



CORRECTED ORDER
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.90 OF 2022

Amol s/o. Ramesh Shelale,
Age : 24 years, Occ. Labour,
r/o. Nagral, Tq. Deoni, Dist.Latur

..Appellant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Police Station, Deoni, Tq. Deoni,
Dist.Latur

..Respondent

Mr.V.D.Gunale, Advocate for appellant
Mr.N.S.Tekale, A.P.P. for respondent - State

CORAM	:	R.G.AVACHAT AND NEERAJ P. DHOTE, JJ.
RESERVED ON	:	FEBRUARY 13, 2025
PRONOUNCED ON	:	APRIL 01, 2025

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

The challenge in this appeal is to the judgment of conviction and the order of consequential sentence passed by learned Addl. Sessions Judge-2, Udgir, Dist. Latur, in Sessions Case No.21 of 2018, whereby, the appellant has been convicted for the offences punishable under Sections 302 and 498-A of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and R.I. for one year, respectively, with default stipulation.

2. The case of prosecution, in short, as disclosed from the evidence on record, is that the appellant married Manisha (deceased) two months before 05.02.2018. Manisha's parents were no more. The appellant would suspect her loyalty to him. There, therefore, used to be quarrels between the two. On the given day, i.e. on 05.02.2018, by 01.30 pm., the appellant started abusing her. He assaulted her with electric-wire. Manisha, therefore, went out of the house to make call to her cousin. The appellant, thereafter, dragged her to the house, poured kerosene on her person and then, set her ablaze after bolting the door. On hearing commotion, neighbours gathered. The appellant and neighbours extinguished the fire with water and rushed Manisha to hospital. She was then referred to the Civil Hospital, Latur. After ten days, Manisha succumbed to the burns at the hospital. Manisha's statement was recorded by the police official on duty. Based on the same, crime vide C.R. No.13 of 2018 was registered with Devni Police Station, for the offences punishable under Sections 307 and 498-A of Indian Penal Code. On demise of Manisha, Section 302 of I.P.C. came to be added in place of Section 307 of I.P.C.

3. Inquest and autopsy were conducted on the mortal remains. The appellant was arrested. Crime-scene panchnama

(Exh.12) was drawn. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, charge sheet was filed against the appellant.

4. Charge (Exh.6) was framed. The appellant pleaded not guilty. The prosecution examined twelve 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.

5. Learned counsel for the appellant would submit that none of the witnesses related to the deceased Manisha, have supported the prosecution case. The so-called dying declaration was recorded by the police constable. In spite of a letter being issued to the Executive Magistrate, it is not known, as to why, the Executive Magistrate did not record Manisha's statement. He would further submit that it is not known, as to whether, the Executive Magistrate has recorded statement of Manisha and the same has been held back by the prosecution. No medical papers of the victim were placed on record. The Medical Officer, who attended the victim first, admitted that Manisha was administered analgesic medicines to

relieve her of pains. Bandage was applied. He would further submit that the statement has been recorded in such a fashion so as to make it self-evident that certain matter, such as, on which number of bed the deceased was kept, etc., has been written by the police official himself. He would further submit that such a dying declaration was short to inspire confidence. According to him, the appellant is behind the bars for little over seven years. He, therefore, urged for allowing the appeal.

6. Learned APP would, on the other hand, submit that unfortunately, the relations of the deceased and other witnesses did not stand by the prosecution. Same would, however, be of little consequence. According to him, the dying declaration given by the deceased has been duly proved. The deceased had suffered 53% of burns. The Medical Officer certified her to be conscious oriented to make a statement. She breathed her last ten days after the incident. The dying declaration given by the victim inspires confidence. According to learned APP, analgesic medicines were not in the nature of medicines like Fortwin, which would keep a patient in drowsy state. According to him, the police official recorded the dying declaration after having verified the patient to have been conscious oriented to make a statement. The dying declaration forms the sole

basis for conviction of the appellant. Learned APP relies on the decision of the Apex Court in the case of Surinder Kumar Vs. State of Haryana, MANU/SC/1271/2011. He, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

8. It is reiterated that all the relatives including the father of the deceased did not stand by the prosecution. We have, therefore, the only evidence of the police official, who recorded the dying declaration (Exh.25), and the Medical Officer, who examined the deceased before and after recording her statement.

9. Admittedly, the appellant married Manisha (deceased) two months prior to the incident dated 05.02.2018. The couple was residing at village Nagral, Tq. Udgir, Dist.Latur. Since Manisha suffered burns, she was rushed to the Primary Health Centre, Udgir. PW11 - Dr. Ashruba was on duty. He was not a surgeon but a pediatric. He testified that there was no surgeon available in the hospital. He further testified that the condition of Manisha was critical and therefore, he referred her to the Civil Hospital, Latur.

Manisha was crying and screaming due to pains. He did not place on record the medical papers of Manisha. He had administered her analgesic medicine to relieve her from pains. He categorically denied that Manisha was in drowsy state due to the medicines administered to her. He specifically testified that he examined her and found conscious oriented to make statement. He, however, admitted that he did not conduct certain medical tests to ascertain her consciousness before recording her statement. According to him, during recording of her statement, he was attending to other patients.

10. PW6 – Sudhakar was the Police Constable attached to the Government Hospital Police Chowki, Udgir. He testified that the Medical Officer (PW11 – Dr.Ashruba) gave a letter for recording of statement of Manisha. He referred to the said letter (Exh.24). He, therefore, reached the casualty ward. The Doctor informed him that Manisha was on bed no.1. He, therefore, went close to Manisha. Saline was being administered to her. He called the Doctor and asked him, whether he could record Manisha's statement. The Doctor, in turn, replied that she was conscious oriented and he could record her statement. Accordingly, the endorsement was made. He, thereafter, recorded the statement as narrated by Manisha. He

referred to the same (Exh.25). During his cross-examination, he admitted that a letter was given to the Executive Magistrate with a request to record Manisha's statement. He did not ask the people around Manisha to leave the place when he recorded Manisha's statement. The statement of Manisha reads thus:-

..... मी गांधीनगर उदगीर येथील बाबुराव हणमंत पाळले यांची मुलगी असून गेल्या दोन महिन्यांपूर्वी माझे लग्न नागराल येथील अमोल रमेश शेल्हाळे यांचे सोबत झाले. लग्न झाल्यापासून नवरा तू रस्त्यावरली आहेस म्हणून शिवीगाळ करायचा. तुला माय बाप नाहीस तू मोकळी आहेस म्हणून माझे वर संशय करून मारहाण करीत होता. पंधरा दिवसांपूर्वी नवऱ्याने मारहाण करून उदगीरला माहेरी आणून सोडले होते. नवऱ्याची आजी विमलाबाई व फुलाबाई हिने आता मी चांगले नंदवला लावते मारू देणार माझे माझे भरोशावर पाठवा म्हणून माझी आत्या तेजमाबाई मोहन दांडगुळे, मथुराबाई, चुलत भाऊ राजीव नागोराव पाळले यांना सांगून माझे नातेवाईकांनी त्यांचे सोबत पाठवून दिले. त्यानंतर सारखे तो माझे माहेरच्या नातेवाईकांवर संशय करून मारहाण करायचा तरी पण मला आई वडील नाहीत म्हणून मी त्याचा त्रास सहन करत राहिले.

आज दिनांक ०५.०२.२०१८ रोजी दुपारी ०१.३० वा. सुमारास नवऱ्याने शिवीगाळ सुरू केला व इस्त्रीच्या वायरने मला मारहाण सुरू केला. मी माझ्या चुलत भावाला फोन करून सांगते म्हणत घर बाहेर आले असता त्याने घरात ओढून घेऊन गेले व स्वयंपाक रूम मधून रॉकेलचा डब्बा घेतला व ओढत स्वयंपाक रूम मध्ये नेला व हातातील रॉकेलचा डब्बा माझे अंगावर ओतू लागला. त्यावेळी मी बाहेर पळत होते तर त्याने काडी ओढून माझे अंगावर टाकली. मी बाहेर येण्यासाठी दारात येत असताना त्याने दार लावले. मी चिरकले. त्यावेळी बाहेरचे लोक पळत आले. माझे अंगास लागली आग पाहून गावातील लोकांनी व नवऱ्याने पाणी टाकले. कोणी तरी माझे चुलत भावास सांगितले. चुलत भाऊ राजकुमार, सुनील हे नागराल येथे आले व त्यांनी मला उदगीरला स. दवाखान्यात आणून शरिक केले. येथील डॉक्टरांनी माझेवर उपचार चालू केला. माझे दोन्ही पाय, दोन्ही हात, पोट, छाती, तोंडास भाजले आहे. तरी माझे अंगावर रॉकेल टाकून जळणाऱ्या अमोल रमेश शेल्हाळे, रा. नागराल, याचेवर कार्यवाही करावी.

The statement bears endorsement of the Doctor, indicating that the patient was conscious oriented to make a statement. Moreover, the Police Constable – Sudhakar had recorded her statement after having found her to be conscious oriented.

11. Manisha had suffered 53% of burns. She succumbed to the injuries after ten days. The post mortem report (Exh.60), indicates that she died of “*septicemic shock due to burns*”. We are conscious of the legal position as regards appreciation of the evidence in the nature of the dying declaration. The dying declaration, if found to be true and made voluntarily, can form the basis of conviction. As such, the dying declaration is the substantive piece of evidence. There is, however, other side. Since the declarant is not available for cross-examination, in some cases, the court requires some evidence in the nature of corroboration to the dying declaration. Each case would depend upon the facts and circumstances appearing therein. Even a person, who has suffered 99% of burns, can make a statement.

12. In the case in hand, the evidence indicates that Manisha was rushed to the hospital by her neighbours. No sooner she was admitted to the hospital, the Doctor on duty gave a letter to the

Police Constable with a request to record her statement. The police official (PW6 - Sudhakar) rushed to the casualty ward. PW11 - Dr. Ashruba was the only Medical Officer available there. He attended Manisha, who had suffered 53% of burns. He certified Manisha to be conscious oriented to make statement. PW6 - Sudhakar then recorded Manisha's statement, which has been referred herein above.

13. The question is, whether the dying declaration inspires confidence as being true. The reason for setting Manisha ablaze attributed to the appellant, was that he would suspect her loyalty to him. It was just two months old marriage. None of the relatives of the deceased stood by the prosecution. The crime-scene panchnama (Exh.12) indicates that a kerosene bottle was lying on the spot. Deceased Manisha, in her statement, stated that it was the appellant and others, who poured water and extinguished the fire. We find her evidence as regards the appellant to have set her ablaze, to be reliable and fit to act upon. The reason attributed to the appellant has, however, no support of any other evidence. As per the case of the prosecution, it is the appellant who made disclosure statement within 2-3 days of his arrest.

14. We are conscious of the fact that the portion, which is inculpatory is not admissible in evidence. We are, however, of the view that whatever reason has been given by the appellant in his disclosure statement appears to have not been investigated at all. As such, it can be said that the prosecution has suppressed the genesis. In the house, there were only two persons: the appellant and deceased Manisha. The appellant in his disclosure statement stated that on 05.02.2018, there was quarrel between him and his wife Manisha. When he was beating her with a wire, there was scuffle (*Zatapat*) between him and the deceased. A button of his shirt was dislocated. The shirt was even torn. The same suggests that all was not well between the couple. It is reiterated that it was the marriage of just two months. A quarrel between the two had preceded the incident. It can, therefore, be stated that there was no premeditation. True, the intention to kill is very much evident, since a person dousing a person with kerosene and setting ablaze, suggest the intention to kill. The reason therefor, has, however, not been investigated. The appellant has his side of story to tell. As such, the incident took place in a spur of a moment, that too, after the quarrel between the two. The deceased had also been aggressive. It was the appellant, who extinguished the fire along with the others with water. In our view, therefore, whatever the appellant has stated in

his disclosure statement can make out his case on the basis of preponderance of probabilities.

15. At the cost of repetition, it is stated that the investigation has not been made, as to why the quarrel had ensued between the appellant and the deceased. It has already been observed that in the statement of the deceased Manisha, there is nothing to indicate that the appellant would suspect her loyalty to him. In our view, therefore, it would be a case of culpable homicide not amounting to murder. We are, therefore, inclined to interfere with the order impugned herein.

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

(i) The appeal is partly allowed.

(ii) The conviction of the appellant for the offence punishable under Section 302 of Indian Penal Code and the consequential sentence to suffer imprisonment for life and to pay fine of Rs.10,000/-, with default stipulation, imposed vide order dated 12.01.2022, passed by learned Addl. Sessions Judge-2, Udgir, in Sessions Case No.21 of 2018, is hereby set aside.

Instead, the appellant hereby stands convicted for the offence punishable under Section 304 Part I of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for nine years and pay fine of Rs.1,000/-, in default, to undergo S.I. for ten days.

(iii) Rest of the terms of the impugned order to stand unaltered.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP