

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 431 of 2016
WITH
INTERIM APPLICATION NO. 985 OF 2024
WITH
INTERIM APPLICATION NO. 2582 OF 2021
IN
CRIMINAL APPEAL NO. 431 OF 2016**

Ambadas Chandrakant Aaretta
Age 48 years,
R/at : H.No.152/3, Ganga Chowk,
Neelam Nagar-3, Solapur,
at present lodged at Kolhapur Central Prison,
Kalamba, Solapur Appellant

Vs.

The State of Maharashtra
(Through Senior Inspector of Police,
MIDC Police Station, Solapur
in C.R.No.30 of 2014) Respondent

Ms. Nasreen Ayubi for the Appellant.
Ms. Sharmila Kaushik, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL AND
SHYAM C. CHANDAK, JJ.**

DATED : 12th JUNE, 2025

JUDGMENT : (Per : Sarang V. Kotwal, J.):-

. The Appellant was the sole accused in Sessions Case No.168/2014 before the learned Sessions Judge, Solapur. The learned Judge vide his Judgment and Order dated 03/12/2014 convicted the

Appellant for commission of the offence punishable under Section 302 of the Indian Penal Code, 1860. He was sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine, he was directed to undergo further rigorous imprisonment for six months.

2) Heard Ms. Nasreen Ayubi, learned Counsel for the Appellant and Ms. Sharmila Kaushik, learned APP for the State.

3) The prosecution case is that the Appellant and his wife – Pushpa were married for about 16 years. The Appellant was a tailor by profession. However, he was not looking after his family. He used to disappear for months. He was addicted to gambling. He was neglecting his family. His wife Pushpa used to earn livelihood for their two daughters and a son. She used to roll bidis to earn their livelihood. The incident took place in February, 2014. A week prior to the incident, there used to be frequent quarrels between the Appellant and Pushpa. Their daughter complained about his behaviour to Pushpa's brother who met the Appellant and tried to convince him to behave properly. The Appellant behaved properly for few days but on 10/02/2014, in the night, at around 11:00 p.m., he again picked up a quarrel with Pushpa. He poured kerosene on her and set her on fire. Their children woke up. The Appellant did not make any attempt to douse the fire. He brought the children outside and latched the door. He prevented the children from helping Pushpa. He went away. The daughters then opened the door. Pushpa's brother was informed. He came to their

house. Pushpa was taken to the hospital. The police were informed. Arrangement was made to record a dying declaration. Naib Tahsildar came to the hospital. He made inquiries with the Medical Officer and obtained his endorsement on the dying declaration. He then recorded the dying declaration. At the end of the recording of the dying declaration, the Medical Officer again examined Pushpa and gave further endorsement that she was conscious and was in a position to give the dying declaration. After that, the Police Constable recorded her separate dying declaration after following the same procedure of getting her examined through a Doctor and obtaining the Doctor's endorsement at the beginning and at the end of the dying declaration. Pushpa succumbed to her burn injuries on the next day at about 05:00 p.m.

4) The Appellant was arrested on the same day. In the meantime, the FIR was lodged. The spot panchanama was conducted. The dead body was sent for Post Mortem examination and it was found that Pushpa had suffered 94% burn injuries. The clothes of the Appellant were seized. The Articles seized from the spot and clothes of the Appellant were sent for CA examination. The statements of the witnesses were recorded. After completing the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5) During trial, the prosecution examined 11 witnesses. The main witnesses were the daughter of the Appellant, the brother of the deceased,

the Doctor who had conducted the Post Mortem examination, another Doctor who had given endorsements on the two dying declarations, the Special Executive Magistrate (SEM) who had recorded the dying declaration and the Police Constable who had recorded the dying declaration.

6) The defence of the Appellant through the suggestions to the prosecution witnesses and in the examination under Section 313 of Cr.P.C., was of total denial.

7) The learned Judge considered these aspects. He considered the dying declarations in favour of the prosecution and based on the evidence of the prosecution witnesses, he reached the conclusion that the Appellant had committed the offence and that the prosecution has proved its case beyond reasonable doubt. Accordingly, he convicted and sentenced the Appellant as mentioned earlier.

8) The main evidence in this case is that of Shirisha Aaretala, the daughter of the Appellant and deceased. She was examined as PW-3. She has deposed that they were residing in a rented premises owned by PW-4 Balaji Madda. She was studying in the 9th standard. Pushpa was earning livelihood by taking on the work of rolling bidis. The Appellant was a tailor but he was not doing any work. Pushpa used to insist that the Appellant should do some work but he refused to pay any heed and instead he was constantly demanding money from Pushpa. He used to beat Pushpa. A

week prior to the incident on several occasions, there were quarrels between the Appellant and the deceased. PW-3 had informed Pushpa's brother – Balaji Nampelli (PW-5) who tried to convince the Appellant to behave properly. For about two days there were no further incidents.

9) On the date of the incident, the Appellant told Pushpa that she should cook food for him. PW-3 and her brother Rajesh had their meals and they went to sleep. In the night, PW-3 heard some noise and smelt kerosene. She noticed smoke in the house. She woke up and saw that her mother Pushpa who had caught fire. She attempted to pour water from a water pitcher on her mother. She has further deposed that the Appellant removed the water pitcher from her hand and did not allow PW-3 to extinguish the fire. He held PW-3 and her younger brother – Rajesh and took them out of the house. He then latched the house from outside and fled away from the spot. PW-3 then removed the latch and opened the door. She herself, Rajesh and the landlord extinguished the fire by pouring water on Pushpa. She has further deposed that Pushpa told her to call Pushpa's brother; who along with PW-3's grandmother came there. Pushpa's brother then took Pushpa to the hospital. Pushpa then succumbed to the injuries in the hospital.

In her cross-examination, PW-3 deposed that her statement was recorded by the police as per her version and at that time, her brother and her maternal uncle were present. The statement was not read over to her.

She did not know what was written in her statement. The rest of the cross-examination is in the nature of suggestions that she was deposing falsely. She stated in the cross-examination that her mother had come out in the verandah when PW-4 Balaji - the landlord and others had reached there. She further added that on that day, there was no quarrel between the Appellant and Pushpa. She had not gone to the hospital with her mother. After the Appellant had left after latching the house from outside, she had raised shouts. On hearing her shouts, the neighbours had gathered. She was crying at that time.

10) PW-4 Balaji Madda was the landlord. He was residing in the neighbouring room. He has deposed that the Appellant was not doing any work. He used to disappear quite frequently. He used to quarrel with his wife whenever he was in the house. On the date of the incident, at about 10:00 p.m., PW-4 smelt kerosene and burning of flesh. He went there. He noticed that Rajesh and PW-3 were trying to douse fire and Pushpa lay on the ground. PW-4 then went to the house of Pushpa's brother - Balaji Nampelli who brought the ambulance and took her to the hospital. On the next day, the police conducted spot panchanama. PW-4 acted as the pancha at that time. The spot panchanama was produced on record at Exhibit-14. There is hardly any cross-examination of this witness except a few suggestions which he has denied. The spot panchanama at Exhibit-14 shows the description of the spot. Certain articles were seized from the spot

viz. a plastic can having $\frac{1}{2}$ litre of kerosene, a matchbox, a burnt matchstick, burnt bedsheet and two burnt mats.

11) PW-5 Balaji Nampelli was the brother of the deceased Pushpa. He deposed that the Appellant and Pushpa were residing with their children. The Appellant was a tailor but he was not doing any work. Pushpa was earning livelihood by taking work of rolling bidis. She was looking after the children. She was maintaining them. The Appellant used to take money from Pushpa. He used to beat her if she refused. The Appellant was addicted to gambling. He used to demand money from Pushpa and used to beat her. Pushpa was hoping that some day he would mend his ways but there was no change in his behaviour. Two days prior to the incident, PW-3 Shirisha had complained to him about the Appellant harassing Pushpa. He tried to convince the Appellant to behave properly. On the date of the incident, when he returned home from duty, he was informed by his brother that Pushpa was set on fire by the Appellant. PW-5 then went to the spot. Pushpa was lying in the verandah. She had sustained burn injuries on her body. On his inquiry, Pushpa told him that she was set on fire by the Appellant. He immediately shifted Pushpa to the hospital in ambulance. On the next date, at about 03:00 to 04:00 p.m., Pushpa succumbed to her injuries.

In his cross-examination, he admitted that he had not told the police that the Appellant used to beat Pushpa. He knew that the Appellant

had borrowed money from others but he did not know the details. He denied the suggestion that those persons were harassing the Appellant and therefore, the Appellant used to go away to avoid them. He denied the suggestion that the dispute between the couple was because of the harassment by those persons.

12) PW-1 Laxmi Mangalpalli was a relative of the deceased and she was a pancha for Inquest Panchanama.

13) PW-2 Kolappa Vitkar was a pancha in whose presence the Appellant's clothes were seized and sealed on 11/02/2014. The panchanama was produced on record at Exhibit-11.

14) PW-7 Ramesh Hirekerur was the Executive Magistrate. He has deposed that on 11/02/2014, at about 02:00 a.m., he received a telephonic call from PHC-Shri. Tanksale attached to MIDC Police Station, Solapur requesting him to record the dying declaration of Pushpa. PW-7 has further deposed that he reached the hospital i.e., Chatrapati Rugnalaya, Solapur. He went to the burns ward. He met Dr. Asole and inquired with him whether the patient was in a position to speak and whether she was in a mental state to give statement before him. He asked the Police Constable to go out of the burns ward. Pushpa was then examined by the Doctor; who gave his endorsement on a piece of paper on which PW-7 started recording the dying declaration. He questioned Pushpa about her name, age, residence, etc. She answered all his questions clearly. She described the

incident. She told him that the Appellant was doing tailoring work in the factory of garments. Because of the grudge that he was holding due to past disputes, he poured kerosene on her when she was fast asleep and set her on fire.

15) PW-7 has further deposed that he read over the contents of her statement. She accepted that the contents of the statement were correct. He obtained her thumb impression on the statement and then put his own signature. The Doctor again certified that the patient was conscious all throughout the recording of the statement. The dying declaration recorded by him was produced on record at Exhibit-20.

There was hardly any cross-examination of this important witness. Only suggestions were put to him which is denied. The dying declaration is produced on record at Exhibit-20. The endorsements of the Doctor at the start of the dying declaration was at 02:30 a.m. on 11/02/2014 and it was mentioned that the patient was conscious and oriented and was in a state to give valid statement. It was signed by the said Dr. Asole. At the bottom of the dying declaration, there was another endorsement made at 03:00 a.m. by the same Doctor. It was mentioned that the patient was conscious and oriented throughout the statement. That endorsement was made at 03:00 a.m. on 11/02/2014. Both these endorsements were proved subsequently by Dr. Asole who was examined as PW-8 and were marked as Exhibits-22 and 23 respectively. The dying

declaration itself was marked at Exhibit-20. The recording started at 02:30 a.m. and was over at 02:55 a.m.

The dying declaration gives details of Pushpa's residence, full name and background that they were married prior to about 16 years. There is reference to her family background. As far as the incident is concerned, he stated that Pushpa told him that, at about 11:00 p.m., the Appellant had poured kerosene on Pushpa and had set her on fire. The fire was doused by her daughter Shirisha. She had stated that she had this complaint against her husband. He had set her on fire because he was holding grudge due to quarrels.

16) PW-8 Dr. Asole had given those endorsements. He had stated that the patient was brought to the hospital at 11:30 p.m. on 10/02/2014. Preliminary treatment was given to her and she was shifted to the burns ward. He himself made inquiry with Pushpa as to how she had sustained burn injuries. Pushpa told him that she was set on fire. The history given by her was recorded in the case papers by him. At 02:30 a.m., the SEM came to the hospital for recording the dying declaration and requested PW-8 to certify about the patient's mental and physical state. PW-8 has further stated that he went to the burns ward and made inquiries with Pushpa to ascertain whether she was in a fit mental and physical condition. He asked her about her name, age, address, etc. When he got proper answers, he was satisfied that she was in a fit state to give the statement and accordingly, he

gave his first endorsement on the dying declaration which was at Exhibit-22. He permitted the SEM to record the dying declaration. He has further deposed that he was present till the SEM completed recording of the dying declaration. After that, PW-8 again satisfied himself about the patient's fit state of mind and about her being fully conscious. Accordingly, he gave his second endorsement on that dying declaration. The endorsement was at Exhibit-23. After that, the Police Officers came to the hospital. In their presence also, he followed the same procedure of ascertaining mental and physical state and fitness of the patient and gave endorsements at the beginning and at the end of the dying declaration recorded by the Police Officer. Those endorsements were produced and marked as Exhibits-24 and 25.

In his cross-examination, he denied the suggestion that Pushpa's entire face was burnt and that she was not in a position to speak. He deposed that he had examined Pushpa's pulse and had taken appropriate note in the case papers. There was no entry about the pulse rate in the dying declaration. He had found that Pushpa was breathing normally. He denied the suggestion that he gave a false endorsement.

17) PW-9 PHC - Devidas Tanksale attached to MIDC Police Station, Solapur had recorded the second dying declaration which was treated as the FIR. He deposed that he received a telephonic call at 12:30 a.m. on 11/02/2014 from the Officer-in-charge of the Police Station Shri. Bhoi, who

told this witness to record Pushpa's statement. PW-9 then went to the hospital at about 01:15 a.m. He sought permission from the Doctor to record her statement. He made inquiries with the Doctor whether Pushpa was in a fit condition to give the statement. The Doctor told him that she was fit. In the meantime, he sent a message and called the SEM for recording the statement. He took the SEM for recording the statement. He waited outside when the SEM came out of the burns ward. He asked the SEM about the statement given by Pushpa. After that, he himself recorded Pushpa's statement in the presence of the Doctor who had certified that Pushpa was conscious and was in mentally fit state to give the statement. He gave the endorsements at the beginning and at the end of the dying declaration. Those endorsements are at Exhibits-24 and 25. The dying declaration is produced on record at Exhibit-27. This dying declaration was treated as the FIR. In this dying declaration, Pushpa had stated that she had got married with the Appellant about 16 years earlier and they had children from that marriage. He behaved properly for a year. He was not regular in his work. He used to disappear for months. She used to earn the livelihood by taking the work of rolling bidis. The Appellant was addicted to gambling. He had taken loan from many people to the tune of Rs.50,000/- which was repaid by Pushpa herself. Appellant used to abuse Pushpa and used to beat her. He never helped her financially in running the house. On 10/02/2014, he came back at about 11:00 p.m. She and their children were

sleeping. The Appellant woke her and started quarreling with her. He pushed her, brought the kerosene can and poured kerosene on her and then set her on fire. She raised shouts. When her daughter called her brother, he took her to the Civil Hospital. This dying declaration was recorded at 03:05 a.m.

18) PW-6 Dr. Santosh Bhoi had conducted the Post Mortem examination. He had found that Pushpa had suffered 94% burn injuries which were superficial to deep burns. The cause of death was mentioned as burn injuries. However, the Viscera was preserved for further analysis.

19) PW-10 Suresh Jadhav, Police Naik attached to MIDC Police Station, Solapur had carried the articles to FSL.

20) PW-11 PSI - Kundan Sonawane was the Investigating Officer. He had carried out the spot panchanama, seized the articles, arrested the Appellant, seized the Appellant's clothes and had recorded statements of various witnesses. He had obtained Post Mortem notes. He had filed the charge-sheet after completion of the investigation.

21) The CA report shows that there were traces of kerosene on the hair and skin of the deceased, in the kerosene can which was recovered and on the pieces of blanket, bedsheet, mats and significantly on the clothes of the Appellant.

This was the prosecution evidence.

22) Learned Counsel for the Appellant submitted that there was

discrepancy in the evidence of the witnesses i.e., Pushpa's daughter, the landlord and Pushpa's brother. There is discrepancy in the two dying declarations. She submitted that since Pushpa had suffered 94% burn injuries, it was not possible for her to have given any dying declaration. There was no pre-meditation. Therefore, the offence may not fall within the meaning of Section 300 of IPC. At the highest, it could be an offence punishable under Section 304(I) of IPC.

23) Learned APP, on the other hand, opposed these submissions. She supported the prosecution evidence. She submitted that there are dying declarations which are consistent. There are endorsements on both the dying declarations. There is evidence of the Doctor giving endorsements and therefore, the prosecution has sufficiently proved the case beyond reasonable doubt against the Appellant. She submitted that the Appellant's case would not fall within the Exception 4 to Section 300 of IPC because the Appellant had acted in a cruel and unusual manner. All the requisite intention and knowledge are quite clearly made out from the evidence. She, therefore, submitted that the Appeal be dismissed.

24) We have considered these submissions. The important evidence in this case is in the form of dying declarations and the direct evidence of the Appellant's daughter – PW-3. We do not find any material discrepancy in both the dying declarations. The story is consistent that, at about 10:00 p.m., the Appellant picked up a quarrel with the deceased Pushpa. He

poured kerosene on her and set her on fire. Both these dying declarations are consistent. There are endorsements of the concerned Doctor on both these dying declarations. Those endorsements are at the beginning and at the conclusion of both these dying declarations. The endorsements are clear enough. The SEM himself had put questions to the deceased and after being satisfied about her state, he had recorded the dying declaration. Therefore, we find that there was no irregularity in recording those two dying declarations. The endorsements thereon, are consistent and cogent.

25) There is oral dying declaration made by Pushpa to her own brother. Even there, the story is consistent.

26) Another important incriminating piece of evidence is in the form of evidence of the Appellant and the deceased's daughter PW-3 Shirisha. She has described the incident in detail. She was very much present in the house. She had seen that Pushpa had caught fire. The Appellant was present there. He had pulled PW-3 and her brother out of the house and then had latched the house from outside when Pushpa was inside the house and had caught fire. This clearly shows that the Appellant had prevented the children from helping Pushpa and saw to it that Pushpa suffered fatal burn injuries. His presence on the spot is further substantiated by the fact that traces of kerosene were found on his clothes. It is not his defence that he was not present in the house at the time of the incident. He had not tried to extinguish the fire. He had run away from the spot after

causing sufficient damage. PW-3's presence in the house was quite natural. There is no reason to disbelieve her evidence at all. PW-4 Balaji Madda and PW-5 Balaji Nampelli have also corroborated PW-3's presence at the spot. PW-5 and PW-3 had given the account of dispute between the deceased and the Appellant and as to how the Appellant used to constantly harass the deceased. He was addicted to gambling. He was not earning anything. He used to ask money from the deceased and used to harass her on all these counts. All this evidence is consistent and unerringly points to the guilt of the Appellant.

27) We are also not satisfied that the offence could be the one punishable under Section 304 Part I of IPC and not punishable under Section 302 of IPC. Exception 4 to Section 300 of IPC reads thus :-

“ Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

The important consideration is that, to take recourse to this benefit, the offender should not have acted in a cruel or unusual manner. In the present case, after setting Pushpa on fire, the Appellant took the children out of the house and had latched the door from outside when Pushpa was still burning inside. He prevented anybody else to help Pushpa. He had thrown kerosene on her and had set her on fire. All this conduct is

definitely cruel and he had taken undue advantage of the vulnerability of his own wife and children. Therefore, the Appellant cannot claim benefit of taking his case within Exception 4 to Section 300 of IPC.

28) As a result of the above discussion, we do not find any reason to interfere with the impugned Judgment and Order. The learned Judge has given proper reasons in convicting and sentencing the Appellant. As a result, the Appeal fails and is accordingly dismissed.

29) With the disposal of this Appeal, the connected Interim Applications are also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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