



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

CRIMINAL APPEAL NO.570 OF 2003

The State of Maharashtra,
Through Chavani Police Station,
Aurangabad.

.. Appellant
(Ori. complainant)

VERSUS

Shaikh Farooq S/o Shaikh Aakif,
Age : 30 Years, Occ. Service,
R/o. Gaddigudam, Opp. Government
Hospital, Chhawani, Aurangabad.

.. Respondent
(Ori. accused)

...

*Mr. S.R. Wakale, Addl. Public Prosecutor for the
appellant/State.*

Mr. G.R. Syed h/f Mr. V.A. bagdiya Advocate for respondent.

...

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

Pronounced on: 08.10.2025

Judgment (Per Sandipkumar C. More, J.) :

1. The appellant/State has challenged the acquittal of present respondent i.e. original accused in Sessions Case No. 430 of 2002, from the offences punishable under Sections 302, 498-A of the Indian Penal Code, at the hands of learned

3rdAd-hoc Additional Sessions Judge, Aurangabad (hereinafter referred to as the “learned Trial Judge”), under judgment and order dated 08.05.2003 in the aforesaid case.

2. As per the prosecution case, one Nasreen Begum i.e. the wife of respondent-accused, having 91% burn injuries, was admitted in Ghati Hospital on 13.08.2002 during the night time. PW-8 Sudhakar Shirsat, the then P.S.I. attached to Chavani Police Station, Aurangabad, recorded the statement-cum-dying declaration of Nasreen, wherein she stated that she got married with respondent-accused five years back. However, respondent was not treating her well and asking her to bring money from her parental house. He was addicted to liquor. On 13.08.2002, at about 9.30 p.m. respondent came home in drunken state, abused her and asked her to leave his house. He took meal and thereafter also quarrel took place between them. The respondent poured kerosene on her person and set her ablaze. When she started shouting, he dowsed her with the help of water and took her to hospital. On the basis of the aforesaid statement-cum-dying declaration (Exh.34), crime was registered against respondent for the offences under Sections 302 and 498-A of the Indian Penal Code. The second dying declaration at

Exh.21 was also recorded by PW-2 Ayub Khan i.e. Special Executive Magistrate. On completion of investigation, the investigating officer PSI Shirsat i.e. P.W-8 filed charge sheet against the accused. The learned Trial Judge after conducting the trial, acquitted the respondent from the aforesaid charge.

3. The learned A.P.P. submits that, though there is some variance in both the dying declarations on record at Exhs. 34 and 21, but the same are consistent on material aspect that respondent set her wife on fire. He pointed out that the learned Trial Judge wrongly disbelieved the evidence of witnesses, to whom the deceased had given oral and written dying declarations.

4. On the contrary learned counsel Mr. G.R. Syed holding for Mr. Bagdiya, supported the impugned judgment and submitted that, the learned Trial Judge has taken the possible view, considering the short falls in the evidence and acquitted the respondent properly.

5. Heard rival submissions and also perused the impugned judgment along with record and proceedings of the original case.

6. On going through the material on record, along with the impugned judgment, it appears that the prosecution case is based upon two written dying declarations (Exhs. 34 and 21) and also oral dying declarations narrated by the deceased to her parental relatives. However, those written dying declarations are not consistent on material aspects. The learned Trial Judge has observed that as per dying declaration at Exh. 21, respondent had brought another woman at home at the time of incident i.e. 10.00 p.m. and when deceased Nasreen opposed for that, there was quarrel between them and therefore, respondent/accused set her ablaze. However, as per the story mentioned in dying declaration at Exh. 34, respondent had alone come to house and had meal and thereafter again quarrel took place between himself and deceased at 10 p.m., and then the burning incident took place. As such, presence of another woman as stated in Dying Declaration at Exh. 21 is completely missing in the Dying Declaration at Exh. 34.

7. The prosecution is claiming that both the dying declarations were recorded by PW-2 and PW-8 in presence of PW-3 Nanda Khandgale. However, there are major contradictions in the evidence of these three witnesses. PW-2

Ayub Khan claims that he recorded first dying declaration and then PW-8 recorded subsequent one. However, PW-8 is stating that he had in fact, recorded first dying declaration followed by dying declaration recorded by PW-2. As against this, the evidence of PW-3 Nanda indicates that she signed both the dying declarations simultaneously. Further, considering the evidence of these witness, in respect of their arrival at the hospital, it was doubtful that PW-2 and PW-8 had in fact recorded respective dying declarations at the time mentioned therein.

8. So far as oral dying declarations are concerned, there is also variance in the versions of parental family members of the deceased. Further, it has also come on record that all those family members were already present along with the deceased and there is no reference that either PW-2 or PW-8 had asked them to go out while recording dying declarations at Exhs. 34 and 21. Thus, considering this aspect, the observation of learned Trial Judge that there was possibility of tutoring, appears reasonable.

9. It is most important to note that soon after the incident, the deceased was brought to Ghati Hospital and from M.L.C

report issued from the Hospital and received by Chavani Police Station, there was M.L.C entry No. 213 of 2002, at 23.50 hours on the same day. The said M.L.C is at Exh. 36. On perusal of the same, it is clearly evident that deceased Nasreen had in fact given history to Chief Medical Officer of Ghati Hospital that she sustained burn injuries around 23.00 hours in her house, due to accidental fall of kerosene lamp on her person. It is further important to note that one P.S.I. Mr. Patil, from Chavani Police Station had also recorded the statement of deceased Nasreen immediately after her admission to the Ghat Hospital, wherein she had reiterated the aforesaid story of sustaining burn injuries by fall of kerosene lamp on her. The said statement is already marked as Exh. 37. As such, Exhs. 36 and 37 are clearly depicting different story at all than the story mentioned in subsequent dying declarations (Exhibits 34 and 21). Therefore, there was every possibility of changing the version by the deceased on the say of her close relatives.

10. Thus, the evidence on record clearly indicates that there were two views possible and therefore, the view chosen by the learned Trial Judge for acquitting the respondent was definitely a possible view. As such, the present appeal is

devoid of merit and needs no interference from us.

Accordingly, it stands dismissed.

(MEHROZ K. PATHAN)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

Ysk/