



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

CRIMINAL APPEAL NO.218 OF 2017

Vijay Shantaram Patil,
Age : 29 years, Occ. Service,
r/o. Bajaj Nagar, Aurangabad

..Appellant

Vs.

The State of Maharashtra
(At the instance of
MIDC Waluj Police Station,
Dist. Aurangabad

..Respondent

AND

CRIMINAL APPEAL NO.992 OF 2024

The State of Maharashtra,
Through : The Police Station Officer,
MIDC Waluj Police Station,
Dist. Aurangabad

..Appellant

Vs.

Vijay Shantaram Patil,
Age : 33 years,
Occ. Private Service,
r/o. Piloda, Tq. Shirpur,
At present Bajajnagar,
Waluj, Dist. Aurangabad

..Respondent

Mr.Dhawal Agarwal, Advocate h/f. Mr.Abhaysingh Bhosale, Advocate for
appellant in Criminal Appeal No.218 of 2017 and for respondent in
Criminal Appeal No.992 of 2024

Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent in Criminal
Appeal No.218 of 2017 and for appellant in Criminal Appeal No.992 of
2024

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : NOVEMBER 25, 2024**

JUDGMENT (*Per R.G.Avachat, J.*) :-

Both these appeals are taken up together for decision, since the challenge therein is to one and the same judgment and order dated 06.04.2017, passed in Sessions Case No.100 of 2013. Vide the impugned order, the accused – Vijay has been convicted for the offence punishable under Section 304 Part I of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.3,000/-, with default stipulation. He is, therefore, before this Court in Criminal Appeal No.218 of 2017. Criminal Appeal No.992 of 2024 has been preferred by the State for enhancement of sentence.

2. The case of prosecution before the trial court was that on 23.11.2012 by 12.30 noon, the appellant committed murder of his wife - Manisha by setting her ablaze. When Manisha was admitted in the hospital, the police officer first recorded her statement-cum-FIR, which, on demise, became her dying declaration. One lady, PW 5 – Nutan, social worker also recorded Manisha's statement. In both the statements, Manisha had narrated the appellant to have doused her with kerosene and set her ablaze. Manisha had suffered 92% of

burns. She, unfortunately, succumbed thereto. Based on her statement made to the police officer, the crime, vide C.R. No.277 of 2012 was registered against the appellant at MIDC Waluj Police Station, Aurangabad. He was arrested. The crime-scene panchnama (Exh.7) was drawn. Inquest and autopsy on the person of the deceased were conducted. The clothes on the person of the deceased were seized. All the seized articles were sent to the F.S.L. for analysis and report. The statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, charge sheet was filed.

3. The trial court framed Charge (Exh.3). The appellant pleaded not guilty. His defence was of false implication. According to him, Manisha set herself ablaze. He extinguished the fire and thereby, suffered burns.

4. To bring home the charge, the prosecution examined eight witnesses and produced in evidence certain documents. The trial court, on appreciation of the same, convicted the appellant and consequently, sentenced, as stated above.

5. Learned counsel for the appellant would submit that there are two different dates on the so called dying declaration. For

the reason best known to the Investigating Officer, no services of Executive Magistrate were availed for recording of the dying declaration. The percentage of burns suffered by the deceased were such that she was unable to speak. Her neck was also burnt. He would further submit that no entry of recording of the dying declaration was made in the station diary. He then adverted our attention to the information solicited by the appellant under the Right to Information Act. According to him, one police officer had recorded statement of the deceased. Same was not made part of the police papers. An adverse inference, therefore, could be drawn in this regard. He would further submit that one Vaishali Desle from whom PW 3 - Vijay learnt about the incident, has not been examined. According to learned counsel, there is no eye witness to the incident. The dying declarations are unreliable. The appellant is, therefore, entitled for acquittal. He, therefore, urged for allowing the appeal.

6. Learned APP would, on the other hand, submit that dousing with kerosene and setting a lady ablaze, indicates one's intention to commit murder. The deceased suffered more than 92% of burns. The maximum punishment provided for the offence under Section 304 Part I of Indian Penal Code, i.e. life imprisonment, ought to have been imposed. He, therefore, urged for the same.

7. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein. Let us advert to the evidence and appreciate the same.

8. Admittedly, the appellant was husband of deceased Manisha. They would reside together. Manisha suffered burns by 12.30 p.m. on 23.11.2012 and therefore, she was admitted to the hospital. The crime scene panchnama (Exh.7) referred to by learned counsel for the appellant indicates that the incident took place in the kitchen room. A plastic can containing kerosene was found with a match-box as well. The crime scene panchnama (Exh.7) has been proved by the evidence of PW 1 - Raju. Admittedly, the deceased died due to "*shock due to burns*". The post mortem report (Exh.55) has been admitted in evidence in view of the evidence of autopsy surgeon, PW 6 - Dr.Vilas. No sooner Manisha was admitted to the hospital, it was made a medico-legal case. It was PW 2 - Pravin, residing in the nearby of the house of the appellant, had rushed to the house and having seen Manisha to have suffered burns, she was shifted to Ghati Hospital, Aurangabad, in ambulance. His evidence indicates that the appellant too was taken in the very ambulance to the hospital. According to him, deceased Manisha related him the appellant to have set her ablaze. His cross-examination, however,

indicates that he was relative of Manisha from her parental side. Be that as it may. There is other evidence as well.

9. PW 3 – Vijay, brother of the deceased, testified that on hearing his sister to have suffered burns, he rushed to the hospital and learnt from her that the appellant set her ablaze. The reason behind the incident was stated to be the quarrel between her and the appellant over non-repayment of money borrowed by the appellant from his brother-in-law.

10. PW 4 – Sagarsing was a Police Sub-Inspector, attached to Waluj Police Station, Aurangabad. His evidence indicates that the Police Head Constable – Thorat presented the M.L.C. to him. He, therefore, first rushed to the Court of Chief Judicial Magistrate, Aurangabad, and solicited direction to the Tahsildar to record statement of the victim. He tendered in evidence his request letter to Chief Judicial Magistrate. It is at Exh.23. According to him, since the Tahsildar refused to record the statement, it was he, who recorded the statement of the victim. He referred to the same. His evidence would further indicate that before recording the same, he issued a request letter (Exh.22) to the Medical Officer, soliciting his opinion, as to whether the victim was conscious oriented to make a statement. The Medical Officer certified Manisha to have been fit to

make a statement. The same finds place on the request letter itself. PW 4 – Sagarsing, then, recorded Manisha’s statement, wherein, she stated that it was 23.11.2012, her husband (appellant) had holiday as it being Friday. He came home with a liquor-bottle and consumed the same by 10.00 in the morning. She questioned him, “*you have money to consume liquor but not to pay back the money borrowed from my brother*”. The appellant, thereafter, got enraged. He said, he would not pay back money to his brother-in-law. The appellant started abusing her in filthy language. She, thereupon, questioned him, as to whether he did not have mother or sister. The appellant, thereupon, beat her up. He then emptied the kerosene can on her person and set her ablaze. On hearing her cries, the neighbours gathered. Then, she was rushed to the hospital. The aforesaid dying declaration finds place at Exh.25.

11. Then, we have evidence of PW 5 – Nutan. She was a social worker. It is in her evidence that on the request of the police official - Rajput, she too recorded statement of Manisha, after having verified from the Doctor that she was fit to make the same. She placed on record a request letter to the Medical Officer in that regard. It is at Exh.50. The Medical Officer certified the patient to be conscious oriented to make a statement. Her evidence further

disclosed that she recorded Manisha's statement (Exh.51), wherein, she stated that the appellant, under influence of alcohol, doused her with kerosene and set her ablaze. Before the incident, quarrel ensued between her and the appellant over paying back the amount of Rs.7,000/-, taken by the appellant as a hand loan from her brother. It needs no mention that anybody can record dying declaration

12. PW 8 - Dr.Ganesh testified that at the instance of the police official - Rajput and social worker - Nutan, he examined Manisha twice and found her to be conscious oriented to make statement. He gave endorsement to that effect on the letters issued by both of them to him.

13. As such, the aforesaid evidence would indicate that deceased Manisha was conscious oriented when she made the dying declaration twice; one to the police officer (Exh.25) and another to the social worker (Exh.51). The date appearing on the dying declaration (Exh.51) is changed due to the day changed over during recording of the same. In both the dying declarations, she consistently stated to have been set ablaze by her husband on account of quarrel that took place over repayment of the hand-loan raised by the appellant from her brother. It needs no mention that the dying declaration, which is found to be true, can itself form the

sole basis for conviction. The trial court considered the fact that the appellant had quarrel with the deceased immediately before the incident. He too suffered 13% of burns as he tried to save her. He was an indoor patient for about 24 days. His injury certificate is at Exh.80.

14. According to the trial court, the incident took place all of a sudden and therefore, it was found to be a case of culpable homicide not amounting to murder, punishable under Section 304, Part I of Indian Penal Code. The appellant has already served out the entire sentence. The appeal was pending for over seven years. The appellant too suffered burns as he had tried to extinguish the fire. We find the trial court to have imposed the sentence proportionate to the offence committed by the appellant. In the peculiar facts and circumstances of the case, we are not inclined to enhance the sentence by allowing the State's appeal.

15. In the result, both the appeals fail and stand dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP