



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

**CRIMINAL APPEAL NO.1033 OF 2019**

Javed Dastagir Kazi,  
Age : 37 years,  
Occ. Convict No.C/8868,  
Through the Superintendent,  
Aurangabad Central Prison,  
Harsool, Aurangabad

..Appellant

Vs.

The State of Maharashtra,  
Through Police Station Officer,  
Police Station, Anandnagar,  
Osmanabad

..Respondent

-----  
Mr.N.K.Tungar, Advocate for appellant  
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent  
-----

**CORAM : R.G.AVACHAT AND  
NEERAJ P. DHOTE, JJ.  
DATE : MARCH 05, 2024**

**JUDGMENT (PER R.G.AVACHAT, J.) :-**

This is an appeal against conviction. The appellant was convicted for the offence of committing murder of his wife by setting her ablaze and therefore, sentenced to suffer life imprisonment and directed to pay fine of Rs.50,000/- (Rupees Fifty Thousand) with default stipulation, vide judgment and order dated 25.04.2018, passed by learned Addl. Sessions Judge, Osmanabad, in Sessions Case No.56 of 2017.

2. The facts, giving rise to the present appeal, are as follows:-

The appellant married Asma (deceased) in 2008. The couple was blessed with two children. The appellant started suspecting her character. On 03.05.2017 by 11.00 p.m., the appellant came home drunk. He played Carrom with his wife Asma (deceased). He lost in two games. The appellant, thereupon, said "women like her need to be set ablaze". Meanwhile, their younger son woke up. He asked for a glass of water. Asma, therefore, entered the kitchen to fetch water for her son. The appellant followed her. He emptied the kerosene bottle on her person and set her ablaze. On hearing cries, neighbours gathered. They (neighbours) extinguished the fire. The appellant asked Asma (deceased) to tell to have suffered burns accidentally, then and then only, he would take her to hospital for treatment.

3. Asma gave her statement (FIR) on 13.05.2017 to the Police Station Officer, Anand Nagar, Osmanabad. Based on the FIR (Exh.53), Crime vide C.R. No.110 of 2017, came to be registered for the offences punishable under Sections 307, 504 and 506 of Indian Penal Code. Asma succumbed to the burns. Section 302 of Indian Penal Code came to be invoked. The scene of offence panchama

(Exh.43) was drawn. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, the appellant was proceeded against by filing charge sheet.

4. The case was committed to the Court of Session, Osmanabad, for trial in accordance with law. The case was assigned to the Court of Addl. Sessions Judge, Osmanabad (trial court). The trial court framed Charge (Exh.4). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution examined eleven witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence in the case, convicted the appellant and consequently, sentenced as stated above. The appellant has been behind the bars since 18.05.2017 till date. Learned counsel Mr.N.K.Tungar was appointed through legal aid to represent the appellant in this appeal.

6. We have heard learned counsel for the appellant and learned Addl. Public Prosecutor for the respondent - State. We do not propose to refer to their submissions so as to avoid repetition. Suffice it to say, learned Addl. Public Prosecutor supports the impugned judgment and order.

7. The Medical Officer (PW 6 - Dr.Prashant) opined that deceased Asma died of "*septicemia due to burn injuries*".

8. The case is based on three written dying declarations and eye-witness account of a sole witness (PW 3 - Tipu Sultan), son of the appellant and deceased.

9. Let us refer to the evidence on record and appreciate the same.

The appellant had married Asma way back in 2008. The couple was blessed with two children. The incident took place by 11.30 p.m. on 03.05.2017 at the house of the appellant. His wife Asma (deceased) suffered extensive burns. She was, therefore, rushed to the hospital. Her statement-cum-dying declaration was recorded on 04.05.2017. It was the statement given by her first in point of time. It is at Exh.21. The Medical Officer on duty certified her to be conscious oriented to make the statement. It was recorded by a Police Officer. The deceased gave her statement as under:-

मी आसमा जावीद काजी, वय २४ वर्षे, धंदा घरकाम, रा. गालिबनगर, उस्मानाबाद स.द. उ.बाद. येथे जळीत वार्डार्त औषध उपचार घेत असून मी पूर्ण शुद्धीवर राहून समक्ष विचारले वरून सांगते की मी वरील ठिकाणीची राहणारी असून दि ३/५/१८ रोजी संध्याकाळी ११.३० वाजलेच्या सुमारास घरातील गॅस संपल्यामुळे मी स्टोव्हवर अंड्याची भूजी करीत असताना अचानक स्टोव्हचा भडका उडाला आणि माझ्या अंगाचा पेट घेतला तेव्हा माझा नवरा जावीद काजी यानी माझ्या अंगावर पाणी टाकून

मला लागलेली आग विझवली. माझ्या गळ्याला, पोटाला, दोन्ही हाताला, चेहऱ्याला भाजले आहे. तेंव्हा माझा नवरा जावीद यानी आमच्या मोटरसायकल वरून मला स.द. उ.बाद येथे आणून ऍडमिट केले आहे. तरी स्टोव्हचा भडका होऊन मी भाजले. माझी कोणाविरुद्धही तक्रार नाही. मी सांगितले प्रमाणे जबाब लिहिला तो मला वाचून दाखवला. माझा जबाब बरोबर व खरा आहे म्हणून दोन्ही हात जळाल्याने आंगठा केला.

Then, we have her second dying declaration recorded by Taluka Executive Magistrate, on the same day, i.e. on 04.05.2017. It is a Exh.22. Same also bears Medical Officer's endorsement, indicating that the patient was conscious oriented to make the statement. Said statement was in 'Questions and Answers' form, though printed. She has stated therein that by 11.00 p.m., she was engaged in boiling eggs. The kerosene-stove flared up. She, thereby, suffered extensive burns. She further stated that the appellant extinguished the fire and brought her to the hospital. She did not have any grievance against anyone.

10. Then we have her FIR-cum-dying declaration (Exh.53) recorded on 13.05.2017. It was recorded by the Police Station Officer, Anand Nagar Police Station, Osmanabad. It was reported by Asma (deceased) that on 03.05.2017 by 11.00 p.m., the appellant came home drunk. He played Carrom with her. He lost in two games. The appellant, thereupon, said "women like her need to be set ablaze". Meanwhile, her younger son woke up. He asked for a

glass of water. Asma, therefore, entered the kitchen to fetch water for her son. The appellant followed her. He emptied the kerosene bottle on her person and set her ablaze. On hearing cries, neighbours gathered. They (neighbours) extinguished the fire. The appellant asked Asma (deceased) to tell to have suffered the burns accidentally, then and then only, he would take her to hospital for treatment.

11. The first two dying declarations (Exhs.21 and 22), which were recorded on one and the same day, i.e. on 04.05.2017, indicate the deceased to have suffered the burns accidentally. One of the two dying declarations, was recorded by the Taluka Executive Magistrate. While recording both the dying declarations, the Medical Officer on duty had examined her and certified to be conscious oriented to make statement. It is only nine days thereafter, Asma gave third statement, which was recorded by Police Station Officer, Anand Nagar Police Station, Osmanabad. She alleged in her statement the appellant to have set her ablaze after pouring kerosene on her person. According to her, the appellant rushed her to the hospital only on the condition that she should disclosed to have suffered the burns accidentally.

12. According to learned counsel for the appellant, by the time the FIR-cum-dying declaration (Exh.53) was recorded, the relations of the deceased had been around her. The dying declaration, wherein the appellant has been implicated, was a result of prompting by her relations. In view of the earlier two dying declarations recorded within hours of the incident and one of which was recorded by the Executive Magistrate, we have every reason to agree with the submissions made by learned counsel for the appellant that the third dying declaration, wherein the appellant has been implicated, might be a result of prompting. As such, it is the case of three dying declarations; two of which attribute nothing incriminating against the appellant, while the third one, which was recorded nine days after the incident, implicates him. As such, the dying declarations are grossly inconsistent and therefore, we do not propose to act upon the last one, i.e. FIR-cum-dying declaration (Exh.53).

13. True, PW 3 - Tipu Sultan, a six years old son of the appellant and the deceased, testified to have had seen the appellant doused his mother (Asma) with kerosene and then, set her ablaze. We cannot lose sight of the fact that PW 3 was just six years of age, while he gave the evidence. He was in the custody of his maternal

grand-parents. He admitted that he listened to his maternal grandfather and obey their directions. It is further in his evidence that his maternal grandfather briefed him about the evidence to be given before the court.

14. The aforesaid testimony of a child witness indicates that the same was not coherent. He appears to have been tutored by the maternal grandfather before he was examined as witness. In our view, therefore, the evidence of PW 3 – Tipu Sultan is not fit to act upon.

15. In short, the first two dying declarations (Exhs.21 and 22) recorded within hours of the incident did not attribute the appellant anything incriminating and the third dying declaration (FIR – Exh.53), wherein he has been implicated, was recorded nine days after the incident. We find it to be unsafe to rely on the last one, wherein, the appellant has been implicated. We are also not inclined to rely on the testimony of the child witness (PW 3), since his evidence appears to have been influenced by his grandfather. We, therefore, find the prosecution evidence to have not been inspiring confidence to sustain the conviction of the appellant. We are, therefore, not at one with the findings recorded by the trial court. Interference with the impugned order is, therefore, warranted.

16. In the result, the appeal succeeds. Hence, the following order :-

(i) The appeal is allowed.

(ii) The judgment and order dated 25.04.2018, passed by learned Addl. Sessions Judge, Osmanabad, in Sessions Case No.56 of 2017, convicting and sentencing the appellant for the offence punishable under Section 302 of Indian Penal Code, is set aside. The appellant is acquitted of the said offence.

(iii) The appellant has already been released on bail by this Court vide order dated 05.03.2024. He need not surrender back to the jail.

(iv) His bail bonds stand cancelled.

(v) Fine amount paid by the appellant, if any, be refunded to him.

**[NEERAJ P. DHOTE, J.]**

**[R.G. AVACHAT, J.]**

KBP