



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

CRIMINAL APPEAL NO.492 OF 2021

Dhanraj Malkappa Dhale
Age 47 years, Occu. Nil,
R/o Khade Galli, Murum,
Tq. Omerga, Dist. Osmanabad **...APPELLANT**

VERSUS

The State of Maharashtra
Through Police Station, Murum,
Tq. Omerga, Dist. Osmanabad
(Copy to be served on P.P. High Court
of Bombay, Bench at Aurangabad) **...RESPONDENT**

.....
Mr. Ravindra Nirmal, Advocate for appellant
Mrs. S.N. Deshmukh, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
PRAFULLA S. KHUBALKAR, JJ.**

Date of reserving judgment : 18th March, 2025

Date of pronouncing judgment : 2nd May, 2025

J U D G M E N T (PER : R.G. AVACHAT, J.) :

The challenge in this appeal is to the judgment and
order of conviction and consequential sentence, passed by the
Court of Additional Sessions, Omerga, District Osmanabad

(Trial Court), in Sessions Case, No.5/2017 on 29/1/2021. Vide impugned judgment and order, the appellant has been convicted for offence punishable under Sections 302 and 435 of the Indian Penal Code and, therefore, sentenced to suffer life imprisonment with fine of Rs.5000/- and sentence of 5 years rigorous imprisonment with fine of Rs.4000/- respectively, in addition to default stipulation. The substantive sentences were directed to run concurrently.

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

P.W.2 Shantabai (informant) is mother of the appellant. The appellant has 5 married sisters. His father – Malkappa (deceased) and his wife Shantabai would reside together in a house on an agricultural field at village Murum, Taluka Omerga, District Osmanabad. The appellant along with his wife, mother Shantabai and their two children, would reside separately, but in the house in which his parents would reside. The appellant was addict of alcohol. Deceased Malkappa had two acres of land. The appellant would insist his parents to lease out the said land and pay him money. He would beat up his parents. On the given day i.e. on 3/4/2017, he picked up a

quarrel with his parents. He even assaulted his mother (P.W.2 Shantabai). She, therefore, went to stay at the house of her neighbour. She stayed there overnight. Deceased Malkappa was little over 80 years of age. He was unable to walk or even stand on his own. He would require a walking stick. On the fateful night, Malkappa went to sleep on an iron cot in the front yard of his house. The cot was closed by haystack of one Mulla. The appellant poured kerosene on the person of his father, haystack and set a fire. His father was charred to death. His neighbours woke up on having seen the flames. They came out of their respective residences. They enquired with the appellant. The appellant, however, fled.

3. P.W.2 Shantabai was informed of the incident. She came to her residence and realised the appellant to have committed murder of Malkappa. She, therefore, lodged the First Information Report (F.I.R. Exh.30) with Murum Police Station.

4. A crime vide C.R. No.56/2017 was registered. The appellant was arrested. Crime scene panchanama was drawn. Autopsy was conducted on the spot. Pursuant to the disclosure statement made by the appellant, a kerosene can

and a match stick came to be seized. Statements of persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, the charge sheet was filed. The Trial Court framed the charge. The appellant pleaded not guilty. His defence was of false implication.

5. To bring home the charge, the prosecution examined 9 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the Trial Court passed the order impugned herein.

6. Heard. Learned Advocate for the appellant would submit that, the case is based on circumstantial evidence. He, therefore, adverted our attention to the parameters to be considered while appreciating the criminal case based on circumstantial evidence. A reference to the judgment of the Apex Court in case of **Sharad Birdichand Sarda Vs. State of Maharashtra (1984 CJ (SC) 262)** was made. The learned Advocate then took us through the evidence of P.W.2 Shantabai to submit that the F.I.R. is silent to record therein very many aspects deposed to by the informant. The appellant was not at his residence on the fateful night. It was an accidental fire. The learned Advocate would

further submit that the identity of the deceased was not established. He would further submit that, the neighbours were inimical with the appellant. Their evidence at the most indicate the appellant to have gone away. The mere fact that the appellant fled from the crime scene would in no way be a conclusive evidence to attribute him with the serious offence of murder. The learned Advocate, therefore, urged for allowing the appeal.

7. The learned A.P.P. would, on the other hand, reiterate the reasons given by the Trial Court and urged for dismissal of the appeal.

8. We have considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

9. The crime scene panchanama (Exh.44) indicate the fire incident took place in front of the house of P.W.2 Shantabai (informant) on the night of 3/4/2017. In the incident, her husband Malkappa was charred to death. Although the identity of the deceased was taken exception to by the learned Advocate during his submissions made

before us, it was specifically suggested in the cross-examination of P.W.2 Shantabai that Malkappa died due to burns suffered on account of the fodder (haystack) to have caught fire accidentally.

10. P.W.1 Dr. Satyajit conducted autopsy on the spot, since Malkappa had suffered 100% burns. The post mortem report is at Exh.26. The cause of death of Malkappa is shock due to thermal burns and deep burns. Although the Medical Officer was subjected to a searching cross-examination, we have no reason to disbelieve his evidence. More so, when the cause of death of Malkappa was admitted in view of suggestion referred to hereinabove, given to P.W.2 Shantabai.

11. P.W.2 Shantabai (informant) testified that, the appellant is her son. She has 5 married daughters. The appellant has a wife and two children. All of them were residing in one house, but separately. She further testified that, her husband did have two acres of agricultural land. The appellant was alcoholic. The appellant had even in the past beaten up her and Malkappa. He had even once attempted to set Malkappa on fire. The appellant would

insist them to pay money by leasing out the agricultural land.

12. P.W.2 Shantabai further testified that, on the fateful day, the appellant beat her up at 8.00 in the morning and drove her out of the house. She, therefore, took shelter at the house of her neighbour, Malu Patale. She even did not take meals that day. She slept overnight at the house of Malu. She further testified that, Malkappa went to sleep on iron cot in front yard of her house. There was a fodder/ haystack belonging to Mulla. It was closed by the cot. Her husband was little over 80 years of age. He was unable to walk and even stand without support. She further testified that, in the morning one Shiv Kumbhar visited Malu's house and informed her of the incident. She, therefore, came to her residence and noticed her husband to have been burnt. She enquired with her daughter-in-law, who told her that the appellant left the house after taking dinner. She was, however, informed by Siraj and Malang that they had seen the appellant igniting fire. She, therefore, went to the Police Station and lodged the report.

13. P.W.2 Shantabai was subjected to a searching cross-examination. Some omissions in her F.I.R. were sought to be brought on record. She testified that, she disclosed to the police that her daughter-in-law informed her that the appellant took dinner and left the house. The same is not in the F.I.R.

14. Both P.W.3 Malang and P.W.4 Siraj, neighbours of the appellant, testified that, having seen the flame, they came out of their respective houses. They have seen the appellant present at the scene. When both of them enquired with him, the appellant fled.

Both of them were, however, subjected to a searching cross-examination. They were confronted with police statements. Close scrutiny of their evidence, however, do not lead us to find them to have not been present to observe the presence of the appellant at the relevant time and on their enquiry, the appellant fled.

15. The evidence of rest of the witnesses is not of much importance.

16. In case of Sharad Sarda (supra), the Apex Court observed :

“152. A close analysis of the decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned must or should and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in (Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, where the following observations were made :

“certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

17. Here is a case, wherein the 75 year old mother of the appellant testified against her only son (appellant). We find no reason to disbelieve her testimony. According to her, the appellant was alcoholic. He would beat up her and her husband. The appellant had even attempted to set his father ablaze in the past, and on the morning of 2/4/2017, the appellant had beaten her up. She had, therefore, taken shelter at the residence of her neighbour. When the appellant's father was in flame, both P.W.3 Malang and P.W.4 Siraj, neighbours had come out of their respective homes. They had seen the appellant present there. They enquired with him. Instead of remaining at the crime scene or make efforts to save his father, he ran away. This speaks in volumes to corroborate the testimony of his mother. During the investigation, the appellant made a disclosure statement, pursuant to which a kerosene can was seized. Although the recovery may not be relevant under Section 27 of the Evidence Act, the conduct of the appellant in

making a disclosure statement and consequential recovery is admissible as his conduct. There is nothing to suggest the fire to have broke out accidentally. It is true that the burden of proof is on the prosecution. The evidence of the appellant's mother coupled with the evidence of prosecution witnesses, besides the conduct of the appellant in fleeing away from the spot and during investigation, making a disclosure statement lead us to infer that it is the appellant and none else who was responsible to the incident. We, therefore, find no reason to interfere with the order impugned herein. The appeal is thus liable to be dismissed. Hence the same is dismissed.

(PRAFULLA S. KHUBALKAR, J.)

(R.G. AVACHAT, J.)

fmp/-