

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

CRIMINAL APPEAL NO.238 OF 2022

Ganesh Shivaji Gangurde
Versus
The State of Maharashtra
and another

.....Appellant

.....Respondents

.....
WITH
INTERIM APPLICATION NO.2393 OF 2024
IN
CRIMINAL APPEAL NO.238 OF 2022

.....
WITH
INTERIM APPLICATION NO.3770 OF 2024
IN
CRIMINAL APPEAL NO.238 OF 2022

Ms. Devyani Kulkarni, Advocate for the Appellant.
Mr. Vinit A. Kulkarni, APP for the Respondent-State.

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

DATE : 09th JULY, 2025

ORAL JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The Appellant has challenged the judgment and order dated 21.1.2017 passed by the Additional Sessions Judge, Niphad, District-Nashik in Sessions Case No.26/2015. The Appellant was convicted for commission of the offence punishable under Section 302 of IPC. He was sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/- and in default to suffer SI for six months. The Appellant was granted set off under Section 428 of Cr.P.C. from that date.

2. Heard Ms.Devyani Kulkarni, learned counsel for the Appellant and Mr. Vinit Kulkarni, learned APP for the Respondent-State.

3. The prosecution case is that the Appellant was married to his wife Anita. They were residing together with their ten month old daughter. In the night between 19th and 20th November, 2014, the Appellant came to the house. He was intoxicated. He began quarreling with his wife Anita. He poured kerosene on her and threw a kerosene lamp on her thereby setting her on fire. He then

went away from the spot. She raised shouts. The neighbours gathered there. They poured water on her. One of the neighbours was examined during the trial. In the morning, her uncle came to her village. He took her to a hospital at Niphad Municipal Corporation Hospital. The police were informed. The Naib Tahsildar went to the hospital and recorded her statement. He was followed by API Patil who also recorded her statement. She clearly implicated the Appellant for having committed that act. The FIR was registered vide C.R. No.142/2014 at Pimpalgaon police station under Section 307 of IPC on 20.11.2014 at about 7.30 p.m.. The investigation started. The Appellant's wife had suffered 45% burn injuries. She survived till 27.11.2014 and expired due to septicemia. The postmortem examination was conducted. After the investigation was over, the charge-sheet was filed and the case was committed to the Court of Session.

4. During the trial, the prosecution examined a neighbour who had poured water on the deceased, the Naib Tahsildar who had recorded the dying declaration, API Patil who had recorded another dying declaration, her relative who had taken her to the hospital, the medical officer who had conducted the postmortem

examination and the investigating officer.

5. The defence of the Appellant was of total denial. According to him, the deceased was not going for work. She set herself on fire and he was falsely implicated.

6. Learned Judge relied on the entire evidence led by the prosecution. He disbelieved the defence of the Appellant.

7. PW-2 Chandrabhaga Sahale was a neighbour. She deposed that the deceased and the Appellant were residing next to her house. The incident took place at about 12.30 a.m. in the midnight. PW-2 was sleeping in her house. She heard the shouts from the Appellant's house. She and others rushed there. She saw that Anita had suffered burn injuries. The other neighbours Nita and Sachin Kadale came there. Then all of them poured water on Anita and extinguished the fire. According to her, at that time, the Appellant was not there. She has further deposed that she made enquiry with Anita; who told her that, the Appellant had poured kerosene on her and had set her on fire. Anita's maternal uncle took Anita to the hospital.

In the cross-examination only the suggestions were put

to her that she was not telling the truth. She denied those suggestions. She also admitted that she had not called the police of Pimpalgaon police station after the incident.

8. PW-5 Shravan Rajole was Anita's relative. He deposed that he knew the Appellant and that Anita was his relative. He stated that he took Anita to the Rural Hospital, Niphad. The police had not recorded his statement. There was no cross-examination of this witness. In any case, there is hardly any dispute that Anita was taken to the hospital.

9. PW-1 Dr. Mahesh Khairkar had conducted the postmortem examination. The postmortem notes were produced on record at Exhibit-12. He deposed that he conducted the postmortem examination on 27.11.2014 at about 9.00 a.m.. He noticed the following four injuries:

- i. Burn injuries present all over the body except over left and right arm, abdomen, part of face and thigh perineum.
- ii. Superficial layer of burnt skin over reversely yellowish greenish base overall foul smelling pus and necrotic slough.
- iii. Blackening and charring of skin was present places.
- iv. Seining of hairs was present at burnt skin.

. The cause of death was mentioned as 'septicemia due to burn'. She has suffered 45% burn injuries.

In the cross-examination, he stated that septicemia meant infection in blood. More than 45% burns may be fatal.

10. PW-6 API Sachin Salunke was a police officer who had only filed the charge-sheet. The main investigation was conducted by API Gajendra Patil, who is examined as PW-4.

11. PW-3 Balkrishna Chavan, the Naib Tahsildar, is an important witness. He deposed that he received a letter from Pimpalgaon police station requesting him to record statement of a patient who had suffered the burn injuries. That letter is produced on record at Exhibit-20. As per that letter he went to Rural Hospital, Niphad and met the medical officer. He made enquiries with the Medical Officer whether the patient was able to give her statement. Accordingly the Medical Officer mentioned the remark on his letter. He then deposed that he went in the ward of the patient and came to know that the patient was able to give her statement. He asked the relatives of the patient and the police staff to go out of the ward. He disclosed his identity to the patient and

asked about making a statement regarding the incident. She was well versed with Marathi. He recorded her statement in Marathi. She told him that she was doing agriculture labour work. She herself, her husband and her ten months old daughter were residing together. On the date of incident, her husband came in the house under the influence of alcohol. He took dinner. He started assaulting her. He poured kerosene on her person and threw a kerosene lamp towards her. Her clothes caught fire. She sustained burn injuries. At that time only both of them were in the house. She remained in the house in the same condition. In the morning at about 7.00 a.m. to 7.30 a.m. she called her maternal uncle. He came there and took her to the Rural Hospital. She clearly stated that her husband i.e. the Appellant had set her on fire. Accordingly, PW-3 recorded the statement. The contents were read over to her. She accepted the contents as true and correct and then put her signature on that dying declaration. It is produced on record at Exhibit-21.

In the cross-examination, he deposed that the police had called him at about 11.30 a.m. to 12.00 p.m.. He reached the hospital at 1 p.m.. At that time, no police officer was present near

the patient. Then he was asked about the manner of writing the dying declaration because the answer to the main question i.e. the question No.4 regarding the incident shows that it was written in small font. He explained that he wanted to complete the dying declaration on the same page. He further stated that when he went there, the patient's relatives were present. He further stated that he himself made enquiries with the patient whether she was able to give her statement. The timing of recording of the statement was not mentioned in Exhibit-21. After the statement was over, he had not taken opinion of the Medical Officer. Exhibit-21 mentions the incident in the same manner as is narrated by PW-3.

12. PW-4 API Gajendra Patil is another important witness. He was attached to Pimpalgaon police station. He deposed that on 20.11.2014 the Head Constable informed him about Anita having been set on fire by her husband and that she was admitted to the Rural Hospital, Niphad. He made the arrangement for PW-3 to record the dying declaration. After that, he himself went to the Rural Hospital, Niphad. He obtained opinion of the Medical Officer who opined that Anita was able to give her statement. He himself ensured that she was able to give statement. PW-4 himself was

satisfied that she was able to give her statement. Then he recorded her statement as per her say. She stated that, on 19.11.2014, in the night, after taking dinner, the Appellant started quarreling. He was doubting her character. He poured kerosene on her and set her on fire with a kerosene lamp. She lay there in the burnt condition. In the morning, she informed her maternal uncle Shravan Rajole (PW-5) about the incident who took her to Niphad Rural Hospital for medical treatment. PW-4 recorded the statement and they registered C.R. No.142/2014. The statement is produced on record at Exhibit-28. The investigation commenced. He carried out the spot panchnama and seized the articles from the spot. He arrested the Appellant on 20.11.2014 at 7.30 p.m.. After that Anita was admitted at Civil Hospital at Nashik for further treatment. He recorded the statements of witnesses and sent the muddemal articles to C.A.. He produced the C.A. reports on record, which are on record of the trial. On 27.11.2014, his Police Station received information that Anita has succumbed to her injuries. Then Section 302 of IPC was added to the offence which was earlier registered under Section 307 of IPC.

In the cross-examination, he stated that he had received

the information at 2.00 p.m. in the police station on 20.11.2014. The dying declaration Exhibit-28 was written by his writer as per his dictation. He made enquiries with Anita asking preliminary questions. Due to burns, she was shouting. Apart from that, some suggestions were put to him that he was deposing falsely, which he denied. The C.A. reports are produced on record at Exhibit-25, which mentions presence of kerosene on the articles found at the spot. In any case the fact that the deceased had suffered injuries at that spot is undisputed.

. This, in short, is the evidence led by the prosecution.

13. Learned counsel for the Appellant made the following submissions :

- i. The prosecution has failed to prove the circumstances against the Appellant beyond reasonable doubt.
- ii. The dying declarations which are recorded by PW-3 and PW-4 do not inspire confidence. There is inconsistency in the dying declarations.
- iii. The conduct of PW-2 is unnatural. She is an unreliable

witness. Therefore, the oral dying declaration given to her is required to be ignored completely. She submitted that it is difficult to believe that PW-2 would leave the deceased in such a precarious condition when the incident had taken place at 12.00 a.m. in the midnight and she would have left her just like that till 7.00 a.m. in the morning. PW-2 had not taken any steps to call the police or any medical help or even to inform the relatives of the deceased. All this conduct is highly unnatural and, therefore, PW-2 is an unreliable witness.

- iv. The dying declaration recorded by PW-3 Balkrishna Chavan, the Naib Tahsildar, does not bear the endorsement of the doctor showing that the deceased was in a fit condition to give statement. Even the timing of the recording is not mentioned in the dying declaration. There is interpolation of the main incident below question no.4.
- v. Similarly the dying declaration recorded by PW-4 API Gajendra Patil does not inspire confidence.
- vi. There is no other independent evidence. The evidence of

PW-5 Shravan Rajole is very cryptic and does not explain the prosecution case.

- vii. There is no evidence regarding the strained relationship between the Appellant and the deceased. She, therefore, submitted that the prosecution has miserably failed to prove its case against the Appellant.
- viii. She further added that in such cases the burden does not shift on the accused and the prosecution cannot take aid of Section 106 of the Evidence Act. She relied on the judgment of the Hon'ble Supreme Court in the case of **Nagendra Sah Vs. State of Bihar**¹.

14. Learned APP, on the other hand, submitted that the evidence of PW-2 Chandrabhaga Sahale is believable. Her conduct was not unnatural. She had stated that when the incident took place the Appellant was not there. At the first instance immediately the deceased had narrated the story mentioning that the Appellant had set her on fire. All the three dying declarations i.e. a oral dying declaration made to PW-2 and the two dying declarations made to PW-3 and PW-4, are consistent. He submitted that the prosecution

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has proved the basic important facts showing that the offence was committed by the Appellant, beyond reasonable doubt. In that case, the burden definitely shifted on the Appellant to explain the situation in the night because it is an admitted fact that both of them were staying together and he was expected to be in the house when the incident had taken place.

15. We have considered these submissions. As is described hereinabove, the prosecution case mainly rests on the two written dying declarations and one oral dying declaration. PW-2 Chandrabhaga Sahale was a neighbour. According to the prosecution case she was the first person to whom the deceased had narrated the incident. Chandrabhaga and others had rushed to the spot, i.e. to house of the deceased and the Appellant, on hearing the shouts of the deceased. At that time the Appellant was not near the spot. The neighbours poured water on the deceased Anita and extinguished the fire. After that, immediately the deceased had narrated the incident to this witness. To that extent PW-2's evidence does not suffer from any infirmity. However, her conduct subsequent to that, does not appear to be natural. After this incident at around midnight, this witness and other witnesses

apparently have not taken any steps for informing any doctor and seeking any medical help. They had not informed the police. They had not informed any other person from their neighbourhood. All this conduct appears to be unnatural. The deceased was in that serious condition upto around 7.00 a.m. in the next morning. Even then the deceased herself had made a phone call to her uncle who came there and took her to the hospital. Considering this unnatural conduct, we do not feel it safe to rely on the evidence of PW-2. Therefore, the evidence of oral dying declaration also becomes unreliable.

16. However, there is strong evidence of written dying declarations recorded by PW-3 and PW-4. PW-3 has stated that first he approached the doctor and got his opinion that the deceased was in a fit condition to give her statement. Though there is no endorsement to that effect on the dying declaration at Exhibit-21, PW-3 himself put some preliminary questions and when he was convinced that she was in a condition to give statement, he recorded her dying declaration.

17. Similarly PW-4 API Gajendra Patil had also approached

the doctor first and had obtained an endorsement about the fitness of the patient to give her statement. There is an endorsement of the doctor at Exhibit-28 about the patient being conscious and oriented. More particularly PW-4 himself ensured that she was in a position to give her statement. He has stated that he came to know that she was able to give her statement and only after that he had recorded her statement. Thus, her capacity and ability to give statement is established by the prosecution. It is also to be noted that the patient survived for a few more days. The dying declarations were recorded on 20.11.2014 and she had succumbed to her injuries on 27.11.2014. Thus, the prosecution has established that the patient was in a position to give her statement and the two dying declarations were recorded as per her narration. Those dying declarations are at Exhibit-21 and Exhibit-28, out of which the second dying declaration was treated as the FIR by the police. Both these dying declarations are absolutely consistent and in both these dying declarations she had clearly narrated the incident of the Appellant pouring kerosene on her and setting her on fire. Therefore, the prosecution has successfully proved its case beyond reasonable doubt. In that background, the burden to give

explanation under Section 106 of the Evidence Act definitely shifted on the Appellant. In the case of **Nagendra Sah**, referred to by the learned counsel for the Appellant, following observations are important :

“22. Thus, Section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the Accused. When the Accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.”

18. In the present case, since the prosecution has succeeded in establishing the facts proving that the incident had occurred in the manner in which it was described by the deceased through her dying declarations, it was necessary for the Appellant to have explained the situation. The important facts are that the Appellant and the deceased were staying together and the incident occurred around midnight. There is absolutely no explanation as to what the Appellant was doing throughout the night. There is no explanation from him as to why he did not try to save her or to take her to the hospital or even why he was not present in the house. He has failed to discharge his burden.

19. Considering all these aspects, we are of the opinion that the prosecution has established its case beyond reasonable doubt. Therefore, we do not find any merit in the Appeal. The Appeal is accordingly dismissed. With dismissal of the Appeal, the connected Applications are also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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