

**(1996) 04 BOM CK 0056**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 163 of 1994**

Arvind Bhikaji Kambale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

**Date of Decision :** 22-04-1996

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313  
Evidence Act, 1872 — Section 3, 32, 45  
Penal Code, 1860 (IPC) — Section 302, 307

**Citation :** (1997) BomCR(Cri) 148

**Hon'ble Judges :** Vishnu Sahai, J; R.G. Vaidyanatha, J

**Bench :** Division Bench

**Advocate :** Suresh Kumbhar, for the Appellant; Jyoti Pawar, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

## Judgement

R.G. Vaidyanatha, J.—This is an appeal directed against order dated 7-1-1994, in Sessions Case No. 58 of 1993, on the file of the Additional Sessions Judge, Satara.

Heard Mr. Suresh Kumbhar for the appellant and Ms. Jyoti Pawar for the respondent.

2. The appellant was prosecuted for murdering his wife for an offence u/s 302 I.P.C. The prosecution case is that the deceased Prabhavati was married to the appellant about 16 years back. They had three children. Prabhavati was working in a hostel. The appellant had no job. There used to be frequent quarrels between the husband and wife. It appears that on 5-1-1993, the appellant went to the hostel where his wife was working and demanded her to pay money for drinks which she refused. Then, the appellant left this place by threatening his wife.

According to the prosecution, on the same day at about 8.30 or 9 p.m. the

accused called his wife and then poured kerosene on her and set fire to her. The children woke up after hearing the hue and cry of the mother. The landlord who is a neighbourer also rushed to the house. Then the landlord and the husband shifted the injured in an auto-rickshaw to the local Hospital at Satara. The doctor gave treatment and informed the local police. S.I. P.W. 11 Saravade rushed to the hospital and questioned the injured and recorded a statement which he has treated as an F.I.R. On that basis, he registered a case for an offence u/s 307 I.P.C. in Crime No. 3 of 1993. In the meanwhile, the S.I. had already sent information to the local Taluka Executive Magistrate. Accordingly, Srirang Shinde, P.W. 10 came to the hospital and then, after getting opinion of the doctor, recorded a formal dying declaration of the injured.

The injured was shifted to Sasoon Hospital at pune on 9-1-1993. Unfortunately, the injured Prabhavati succumbed to her injuries and died on 14-1-1993. The offence was changed to one u/s 302 I.P.C. The dead body was subjected to post-mortem examination. During the investigation, Many witnesses came to be examined and ultimately a charge-sheet was filed against the appellant.

3. The appellant's defence was one of denial so far as the alleged offence is concerned. His defence appears to be that it is a case of accidental burns.

12 witnesses were examined on behalf of the prosecution. Then statement of the accused was recorded u/s 313 Cr.P.C. He did not adduce any evidence. Then after hearing both the sides, the trial Judge accepted the prosecution case and held that the prosecution has successfully proved an offence u/s 302 I.P.C. against the appellant. Accordingly, the accused was convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs. 200/- or in default to suffer R.I. for 6 months more. Being aggrieved by the conviction and sentence the appellant has come up in appeal.

4. The learned Counsel for the appellant took us through the evidence and contended that the dying declarations are not proved and there are no direct eye witnesses to the occurrence and hence, appellant's conviction is not sustainable. On the other hand, the learned A.P.P. contended that the dying declaration both oral and written have been duly proved and according to law, there is no necessity for corroboration of the dying declarations and therefore submitted that there is no merit in the appeal.

5. The fact that Prabhavati died as a result of burn injuries has not been disputed. The only dispute is whether it was a homicidal one or an accidental one. We have the evidence of Dr. Dattatraya P.W. 12 who first examined the injured Prabhavati when she was brought to the hospital. His evidence shows that Prabhavati had sustained burn injuries and he gave her treatment.

Then, we have the evidence of Dr. Shrikant P.W. 7 who conducted the post mortem on the dead body of Prabhavati. The Doctor deposed before the Court that there were superficial burns all over the body to the extent of 50 to 60% of the body. In his opinion, the death was due to shock as a result of burn injuries.

He has prepared the post mortem notes as per Exhibit 19. The doctor further stated that in the ordinary course of nature, these burn injuries are sufficient to cause death. There is nothing in his cross-examination to doubt or disbelieve the doctor regarding the nature of the injuries or regarding opinion regarding cause of death.

6. Now, the next question is whether the prosecution has proved that the accused set fire to his wife at the time and place as mentioned in the charge. In the very nature of things, there cannot be any direct witness when the incident has taken place inside the house. Hence, the prosecution is relying upon oral and written dying declarations to show that the accused is the author of the crime.

As far as the oral dying declaration is concerned, 3-4 witnesses have turned hostile, who are P.W. 5 Vaishali Kamble and P.W. 6 Shailendra Kamble who are children of the deceased and the accused. Then, one more witness P.W. 9 Bharat Shinde has turned hostile. Then, brother of the deceased P.W. 8 Bajirao Ghodake has also turned hostile. All these witnesses have denied having made statements before the police regarding the oral dying declarations. It is well-settled that the statement made before the police during investigation cannot be treated as substantive evidence in Court. Since these witnesses have not supported the prosecution, while giving evidence on oath before the Court, the Court has to ignore the same.

7. Then, we have the evidence of Prabhakar examined as P.W. 4 who is the landlord of the accused. He has rushed to the house after hearing hue and cry on the night of 5-1-1993. He came to the portion of the house occupied by the accused and his wife at about 8.45 p.m. The accused opened the door. He entered the house. Then Prabhavati stated that her husband set fire to her. He found that Prabhavati had sustained burn injuries. Then, he also says that both he and accused shifted the injured to a hospital. There is nothing elucidated in his cross-examination to show that he has any enmity or ill will to give false evidence against the accused.

The only suggestion to him is that Prabhavati was not in a position to speak which he has denied. He has denied number of suggestions in the cross-examination. In our view, the evidence of this witness has not been shaken. His evidence proves the oral dying declaration made by Prabhavati setting fire to her.

Then in point of time, we come to the statement of the injured recorded by S.I. which is marked as Exhibit 28 and which has been treated as F.I.R. in this case. S.I. P.W. 11 Ramesh has told the Court that on getting the information from the hospital that a woman with burn injuries has been admitted, he immediately went to the hospital. He saw the injured Prabhavati in the burn ward. He took opinion of the doctor whether the injured was in a position to give a statement. On getting a positive answer, he questioned the injured and recorded the statement as per Exhibit 28. In the cross-examination, there is denial of suggestion that Prabhavati was not in a condition to give a statement.

On this point, we also have the evidence of Dr. Dattatraya P.W. 12 who has stated that when the S.I. questioned him, he certified that the injured was in a position to give a statement.

On perusal of Exhibit 28 shows that the injured has given a statement about the ill-treatment at the hands of the accused and also about the accused setting fire to her. In view of the same, death of the injured, this F.I.R. has to be treated as a dying declaration u/s 32 of the Evidence Act.

8. Now we come to the formal dying declaration recorded by the Executive Magistrate.

P.W. 12 Dr. Dattatraya has given evidence that he was present when the taluka Executive Magistrate recorded statement of the injured Prabhavati. He has certified that the patient was conscious and was in a fit condition to give a statement. He has made an endorsement to that effect on the statement recorded by the taluka Magistrate. He had also stated that no sedatives had been administered to the injured before the statement came to be recorded. In cross-examination, he has denied a suggestion that patient was not conscious and she was not in a fit condition to give a statement. Except some suggestions which are denied by the witness, nothing is elucidated in the cross-examination to shake the evidence of the doctor.

Then we come to the evidence of Taluka Executive Magistrate who is P.W. 10 Dinkarrao. He has deposed that on the requests of the police, he came to the hospital. He took opinion of the doctor on duty who examined the patient and told him that she is conscious and is in a fit condition to give a statement. Then, he recorded statement of Prabhavati as per her say. He has proved the statement of Prabhavati which is at Exhibit 24. It also bears the endorsement of the doctor. In the cross-examination, he has denied some suggestions. Nothing serious is elucidated in the cross-examination to doubt or disbelieve his evidence.

The witness is a responsible officer being a Taluka Executive Magistrate. His evidence clearly proves that he recorded statement of the injured as stated by her.

9. The dying declaration is Exhibit 24. A perusal of Exhibit 24 shows that Prabhavati stated that her husband poured kerosene on her and set fire to her. She has also spoken about the ill-treatment at the hands of her husband.

Now, therefore, we find that the prosecution has successfully proved one oral dying declaration and two written dying declarations. The A.P.P. Ms Pawar invited our attention to the leading case on the point reported in Khushal Rao Vs. The State of Bombay, , where it has been held that a dying declaration must be subjected to a very close scrutiny. Once a dying declaration crosses the test of scrutiny, then there is no question of further corroboration to the dying declaration. However, where the Court comes to the conclusion that a dying declaration is not free from doubt, then of course, corroboration should be

insisted.

In the present case on hand, we find that there is satisfactory evidence to prove that Prabhavati was conscious and was in a fit condition to make a statement which was attributed to her. In our view, the evidence clearly proves that the three dying declarations inspire confidence. The learned trial Judge had occasion to record evidence of witnesses and has analysed the evidence and has thought fit to accept the dying declaration. After re-appreciating the evidence, we also find that the dying declarations inspire confidence and may be safely accepted.

10. In view of the dying declarations which are found to be safe, it clearly proves that the accused is the author of the crime. The dying declarations clearly show that it was the accused and the accused alone, who poured kerosene on the person of his wife and set fire to her. Hence, in our view, evidence on record is sufficient to prove that the accused has committed the murder of his wife by pouring kerosene on her and setting fire to her. The accused is rightly convicted for an offence u/s 302 I.P.C. We do not find any reason to take a different view. Hence, the conviction of the appellant has to be confirmed.

As far as the sentence as awarded by the Sessions Judge is concerned, lessor sentence provided u/s 302 I.P.C. has been awarded and hence, no interference is called for.

11. In the result, the appeal fails and is hereby dismissed. The conviction and sentence of the appellant are hereby confirmed. The appellant who is stated to be in jail shall continue to remain in jail till he serves out his sentence.