



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

CRIMINAL APPEAL NO.127 OF 2019

Manoj s/o. Eknath Koli,
Age : 23 years, Occ. Nil,
r/o. Pachora, Dist. Jalgaon
at present Shirud,
Tq. and Dist. Dhule

..Appellant

Vs.

State of Maharashtra

..Respondent

Mr.Avinash R. Borulkar, Advocate for appellant
Mr.Shailendra S. Gangakhedkar, Advocate appointed to assist the court
Mr.A.R.Kale, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : JULY 20, 2024
PRONOUNCED ON : AUGUST 06, 2024**

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

This appeal takes exception to the judgment and order of conviction and consequential sentence dated 07.04.2017, passed by learned Sessions Judge, Dhule, in Sessions Case No.112 of 2015, whereby the appellant was convicted for the offence of uxoricide and therefore, sentenced to suffer imprisonment for life and pay fine of Rs.1,000/- with default stipulation.

2. The prosecution case, in short, was that the appellant married Jyotibai (deceased) way back in May, 2005. The couple was blessed with two minor children – Rohit and Yash. Rohit was staying at the house of his maternal aunt for education, at Nashik. The couple, i.e. appellant and his wife would reside at village Shirud, Tq. and Dist. Dhule. The appellant was working as a Waiter in a hotel, while Jyotibai (deceased) would serve as a Nurse/Compounder in the clinic/dispensary of Dr. Jagtap. She would daily shuttle between her work-place and the place of her residence. It so happened that on 02.07.2015, Jyotibai returned to her residence from her work. It was about 5.00 p.m. The appellant was at the residence. He was drunk. He asked her to cook food. He left his residence for a while and returned consuming more liquor. The appellant picked up quarrel with Jyotibai. He suspected her character. According to him, since his wife, that day, did not take tiffin with her, somebody might have brought her one. He, therefore, doused her with kerosene and set her ablaze. She came outside her residence. Somebody from nearby informed her father (PW 5 – Bhagwan). He rushed to her place and in turn, took her to the Civil Hospital, at Dhule.

3. The Doctor on duty informed Dhule Taluka Police Station about admission of a lady in burnt condition. PW 4 – Vilas, Police

Head Constable, was directed by the Police Station Officer to record her statement. He was also asked to get the victim's statement recorded, by the Executive Magistrate. Both PW 4 - Vilas and PW 1 - Kiran, Awwal Karkun, Tahsil Office, Dhule, recorded her statements after having verified from the Medical Officer on duty (Dr.Dinesh Dahite, PW 7) her to be conscious oriented to make statement. In both the statements (Exh.12 and Exh.23), she informed to have been set ablaze by her husband. On the sixth day of the incident, Jyotibai breathed her last. Inquest and post mortem examination on her mortal remains were conducted. The post mortem report (Exh.32) indicates she died of '*septicemia due to burns*'. The crime scene panchnama (Exh.19) was drawn immediately after her FIR-cum-dying declaration (Exh.23) was recorded by PW 4 - Vilas. Certain articles like kerosene can, burnt pieces of saree, match-box, etc., came to be seized. All the seized articles were sent to F.S.L., Nashik, for chemical analysis and report. Statements of the persons acquainted with the facts and circumstances of the case were recorded.

4. Upon completion of the investigation, charge sheet was filed against the appellant. Learned Chief Judicial Magistrate, Dhule, committed the case to the Court of Session, Dhule (trial court). The trial court framed Charge (Exh.3). The appellant pleaded not guilty

and claimed to be tried. From the cross-examination of the prosecution witnesses, it appears that his defence was that Jyotibai died of accidental burns. It was suggested that there was bursting of kerosene stove. The dying declarations were stated to be fabricated documents.

5. To bring home the Charge, the prosecution examined ten witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted and consequentially, sentenced the appellant, as stated above.

6. Heard learned counsel for the parties.

7. Mr.Borulkar, learned counsel for the appellant would submit that the victim had every opportunity to run away from her residence, if quarrel had really taken place between herself and the appellant. There was LPG cylinder in the house. Had the appellant really poured kerosene on her person and set her ablaze, there would have been explosion of the LPG cylinder. The victim had suffered 47% burns. The evidence indicates that she was groaning. The documents relied on also did not bear the date, inward and outward number, etc. There is variance between the statements

recorded by PW 1 - Kiran and the FIR-cum-dying declaration recorded by PW 4-Vilas. Authority of PW 1 - Kiran to record the dying declaration was also questioned. Learned counsel took us through the entire evidence on record to ultimately submit the prosecution to have failed to bring home charge beyond reasonable doubt.

8. Mr.Gangakhedkar, learned counsel appointed to assist us in this case, ably assisted us. According to him, the deceased had suffered 47% of burns. She died six days after the incident. Her relations were around. Possibility of dying declarations to be the outcome of tutoring could not be ruled out. He would further submit that Jyotibai was shifted to some private hospital against the medical advise. It was hospital of Dr. Bora, to which she was admitted. The medical papers relating to the treatment extended to her at the said hospital were not placed on record. The cause of death is septicemia due to burns, which might have been developed on account of deceased to have not been duly treated. Had she really been taken care of properly, she would have survived. According to learned counsel, the appellant was already drunk. He consumed more liquor. As such, he was not in his senses. Same indicates him to have had no intention to eliminate his wife. He would further submit that Jyotibai herself stated the appellant to have emptied water from the

vessel on her person, so as to extinguish fire. Same suggests the appellant to have had no intention to eliminate her. He ran away to avoid fury of neighbours, who had gathered at his residence. He too pointed out the lapses and loopholes in the investigation and recording of statements of the deceased. Same will be referred to while appreciating the evidence on record. According to learned counsel, in any case, this is not an offence of culpable homicide amounting to murder.

9. Learned APP would, on the other hand, submit that the dying declaration itself can form the basis of conviction. According to him, anyone can record a dying declaration. He referred to the crime-scene panchnama (Exh.19) to indicate the kerosene-stove residues to have been intact. Learned APP meant to say that this rules out the defence of accidental burns on account of bursting of kerosene-stove. According to him, when the appellant poured kerosene on the person of his wife and set her ablaze, his intention to eliminate her, was the only inference that could be drawn. He, ultimately, urged for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein.

11. Let us turn to the evidence on record and appreciate the same. Admittedly, the appellant had married Jyotibai (deceased) way back in May, 2005. The couple was blessed with two children; one of the two children, was staying at his maternal aunt's house at Nashik for education. Jyotibai suffered burns at her residence little past 05.30 p.m., is undisputed. The appellant was serving as a waiter in 'Hotel Gaurav', while Jyotibai was serving as Nurse in the clinic of Dr. Jagtap (PW 9).

12. Jyotibai was admitted to the Civil Hospital by her father - Bhagwan (PW 5). The Medical Officer on duty (PW 7 - Dr.Dinesh) informed Dhule Taluka Police Station regarding admission of a burnt patient. PW 4 - Vilas was Police-Naik working with Dhule Taluka Police Station. It is in his evidence that on 02.07.2015, the Police Station Officer directed him to rush to the Civil Hospital and record statement of a lady admitted to the hospital. He placed on record a communication issued by PSO in that regard. Same is at Exh.22. It reads that a patient by name, Jyotibai Manoj Koli suffered 47% burns and therefore, admitted by her father to the hospital. He was asked to record her statement and also get her statement recorded by the Executive Magistrate. His evidence further indicates that he, accordingly, went to the hospital. He met the Medical Officer on

duty there. He was Dr.Dinesh (PW 7). It is further in his evidence that the Medical Officer examined Jyotibai in his presence and certified her to be fit to make a statement. He then introduced him to Jyotibai and recorded her statement (dying declaration – Exh.23). It is further in his evidence that the Medical Officer on duty again examined her and certified that she was conscious oriented post recording of statement was over. Based on her statement, crime vide C.R. No.170 of 2015 was registered with Dhule Taluka Police Station, for the offences punishable under Sections 307, 323, 504 and 510 of Indian Penal Code. Jyotibai related PW 4 – Vilas in her statement that she was married with the appellant on 10.05.2005. She started residing with him along with her in-laws. Two years after marriage, the appellant got addicted to liquor. He started suspecting her character. He would harass and illtreat her. After having been fed up with the illtreatment, she started residing at the house of her father Bhagwan. She would do labour work to earn living. About 4-5 months before the incident, the appellant came to her. He had brought with him all domestic utensils and requested her to stay with him separately. She, therefore, started residing with him in a room taken on rent. The appellant was serving as a Waiter with the Hotel, Gaurav. For some days, she was treated well. The appellant again started illtreating her on account of suspecting her character.

13. She further related PW 4 – Vilas that she was serving with the hospital/clinic of Dr. Jagtap at Dhule and would shuttle between Shirud and Dhule, everyday. She would return back to her residence by 03.30 p.m. On the given day, i.e. on 02.07.2015, she came home by 03.30 p.m. The appellant returned home by 04.30 p.m. He was drunk. He asked her to prepare food. He then left and again returned consuming more liquor. He then asked her as to why did she not carry tiffin with her to her work-place. He suspected that she had a boy-friend and he might have brought tiffin for her. When she asked him not to abuse her, he assaulted her first and then, doused her with kerosene. The appellant then set her ablaze by igniting match-stick. She further related that she rushed out of her room. The appellant followed her with a vessel filled with water (पाण्याने भरलेला हंडा) and emptied the same on her person. Meanwhile, neighbours gathered. The appellant fled. Someone informed her parents. They arrived and admitted her to the hospital.

14. PW 4 – Vilas was subjected to searching cross-examination. He admitted to have not mentioned the time on Exh.22, when he received the same. He also did not sign it. He was suggested that when he went to the Civil Hospital, there was rush of

relatives of patient admitted to the accident ward. He denied the suggestion that when he went close to Jyotibai, her parents and brother were sitting nearby her. He also denied that while he was close to Jyotibai, she was frightened and confused. It was further suggested to him that Jyotibai told him to have suffered burns on account of blaze of kerosene-stove while she was cooking. He denied to have concealed the said fact and prepared false statement (Exh.23). He admitted the Investigating Officer to have not recorded his statement. He also admitted that the statement (Exh.23) does not indicate that the thumb impression was of left hand. He denied to have not visited the hospital and recorded statement (FIR-cum-dying declaration)(Exh.23).

15. PW 1 – Kiran was serving as Awwal Karkun in Tahsil office, Dhule, It is in his evidence that he received a phone call from Dhule Taluka Police Station with a request for recording of dying declaration. He, therefore, went to the police station and received a memo-cum-requisition. He referred to the same (carbon copy), which is at Exh.9. It is further in his evidence that thereafter, he went to the Civil Hospital. He met Dr. Dinesh Dahite (PW 7). On his request, Dr.Dinesh examined Jyotibai and certified her to be conscious oriented to make a statement. He then introduced himself

to Jyotibai (deceased). He inquired her about her name, age and residential address as well. She gave the same. It is further in his evidence that when he inquired her as to how did the incident took place, she told him that the appellant had quarreled with her. He would suspect her character. She related him that the appellant abused and assaulted her with fists and kick blows. He then poured kerosene from the can in the house on her person and set her on fire. It is further in his evidence that when he questioned her as to whether she suspect anyone else, she told that except appellant, she did not have any grievance against anyone. She even told him that her parents admitted her to the Civil Hospital. It is further in his evidence that he recorded her statement as narrated by her. He then read it over to her. He obtained her thumb impression on the said statement. He then obtained signature of one of her relations in proof of attestation of her thumb impression. He went on to state that Dr.Dinesh again gave remark on the very statement that the patient was in fit condition to make the statement.

16. It is further in his evidence that he prepared two copies of the statement recorded by him. He referred thereto. One of them is at Exh.10. According to him, the other one was handed over to the police station. He placed on record the original memo (Exh.11)

copy whereof is at Exh.9. He then referred to the original statement of the deceased. It was marked as Exh.12.

17. He too was subjected to searching cross-examination. It was brought on record through his cross-examination that both Dhule Taluka Police Station and Tahsil Office were situated in one compound. The staff of both offices used to visit each other's office. He was residing near Railway Station. He would report on duty by 9.45 a.m. everyday but his time to return home is uncertain. It was depending upon workload. In the Tahsil office, he was assigned the work of registering Grampanchayat and preparing affidavits. He admitted to have not been in-charge of any other work. His evidence further indicates that on 02.07.2015, he was at the office by 06.30 p.m. He, however, could not tell phone number from which he received call for recording the dying declaration. It is further in his evidence that when he had been to the hospital, police officials were not present around the victim nor her relations were there. He denied that the patient was covered with a net. He denied that the victim was in confused state of mind and therefore, unable to speak. The person who attested the thumb impression was present outside the room. He went out of the room and obtained his signature. He admitted that near thumb impression, it has not been mentioned

that it is a left hand thumb impression. He went on to state to have not undergone any training in recording of the dying declaration. He admitted that there was no stamp of Executive Magistrate on Exh.10 nor was there stamp of the Medical Officer as well. He denied the suggestion that the parents and brother of the victim were around her while her statement was being recorded. He denied to have prepared false statement in the police station as per the say of parents and brother of the victim.

18. PW 5 – Bhagwan was father of Jyotibai (deceased). It is in his evidence that Jyotibai had married the appellant in May, 2005. The couple was blessed with two children. Jyotibai was treated well for two years of marriage. Thereafter, the appellant got addicted to liquor. Jyotibai used to tell him about the illtreatment given to her by the appellant. It is further in his evidence that since the illtreatment became unbearable, she came to his home and started residing with him. It is further in his evidence that after some days, the appellant came with household articles. He stayed with him for some days. Then, both appellant and Jyotibai started residing separately in a room taken on rent.

19. It is further in the evidence of PW 5 – Bhagwan that one Anil Jaiswal informed him the appellant to have set her daughter ablaze. He, therefore, went to the appellant's place. He noticed his daughter was lying outside the house in burnt condition. Quilt was put on her body. He and others took her to Civil Hospital, Dhule. On inquiry with her, she related him that the appellant had consumed liquor. He asked her to cook food. He again went out of the house and came consuming more liquor. She further related him that the appellant questioned, why did she not carry tiffin to her work-place on the given day. He said her that somebody must have provided lunch to her. He then poured kerosene on her person and ignited with match-stick.

20. During his cross-examination, PW 5 – Bhagwan testified that when he went to the place of the appellant, many persons had gathered outside. The appellant had LPG connection. He would bring kerosene from his work-place. He denied that Jyotibai was not in a condition to speak. He admitted that she was groaning. He, however, denied that she had difficulty in speaking. He admitted that he along with his wife and son were around Jyotibai all the time. It was suggested to him that the police recorded her statement. He testified that while recording the statement, they were asked to wait

outside the room. He denied that Jyotibai suffered burns due to explosion of kerosene-stove. His evidence further indicates that on the following day, he shifted Jyotibai to the hospital of Dr. Bora. He even did not inform the police about shifting her to another hospital.

21. PW 7 - Dr.Dinesh testified that on 02.07.2015, Jyotibai was admitted to the Civil Hospital. He was on duty as Medical Officer on the given day. She had suffered burns. It is in his evidence that by 09.15 p.m., the Executive Magistrate had come to the hospital for recording of her statement. Then, one police official had also come. It is further in his evidence that on the request of both of them, he examined Jyotibai and certified in writing that she was conscious oriented to make statement. It is further in his evidence that after recording of both the statements, he again gave similar certificate. He referred to his endorsement appearing on her statements (dying declarations recorded by PW 1 and PW 5). During his cross-examination, he testified that the person who suffered 47% of burns, remains in agony. He denied that such patient was not conscious to make statement. He denied that the victim was administered sedatives. He, however, did not recollect as to whether he had advised to refer Jyotibai to super-specialty hospital.

22. PW 3 - Rajendra is witness to the crime-scene panchnama (Exh.19). PW 2 - Sachin is Police Constable who carried the seized articles to F.S.L., Nashik. PW 6 - Dr. Kapileshwar is the Medical Officer, who conducted post mortem examination. He referred to the report (Exh.32) of the post mortem examination. According to him, the deceased died of '*septicemia due to burns*'. He admitted that the patient who suffered 47% burns, may not be conscious.

23. PW 9 - Dr. Charuhas Jagtap had his clinic at Dhule. His evidence indicates that deceased Jyotibai was serving as Nurse with his hospital. According to him, she used to relate him that the appellant would harass her on account of suspecting her character.

24. PW 10 - Nilesh is Police Officer, who registered the crime and drew inquest (Exh.20). He admitted to have not recorded the statement of Dr.Bora nor did he collect the papers of medical treatment extended to Jyotibai at Dr.Bora's hospital.

25. The aforesaid is the evidence in the case. True, no person from neighborhood of the appellant was examined. The request letter did not bear timing at which it was issued and was

received by the concerned, who, allegedly, recorded the statement of the deceased. It is also true that PW 1 – Kiran is not an Executive Magistrate. There were no papers about the medical treatment extended to the victim at the hospital of Dr. Bora. It is also true that except the dying declarations, there is no other evidence to indicate the appellant to have ever harassed and illtreated the victim. It is also true that there is some variance between both the written dying declarations.

26. The suggestions given to both PW 1 – Kiran and PW 4 – Vilas go a long way to indicate the appellant to have admitted that both of them had been to the Civil Hospital, Dhule and even recorded Jyoti's statements. Those suggestions are referred to herein above while adverting to their cross-examinations. The dying declaration (Exh.12) recorded by PW 1 – Kiran is in the particular format. There is, therefore, nothing more than the matter as to the appellant to have picked up quarrel with the deceased as he was suspecting her character and then set her ablaze after pouring kerosene. The dying declaration-cum-FIR (Exh.23) recorded by PW 4 – Vilas is in detail. It was recorded like FIR. PW 4 – Vilas has placed on record an order issued to him by his Officer to rush to the hospital and record the victim's statement. PW 7 – Dr.Dinesh was on duty. He is an

independent witness. We have no reason to discard his evidence. It is but natural that the relations of the victim to be around her in the hospital. Her father has, however, testified that while the police recorded her statement, the relations were asked to stay outside the room. Both the statements recorded by PW 1 - Kiran and PW 4 - Vilas bear endorsement given by PW 7 - Dr. Dinesh, indicating Jyotibai was conscious oriented to make the statements. Both the written dying declarations are consistent with each other on material particulars, that is, the appellant suspected her character; he assaulted and doused her with kerosene and then, set her ablaze. Her further statement to PW 4 - Vilas may be useful to the appellant since, according to her, it was the appellant who poured water from the vessel so as to extinguish the fire. It is not that only Executive Magistrate could record the dying declaration. Needless to mention that anyone can record the same. PW 1 - Kiran, admittedly, is an awwal-karkun of 18 years standing, serving with revenue department. He went to the hospital and recorded the victim's statement in the prescribed form. It is at Exh.12.

27. On appreciation of the evidence in the case, we have no slightest doubt that it is the appellant who poured kerosene on the person of his wife and then set her ablaze after having picked up

quarrel over suspecting her character. The question is whether the act of the appellant constitutes an offence of murder, punishable under Section 302 of Indian Penal Code. Admittedly, Jyotibai had suffered 47% of burns on 02.07.2015. She died six days after the incident. She was admitted to Civil Hospital. Her relations shifted her to private hospital of Dr. Bora. It was against the medical advise. The papers of medical treatment extended to her at Dr.Bora Hospital have not been made part of the police papers. The cause of death is '*septicemia due to burns*'. Due to non-placing of those medical papers, prejudice has necessarily been caused to the appellant. He could have shown that due to non-extending Jyotibai proper treatment or lapse in taking her care, septicemia might have developed. It would be anybody's guess, in what way, the appellant would have made his case to say that it is not an offence under Section 302 of Indian Penal Code had all medical papers of the victim been there on record.

28. We are, however, not in agreement with learned counsel for the appellant, who has assisted us. According to him, when the appellant was heavily drunk, he was not in his senses and therefore, he could not be attributed with the intention to kill his wife. He relied on the judgment of the Apex Court in the case of **Sandesh alias**

Sainath Kailash Abhang Vs. State of Maharashtra, (2013)2

SCC 479. We have perused the same. The appellant in the said case was sentenced to death. While appreciating the evidence in that case, the Apex Court had observed that the appellant was not in balanced state of mind and in fact, had no control over his mind as he was drunk. It is true that the appellant in this case too had consumed liquor. There is, however, nothing to indicate him to have not been in his senses or had no control on his own mind. On the contrary, he lifted a big vessel full of water and emptied on the person of his wife, to extinguish the fire. After having the neighbours gathered, he fled. A person, who poured kerosene on the person of his wife and then set her ablaze can, in the facts and circumstances of the case, be attributed with an intention to have done so to eliminate her. It is true that in the spot panchnama, a kerosene-can is seen with cork on. The C.A. report, however, indicates the kerosene residues. Kerosene-stove was intact. Same falsifies the appellant's defence of his wife to have suffered burns accidentally.

29. Based on the evidence on record, we reached to the conclusion that the appellant, with an intention to kill his wife, poured kerosene, on her person and then set her ablaze. Admittedly, she died of septicemia due to burns. Death took place six days after

the incident. She was removed from the Civil Hospital to a private hospital against medical advise and without informing the police officers. What kind of treatment was extended to her at the private hospital to which she was admitted is not before this court. It would, therefore, be nobody's guess as to the reason of developing septicemia. For want of those medical papers, the appellant could be said to have been prejudiced in his defence or at least, lost an opportunity to meet the prosecution case of committing murder of his wife. The deceased suffered 47% burns. He would have brought on record that had she been properly taken care of, she would have been recovered. Be that as it may. There is also no evidence on record to indicate that the burns suffered by Jyoti were sufficient in the ordinary course of nature to cause her death. Although the appellant doused his wife with kerosene and set her ablaze, there is nothing for us to observe that she died thereof, since septicemia was developed. It is needless to mention that septicemia could be developed for more than one reason. One of them may be not extending proper treatment or even not taking proper care of a patient. We, therefore, find the appellant to have committed offence of attempt to commit murder of his wife, punishable under Section 307 of Indian Penal Code.

30. For the aforesaid reasons, interference with the impugned order of conviction and consequential sentence for offence under Section 302 of Indian Penal Code, is warranted.

31. In the result, the following order:-

(i) The appeal is partly allowed.

(ii) The order dated 07.04.2017, passed by learned Sessions Judge, Dhule, in Sessions Case No.112 of 2015, convicting and sentencing the appellant for the offence punishable under Section 302 of Indian Penal Code, is hereby set aside.

Instead, the appellant is convicted for the offence punishable under Section 307 of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for a period of nine years and to pay fine of Rs.1,000/- (Rupees One Thousand). In default of payment of fine, he shall suffer rigorous imprisonment for one month.

(iii) Set off be given as per Section 428 of the Code of Criminal Procedure.

32. Before parting with the judgment, we appreciate the able assistance rendered by Mr.S.S.Gangakhedkar, learned counsel appointed to assist the court in this matter.

[NEERAJ P. DHOTE, J.]
KBP

[R.G. AVACHAT, J.]