



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

CRIMINAL APPEAL NO. 552 OF 2003

The State of Maharashtra,
Through Police Station Bori,
Taluka Jintur, District Parbhani

... Appellant
(Ori. Complainant)

Versus

1. Ratanlal s/o Kesrimal Chordiya,
Age : 40 years, Occupation: Agri.,
R/o Pachlegaon, Tq. Jintur,
Dist. Parbhani.

2. Sow. Kiran Ratanlal Chordiya,
Aged 35 years, Occu. Household
R/o as above.

... Respondents
(Ori. Accused)

...

* Mr. S.R. Wakale and Mr. S.J. Salgare,
APP for Appellant/State.

* Mr. C.C. Deshpande holding for Mr. C.R. Deshpande
Advocate for Respondent No.1

...

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

DATE : 14th OCTOBER 2025

ORDER (Per Mehroz K. Pathan, J.) :-

1. The present appeal is filed by the Appellant challenging the judgment and order of acquittal passed by the learned Sessions Judge, Parbhani dated 08.05.2003 in Criminal Appeal No.552/2003 in Session trial No.80/2001, whereby the accused Ratanlal Chordiya and Kiran Chordiya were acquitted for the offence punishable under Section 302 read with 34 of the Indian Penal Code.

2. This Court had admitted the appeal vide order dated 08.05.2003 by granting leave to file appeal under Section 378(1)(3) of the Code of Criminal Procedure. The matter was taken up for hearing with the consent of the parties.

3. We have heard learned APP Mr. S.R. Wakale for the Appellant/State and Mr. C.C. Deshpande holding for Mr. C.R. Deshpande appearing for the Respondent No.1. With the assistance of the learned Counsels, we have also gone through the record and proceeding in the present matter.

4. It was a case of the prosecution that deceased Sunita had sustained burn injuries and was admitted to the hospital on 06.02.2001. The prosecution recorded the statement of the deceased, Sunita, on 07.02.2001 in the form of a dying declaration, marked as Exhibit-35, wherein she implicated Ratanlal (Accused No. 1) and Kiran as the perpetrators who poured kerosene on her and set her on fire and then ran away. That on the basis of the said statement, the First Information Report was registered under Sections 307, 323 read with 34 of IPC.

5. The further investigations were carried out by recording one more dying declaration Exhibit-46 which was recorded on 08.02.2001 wherein the deceased Sunita has again implicated both the accused to

have poured kerosene and set the deceased on fire. The deceased succumbed to her injuries on 10.02.2001 having sustained 90% burn injuries. Thus Section 302 was added and after completing the investigation and obtaining postmortem report, the prosecution filed a charge-sheet before the learned trial Court. The learned Sessions Court has framed a charge under Section 302 read with 34 of IPC against both the accused. The prosecution has examined nine witnesses in support of their case and has further relied upon six documents to prove the guilt of the present accused.

6. The learned trial Court after considering the evidence led by the prosecution and the documents produced on record, was pleased to acquit the Respondents of the charge under Section 302 read with 34 of IPC for committing murder of deceased Sunita. The Appellant has thus approached this Court, challenging the judgment dated 08.05.2003 passed by the Sessions Judge, Parbhani in Sessions trial No.80/2001, wherein on the following grounds amongst others. It is pertinent to point out that the Respondent No.2 has expired during the pendency of the appeal and the death certificate is produced on record by the Respondent showing that Kiran Ratanlalji Chordiya has expired on 22.08.2024. The same is taken on record and marked 'X' for identification. Thus the appeal as against Respondent No.2 stands abated.

7. Insofar as the appeal against Respondent No.1, the learned APP appearing for the State has challenged the impugned judgment on following grounds amongst others. The learned APP submits that the learned trial Court has wrongly come to the conclusion that there is inconsistency in the dying declaration whereas the dying declaration no.2 and dying declaration no.3 i.e. Exhibit-35 and 46 are in consonance with each other and could have been relied upon to rest the conviction of the accused persons.

8. It is further submitted by the learned APP that the dying declarations were recorded after obtaining the fitness certificate from the Doctor who has examined the deceased before recording her statement. It is submitted that such a cogent piece of evidence could not have been ignored by the learned trial Court and thus the impugned judgment calls for interference of this Court, thereby convicting the Respondent for causing the homicidal death of deceased Sunita.

9. As against this, the learned Counsel for the Respondent submits that the learned trial Court has rightly come to the conclusion that there is inconsistency in the dying declaration and therefore the same cannot be relied upon to base a conviction in the facts of the present case. The Counsel further submits that the dying declaration no.1 which is recorded on 06.02.2001 i.e. Exhibit -25 speaks about the

accidental burns having suffered by the deceased. The Counsel for the Respondent No.1 thus submits that the view taken by the learned trial Court is a possible view and therefore may not be interfered by this Court as the scope for interference in the appeal against acquittal is very limited.

10. We have considered the submissions and have also gone through the record and proceeding with the assistance of the learned Counsels. The perusal of the judgment of the learned trial Court would show that the learned trial Court has found inconsistency in the version of the victim, as she had initially stated in dying declaration Exhibit-23 dated 06.02.2001 recorded by the Special Executive Magistrate that she suffered accidental burns when her sari caught fire due to the flames from the stove. The said Exhibit-23 was filed by the prosecution and the same was admitted by the defense and thus the said dying declaration got exhibited as Exhibit-23. This being the position the said dying declaration Exhibit-23 runs totally contrary to the version of the deceased in the subsequent dying declaration i.e. Exhibit-35 recorded by the Special Executive Magistrate on the next date i.e. 07.02.2001 as also the third dying declaration recorded by the Investigating Officer Exhibit-46 on 08.02.2001, wherein the complainant deceased had implicated Ratanlal and Kiran to be the accused who had poured kerosene on her and set her on fire. Thus looking to the major inconsistency in Exhibit-23 and Exhibit-35 and 46, the learned trial

Court rightly disbelieved the said version, as it does not inspire confidence in the prosecution case. There is no other piece of evidence which corroborates the dying declaration. On the contrary the husband of the deceased Sunita i.e. PW-5 Prakash Chordiya has turned hostile and has resiled from his earlier version wherein he claimed that deceased Sunita gave oral dying declaration, wherein she implicated Ratanlal and Kiran to be perpetrators of the said crime. The said important witness PW-5 husband of the deceased has turned hostile and did not support the prosecution. Thus there is no corroboration to the inconsistent dying declaration and as such reliance upon the same, was not found sufficient to convict the Respondent for committing the homicidal death of deceased Sunita. The prosecution has also failed to prove the motive behind commission of the said crime. The prosecution has also failed to examine the neighbours residing in the area who could have corroborated the version of the deceased in the subsequent dying declarations that it was the Respondent/Ratanlal and his wife Kiran who had poured kerosene upon the deceased and then set her on fire. Moreover it is also seen that in one dying declaration she attributes both the incidents of catching hold and pouring kerosene and setting her on fire to Respondent Ratanlal, whereas in another dying declaration she had attributed the said act to Ratanlal as well as Kiran.

11. Thus in our considered view, we find that the view taken by

the learned trial Court is a possible view as per the evidence led by the prosecution. It is almost a settled law that if two views are possible and the learned trial Court has taken one possible view, the Appellate Courts may not interfere and reverse the judgment of acquittal only because second view is also possible in the case of appeal against acquittal. We do not find that the evidence is unerringly pointing out towards the guilt of the accused.

12. In our view therefore there is no substance in the appeal filed by the State challenging the impugned judgment. The appeal challenging the judgment and order of acquittal passed by the learned Sessions Judge, Parbhani dated 08.05.2003 in Criminal Appeal No.552/2003 in Session trial No.80/2001, is hereby dismissed with no order as to costs.

MEHROZ K. PATHAN
JUDGE

SANDIPKUMAR C. MORE
JUDGE

Majeed