received

जवाब,

A.S.J. is concerned & meeting for to give statement
5/6/13 at 1.15 PM

५२१: आपाचे नाव सांगा - व पत्ता सांगा

सत्यश्रीका संजय शिरकुते

वय २० वर्षे

राठोड कामावाडी पंजाब नगर,

ना. हिमायत नगर, जी. नोदे

(Bhimrao Hatkar)
Special Judicial Magistrate
Nanded

५२१: धरता कदाई धाडली.

आचार कामावाडी रात्री आरही आगव्या धाडली

आवारात झोपला अलगात माथव बरेलो
शिरकुते अंदाजे वय २० वर्षे पोणे

आमच्या पती पत्नीच्या अंगावर रात्री
 कंदाळी अकरा ते बारा वाजता घुमारास
 पेडोळ राकळे व काळी लावून पकडलेली.
 आम्ही आरडा ओरडा केला त्याला पकडलेला
 प्रयत्न केला. ~~जे~~ आता लावली असल्या.
 ही रोजाच्याला आम्ही ओरडून बोलवले.
 केरवा गणपती शिरफुले, अशोक कापसाकर
 यांनी आम्हाला मदत केली. माझी वडकां
 यांनी देखील मदत करून आम्हाला दबाखान्या
 आडोऱ्या केले.

दोन ते तीन महिन्यांपूर्वी शोबेवर अंगण
 वाळवेडे जो माझी शिरफुले यांचा भावा आहे.
 त्यांचे आमच्या घरी बोली केली. ~~आम्ही~~
 आम्ही ती पकडली त्यामुळे आमच्या दुकाना
 होऊन त्यांनी आम्हाला जीवे मारण्याचा प्रयत्न
 केला. यातून काळ रात्री तारिख ४ जून २०१३
 रोज मंगळवारी माझी शिरफुले यांनी आमच्यापुढे
 पेडोळ राकून जीवे मारण्याचा व जाळण्याचा प्रयत्न
 केला.

जवळ राहून दाखविला. तो संशया प्रमाणे खरा
 असल्याने तो त्यावर उजव्या पायाचा सोंडा उतरविला
 आहे.

PT was Lenses fragment

the Statement



13.01.2024

सत्य पूर्व जवानी मी नोंदविली आहे
 व यात दुसरी १.१५ मी खुले होऊन १.१५ वाजता संपले.

सत्यांशित संशय शिरफुले

(Bhimrao Hatkar)
 Special Judicial Magistrate
 Nanded

19. The evidence of PW -9 [Bhimrao Jalbaji Hatkar] show that he obtained toe impression of right leg of both the injured on their respective statements. The non-attestation of toe impression by PW – 9 [Bhimrao Jalbaji Hatkar] will not affect the veracity of the Dying Declarations for the reason that even the verbal Statements are relevant by virtue of provisions of Section 32 of the Indian Evidence Act, 1872.

20. Though the suggestions are given to the effect that the relatives were present at the time of recording the statements of patients, nothing has come which would establish that the relatives of injured were present while recording the statements. There is nothing in the evidence, even to remotely suggest that the statements of injured were the outcome of tutoring. Not mentioning by PW – 9 [Bhimrao Jalbaji Hatkar] in the Dying Declarations that, he was satisfied with the condition of the patients, will not affect the veracity of Dying Declarations for the reason that, there are endorsement of PW – 12 [Dr. Sanjay Sahebrao Kadam] about the consciousness and mental fitness of both the injured in both the Dying Declartations.

21. The evidence of PW – 9 [Bhimrao Jalbaji Hatkar] and PW – 12 [Dr. Sanjay Sahebrao Kadam] show that before recording the statements of deceased - Sanjay and deceased - Satwshila, their mental fitness were ascertained and they were found to be conscious / fit to give the statements. Their evidences further show that the Special Judicial Magistrate also ascertained whether both of them were in a condition to talk. Their evidence further

show that after recording their statements, it was ascertained whether the patients were conscious throughout, when their statements were recorded and they were found to be conscious / fit during recording of their statements. The Exhibits – 54 and 55 corroborate the testimony of both the said witnesses i.e. PW – 9 [Bhimrao Jalbaji Hatkar] and PW – 12 [Dr. Sanjay Sahebrao Kadam]. Both the Dying Declarations have been duly proved by the Prosecution through these two witnesses. The Dying Declarations are consistent and names the Appellant as the person who poured Petrol on both the deceased and set them on fire.

22. The evidence of PW – 6 [Sandeep Parasram Fugat] show that on 07.06.2013, he was at Apollo Hospital where the Police summoned him for inquest. The Police had shown him the dead body and prepared inquest at Exhibit – 37. His evidence cannot be discarded for the reason that he was the friend of the son of deceased. His evidence show that he was taking Education at Nashik with the son of deceased and had gone to Hyderabad along with the son of deceased. The inquest at Exhibit – 37 is brought on record in the evidence of this witness. The inquest bears the name of deceased as Sanjay Nivrattirao Shirfule. The inquest of Satwashila Sanjay Shirfule is at Exhibit – 44 which as seen from the endorsement, was admitted by the defence. Both the inquests i.e. Exhibit – 37 of Sanjay and Exhibit – 44 of Satwashila show that there were burn injuries on the bodies.

23. Next piece of evidence is that of Doctors who performed the post-mortems on the dead bodies of Sanjay and Satwashila. The evidence of PW – 13 [Dr. Santosh Harischandra Bhosale]

show that after 2006, he was working as Medical Officer in Civil Hospital. He conducted more than 2000 post-mortems. His evidence show that on 10.06.2012 [2012 appears to be typed wrongly, instead of 2013] dead body of Satwashila Sanjay Shirfule was referred for post-mortem and he conducted the post-mortem from 03.00 pm to 04:00 pm and found the following injuries :

1. Superficial to deep burns present over body surface with foul smelling yellowish pus pockets with white slough present over burn surface.

2. Peeling of skin, singeing body hairs present, distribution of burn surface area:

<i>Head neck face</i>	<i>5% with scalp spared</i>
<i>Chest and abdomen</i>	<i>16% burn area spread at place</i>
<i>Back</i>	<i>18%</i>
<i>Right upper limb</i>	<i>9%</i>
<i>Left upper limb</i>	<i>9%</i>
<i>Right lower limb</i>	<i>17% with sole spared</i>
<i>Left lower limb</i>	<i>17% with sole spared</i>
<i>Genital</i>	<i>0%</i>

<i>Total burn area</i>	-	<i>91%</i>
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His evidence show that the injuries were ante-mortem. Internal examination show that brain was congested edematous. Areas of consolidation were present in lungs. He gave the opinion as to cause of death as '*septicemia due to burns*' and prepared the Post-Mortem Report at Exhibit – 76. The Post-Mortem Report corroborate the testimony of this witness. Nothing has come in the cross-examination to affect the testimony of this witness.

24. The evidence of PW – 15 [Dr. J. Ammani N. Rajendra] show that since July, 2012, he was working as an Assistant Professor in Osmania Medical College, Hyderabad, in Forensic Medicine Department and conducted 700 post-mortem yearly. On 07.06.2013, he received requisition for post-mortem of deceased Sanjay and performed the post-mortem from 16.30 hours to 17.30

hours and found ante-mortem injuries about 80%, ante mortem dermo epidermal mixed flame burns present over both upper limbs, front of chest of abdomen, back of chest and abdomen, face, neck, both anterior thighs and on completion of post-mortem, he gave the opinion as to cause of death as '*due to burns*'. He issued the Post-Mortem Report at Exhibit – 90. Though in the cross-examination, it has come that the mode of death is not reflected in the post-mortem report and he did not find any odour erupting from the body, his evidence about the cause of death remain unaffected. The post-mortem report at Exhibit – 90 corroborate the evidence of this witness.

25. Adverting to the MLC prepared at the time of admission of the injured / deceased in the Aadhar Hospital at Nanded, it speak of history that the incident was the result of short circuit in the house of injured. However, nothing has come in the medical evidence discussed above that the injuries were suggestive of electricity shock. Even there is no suggestion in the cross-examination of Doctors witnesses that the death was due to electric shock.

26. The evidence of PW – 10 [Pramod Shankarrao Shirfule] show that he acted as a spot panch and the spot panchnama at Exhibit – 60 is brought on record in the evidence of this witness. Though in his evidence, this witness deposed that he met the injured in Hospital where they were taking treatment and inquired with them and they disclosed about the incident, this part of his evidence is kept out of consideration because in his cross-examination, it has come that he personally did not made

any inquiry with the deceased – Sanjay and he did not disclose anything to him. However, his testimony in respect of spot panchnama remains unaffected. His evidence show that the spot of incident was the house of deceased – Sanjay. One of the contentions of the learned Advocate for the Appellant is that it has come in the evidence that the compound wall of the house of deceased was seven feet tall having the pieces of glass over the wall and therefore, it was not possible to climb the wall and commit the crime. However, the evidence of PW – 10 [Pramod Shankarrao Shirfule] – panch witness show that there was a gate to the compound wall. Nothing has come in the evidence on record that it was impossible to enter the house of deceased. Therefore, the contention that due to height of wall and pieces of glass on its top would make the entry of any person inside the house impossible, has no merits.

27. Further evidence of PW – 10 [Pramod Shankarrao Shirfule] show that on 05.06.2013, at the time of spot panchnama, he found wooden cots, torch, lady sandal, petticoat, undergarments, plastic bucket in burnt condition and near the gate, one bottle of Kinley company smelling Petrol was found. Nothing has come in the evidene of this witness that the house was gutted so as to suggest that the incident was out of electric short circuit. Had the incident been the outcome of fire due to short circuit, the entire house and the articles inside the house would have gutted. As already seen from the evidences of neighbourers of deceased, they could enter the house and douse the fire on deceased – Satwashila. The C.A. Report at Exhibit – 122 in respect of the

earth mixed with ash, partly burnt pair of ladies chappal, partly burnt torch [battery operated], partly burnt plastic bucket, an empty plastic bottle and partly burnt cloth pieces which were the articles collected from the spot of incident and sent for chemical analysis vide letter No.961/2013 dated 10.06.2013, show that the results of tests for detection of petroleum hydrocarbon residues were positive. This evidence on record clearly rules out the possibility that the incident was the result of electric short circuit.

28. The evidence of PW – 14 [Rahul Samadhan Wagh] Policemen, show that he recorded the statement of deceased - Sanjay in the Hospital at Nanded, however, his evidence is kept out of consideration for the reason that it has come in his cross-examination that he obtained the endorsement on blank paper.

29. The evidence of PW Nos.16 - [Ashok Kishanrao Ghuge], 18 - [Ganpat Dhansing Chavan], 19 – [Devidas Namdeorao Dhole] and 20 – [Surendra Namdevrao Sonawane] show that they were the Policemen who discharged their duties i.e. recording of the FIR and carrying the investigation.

30. From the evidence of PW – 11 [Kerba Ganpat Shirfule] who was the neighbourer of the deceased – Sanjay, it is clear that there was enmity between the deceased and the Appellant. The aspect of deceased – Sanjay and Appellant being on inimical terms is fortified by the cross-examination.

31. In the statement under Section 313 of Cr.PC, it is stated by the Appellant that he was falsely implicated and PW – 1 [Pundlik Vitthalrao Kadam], PW – 2 [Sangita Shivajirao Shirfule], PW – 3

[Madhav Govindrao Wadadkar], PW – 4 [Shivaji Ganpatrao Shirfule] and PW – 5 [Savita Kerbarao Shirfule] were the close relatives of deceased and were inimical terms with the Appellant. The said defence melts down in the light of cogent and trustworthy Dying Declarations of both the deceased.

32. The above discussed evidence clearly established that the neighbours of deceased – Sanjay woke-up in the night due to shouts of deceased – Sanjay and they all went to the house of deceased and doused the fire of Sanjay and his wife and admitted both the injured to the Hospital. The evidence on record has established that the statements of both the injured i.e. deceased – Sanjay and deceased - Satwashila were recorded by the Special Judicial Magistrate when the injured were conscious and were in fit state of mind to give the statements. The evidence on record nowhere suggests that the statements of both the injured were the outcome of tutoring. The Dying Declarations of both the deceased are proved. The Appellant has been named by both the deceased in their Dying Declarations as the person who poured the Petrol and set them on fire. The Dying Declarations are consistent in respect of incident of pouring Petrol and setting on fire by the Appellant. Both the Dying Declarations have stood the scrutiny of law and hence accepted. The spot of incident is the house of both the deceased. Both the deceased being husband and wife, their presence at the spot of incident is natural. It is established by the Prosecution that both Sanjay and Satwashila died because of the burn injuries suffered by them. The Appellant was on inimical terms with deceased – Sanjay due to the earlier incident. The

evidence on record clearly established that the Appellant caused the death of Sanjay and Satwashila. Entering the house of deceased, pouring Petrol over them and setting them on fire clearly establishes the intention of the Appellant to cause death of both of them. The homicidal death of Sanjay and Satwashila due to the intentional act of the Appellant has been proved by the Prosecution with cogent evidence. The essential ingredient for the offence of Murder defined under Section 300 has been established against the Appellant.

33. In the light of the above discussion in our considered view, no case is made out to interfere in the impugned Judgment and Order by which, the Appellant has been convicted for the offences punishable under section 302 of IPC. Hence, we proceed to pass the following order:

ORDER

[I] Criminal Appeal is dismissed.

[II] The Record and Proceedings be sent back to the Trial Court.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]