

(2000) 09 BOM CK 0033
In the Bombay High Court
Case No : Criminal Appeal No. 49 of 1995

Dhanraj Raut and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 165
Evidence Act, 1872 — Section 3, 32, 45
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2001) 5 BomCR 432

Hon'ble Judges : S.G. Mahajan, J; R.K. Batta, J

Bench : Division Bench

Advocate : D.L. and Joyti Dharmadhikari, for the Appellant; S.G. Loney, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—The appellants were tried for the murder of Sindhubai w/o Ramesh Kelbaji Raut by setting her on fire u/s 302 read with 34 Indian Penal Code. The husband of Sindhubai viz. Ramesh Kelbaji Raut was also charge-sheeted along with the appellants for the said offence, but he was absconding and the trial proceeded against the appellants who have been convicted by the trial Court for the murder of Sindhubai u/s 302 read with 34 Indian Penal Code. The appellants have been sentenced to rigorous imprisonment for life and fine of Rs. 100/- each in default to further undergo rigorous imprisonment for one month. The conviction and sentence is challenged by the appellants in this appeal.

2. The prosecution had examined 11 witnesses in support of the charge. The prosecution case, in brief is that, deceased Sindhubai was married with absconding accused Ramesh about 3 years prior to the date of incident; absconding accused Ramesh used to harass and ill-treat Sindhubai; accused Laxmibai and Krishna used to instigate absconding accused Ramesh to leave

Sindhubai and that a few days prior to the incident in question, there was a quarrel between the absconding accused Ramesh, Laxmibai, Sukhdeo, Subhash and Krishna's wife so as to drive Sindhubai out of the house. Some days prior to the incident, deceased Sindhubai and her husband absconding accused Ramesh had gone to the parental house of Sindhubai and from there they returned along with Umesh P.W. 1 who is the younger brother of Sindhubai.

3. On the date of the incident, that is to say, on 17-3-1992 at about 8.30 a.m., there was a dispute between deceased Sindhubai and accused No. 4 Venubai and the said Venubai assaulted deceased Sindhubai by bamboo stick on her head. Venubai is the mother-in-law of deceased Sindhubai. Accused No. 4 Laxmibai is the wife of Krishna Raut who is the brother of absconding accused Ramesh. Accused Nos. 1 to 3 are sons of Laxmibai accused No. 4 and Krishna Raut. The prosecution case further is that accused Dhanraj, Subhash and Sukhdeo caught hold of Sindhubai, accused Laxmibai and Venubai brought kerosene oil in two bottles and then sprinkled kerosene oil on the person of Sindhubai and thereafter absconding accused Ramesh ignited the match stick and threw it on the person of deceased Sindhubai who caught fire. Accused No. 5 Venubai asked accused Ramesh to run away and accordingly he ran away and absconded. Umesh P.W. 1. is stated to have poured water on the person of Sindhubai and the said Sindhubai came to the courtyard and fell there. Umesh P.W. 1 went to call his parents. Deceased Sindhubai on her own went to the hospital and none of the family members of her absconding husband accompanied her to the hospital. In the hospital, police recorded the statement of Sindhubai. The police also sent a requisition to the Tahsildar to record dying declaration of Sindhubai which was accordingly recorded by the Executive Magistrate. The deceased is reported to have made oral dying declaration to her father P.W. 6 Damodhar. According to the prosecution, the incident was witnessed by three witnesses viz. Umesh P.W. 1, Mangala P.W. 2 and Kamla P.W. 5.

4. In nutshell, the prosecution evidence mainly consists of two dying declaration one recorded by the police and the other by the Executive Magistrate, oral dying declaration by deceased Sindhubai to her father P.W. 6 Damodhar and the testimony of three eye-witnesses P.W. 1 Umesh, P.W. 2 Mangala and P.W. 5 Kamla.

5. We have heard learned Advocate for the appellants and learned Additional Public Prosecutor at length and we shall deal with their submissions with reference to the evidence on record. The learned Advocate for the appellants has, to start with, urged before us that none of the two dying declarations can be relied upon, since the doctor had not certified the fitness of deceased Sindhubai for the purpose of giving statement before or after the recording of the said dying declarations. It was also pointed out that the evidence on record suggests that the two dying declarations were recorded simultaneously and in this connection our attention was drawn to the evidence of P.W. 4 Mahadeo, P.W. 7 Executive Magistrate (Naib Tahsildar) and P.S.I. P.W. 9 Sheshrao. It is true that

apparently on the face of it the contention of the learned Advocate for the appellants may appear to be correct, but the record makes it clear that the two dying declarations were recorded separately at different times. The learned Advocate for the appellants has argued that according to P.W. 9 Sheshrao, the dying declaration was recorded between 11 to 11.30 a.m. by him in the presence of P.W. 4 Mahadeo who in turn had stated that he got the information at about 12.30 noon. It was also pointed out by the learned Advocate for the appellants that according to P.W. 7 Executive Magistrate, he had recorded the dying declaration of Sindhubai between 11 a.m. to 11.45 a.m. The record at Ex. 57 which is a station diary entry shows that a memo was received from Public Health Centre by the Police Station at 11. a.m. informing the police that Sindhubai Ramesh Raut had been admitted in the hospital on account of sustaining burns. According to P.S.I. P.W. 9, he had reached P.H.C. within 10 minutes of the receipt of the said information from P.H.C., which according to him had been received at 11. a.m. Thereafter, P.S.I. P.W. 9 had recorded the statement of Sindhubai. According to him, he had recorded the statement of Sindhubai between 11 to 11.30 a.m. in the presence of Mahadeo P.W. 4 and Pandurang. It is no doubt true that Mahadeo has stated that he reached the hospital at 12.30 noon, but it has to be noted that P.W. 4. Mahadeo is an agricultural labourer and will not have much sense of time. Hence, the timing given by him may not be exact and the timing deposed to by P.S.I. has to be taken as correct. The record further shows that P.W. 7 Executive Magistrate had recorded dying declaration of Sindhubai at 11.45 a.m. The said dying declaration is Ex. 52. It is also pertinent to note at this stage that letter written by Police Station Officer, Warud to the Tahsildar for recording the dying declaration of Sindhubai was received by Tahsildar at 11.15 a.m. This position is crystal clear from letter Ex. 30 on record. According to the Executive Magistrate P.W. 7, Tahsildar had directed him to record the dying declaration which means that Executive Magistrate P.W. 7 must have reached the hospital after 11.30 a.m. As already pointed out, dying declaration Ex. 52 shows that the recording of the same started at 11. 45 a.m. There appears to be apparent error on the part of Executive Magistrate P.W. 7 when he has stated that he had recorded the statement of Sindhubai at 11 a.m. completed it at 11.45 a.m. whereas the record clearly shows that the dying declaration was recorded by him at 11.45 a.m. Thus, there is no force in the contention of the learned Advocate for the appellants that the two dying declarations were recorded simultaneously. In fact, the two have been recorded one after the other, the first one by the police and the second one by the Executive Magistrate P.W. 7.

6. Prosecution to start with relies upon the dying declaration recorded by the Executive Magistrate. In respect of this dying declaration as well as the dying declaration recorded by the police the attack launched by the Advocate for the appellants is that, before recording these statements and after completion of the said statements no endorsement has been obtained on the said statements of the Medical Officer showing that the deceased was in a fit state to make a

statement. In support of his submission, the learned Counsel for the appellants placed reliance on three judgments.

7. He has first relied on the judgment reported in *Maniram Vs. State of M.P.*, . In this case dying declaration was recorded by Sub Inspector in the nature of F.I.R. but no attestation from the doctor was taken to the effect whether patient was conscious or not. In addition, there was failure on the part of Sub Inspector to take signature or thumb impression of the deceased. There was no other evidence against the accused except dying declaration which was found to be of highly doubtful nature. It was in these circumstances that the accused was acquitted. As we shall demonstrate later on, with reference to the facts under consideration, this ruling is of no help to the case of the appellants.

8. The second ruling upon which much reliance has been placed by the learned Advocate for the appellants is *Paparambaka Rosamma and Others Vs. State of Andhra Pradesh*, . In this case before the Apex Court conviction was solely based upon the dying declaration and the doctor had merely certified that the deceased was conscious. The controversy before the Apex Court was whether the certificate of the doctor to the effect that the deceased was conscious was sufficient to establish that the deceased was in a fit mental condition to make a voluntary disclosure of the incident. It is in this context that the Apex Court held that consciousness and fitness of mind are distinct conditions and the doctor's certification regarding consciousness and also about fit state of mind of the deceased that existed before recording of dying declaration was regarded essential. This ruling also would be of no help to the appellants for the same reason as recorded in the previous paragraph.

9. The learned Advocate for the appellants thirdly relied upon a Division Bench judgment of this Court in *Manohar v. State of Maharashtra* 2000(2) Mh.L.J. 3 which lays down that doctor must state about the general physical condition of patient before stating whether patient was physically and mentally fit to give statement.

10. As against these rulings relied upon by the learned Advocate for the appellants, the learned Additional Public Prosecutor relied upon two judgments of the Apex Court in *Paras Yadav v. State of Bihar* 1999 S.C.C.(Cri.) 104 and *Koli Chunilal Savji v. State of Gujarat* 2000 S.C.C. (Cri) 432. In *Paras Yadav v. State of Bihar* (supra) statement of deceased was recorded by the Police Sub Inspector in a routine manner as a complaint and not as a dying declaration, but the said statement was taken as dying declaration after the death of the deceased. Though the deceased was found in a fit state of health to make statement and the witnesses had deposed that the deceased was in a fit state of health to make statement, yet no dying declaration was recorded by the Investigating Officer or by the doctor. It was held that in the circumstances lapse on the part of Investigating Officer should not be taken in favour of the accused and prosecution evidence should be examined de hors such omissions to find out whether the evidence is reliable or not.

11. In *Koli Chunilal Savji v. State of Gujarat (supra)*, the Apex Court had considered the absence of doctor's endorsement as to the mental fitness of deceased to make a declaration and its effect. The Apex Court held, that the requirement of such endorsement by Medical Officer is only a rule of prudence and the ultimate test is, whether the dying declaration can be held to be truthful and voluntarily given. It was further laid down that, it is no doubt true that before recording the dying declaration the officer concerned must find that the declarant was in a fit condition to make a statement in question. The Apex Court had quoted with approval the observations in *Ravi Chander and Others Vs. State of Punjab*, wherein it was held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. It was further pointed out in the said case that Executive Magistrate is a disinterested witness and is a responsible officer and there is no circumstance or material on record to suspect that the Executive Magistrate had any animus against the accused or was in any way interested in fabricating the dying declaration, and therefore, the question of genuineness of dying declaration recorded by the Executive Magistrate to be doubted does not arise.

12. In the light of the above position of law, we shall now examine whether the dying declaration recorded by the Executive Magistrate P.W. 7 can be said to be truthful and voluntary.

13. The Executive Magistrate P.W. 7 has stated that after reaching P.H.C. at Warud for the purpose of recording the dying declaration, he had met the doctor. He had asked the doctor whether Sindhubai was in a position to give statement. The doctor replied that she was in a position to give statement and after permission from the doctor he asked Sindhubai about the incident in question and she made dying declaration Ex. 52. After recording the said dying declaration he had shown the same to the doctor and obtained her signature on Ex. 52. During cross-examination, he stated that he had also found Sindhubai fit to record her statement and in his view she was fit to give statement. There is absolutely no challenge to the deposition of Executive Magistrate P.W. 7 in so far as recording of the statement and the making of statement Ex. 52 by deceased Sindhubai is concerned. He has ruled out the possibility of the parents of Sindhubai being present at the time of recording of her statement.

14. The prosecution had examined Dr. Anita Vanjari P.W. 8 who has stated that she had informed the police to arrange for dying declaration. She has further stated that she examined the patient and informed the officer to record her statement. The Naib Tahsildar had recorded the statement of patient Sindhubai and after recording her statement she had examined Sindhubai and the patient was under observation when she had examined her. She confirms during her cross-examination that Naib Tahsildar had asked her whether the patient Sindhubai was in a position to give statement and she informed him in the positive. She admitted that no certificate of fitness was recorded on the

statement but that she had signed the said statement. She is conscious of the fact that it is necessary to give a certificate about the mental and physical condition of the patient before and after the completion of the statement but according to her she has not recorded such certificate because the officer has not asked her to do so in writing.

15. It was suggested to her that she was not present at the time of recording of statement of Sindhubai, but she has denied the said suggestion. In other words, the doctor was present throughout the period during which the statement of Sindhubai was recorded. It may also be mentioned that the Executive Magistrate (P.W. 7) was also conscious, as can be seen from his cross-examination that prior to recording of statement of patient and after completion of the statement certificate has to be obtained from the doctor. The sum total of the evidence of P.Ws. 7 and 8 is that, both the Executive Magistrate and Doctor were fully conscious of the fact that the patient should be in a fit condition to record her statement. That is why Executive Magistrate P.W. 7 had made enquiries with the doctor about the fit condition of Sindhubai to give statement and doctor P.W. 7 after examining the patient had told him that Sindhubai was in a fit state of condition to give statement. She was present throughout during the recording of the dying declaration and she had also examined the patient after the dying declaration was recorded and she found her to be fit. In the light of this evidence, mere non-recording of the certificate by the doctor is of no consequence. The prosecution has been able to establish that Sindhubai was in a fit condition to make dying declaration. Both the Executive Magistrate P.W. 7 and the Doctor P.W. 8 are independent witnesses and there is no reason whatsoever to disbelieve them. During cross-examination of these witnesses nothing could be elicited which would make any dent in the dying declaration. We find that the dying declaration is truthful and voluntary and the same can be relied and acted upon as the same is trustworthy.

16. In addition to the dying declaration recorded by the Executive Magistrate, there is further evidence on record which lends corroboration to the said dying declaration.

P.S.I. P.W. 9 had received information from P.H.C. that Sindhubai had been admitted there with burns and after making station diary entry, P.S.I. P.W. 9 had proceeded to P.H.C., Warud. After reaching the hospital, he recorded the statement of Sindhubai in the presence of Mahadeo P.W. 4. On the basis of this statement, F.I.R. was registered. The learned Advocate for the appellants has urged before us that the F.I.R. is hit u/s 162 Code of Criminal Procedure. In this respect, learned Additional Public Prosecutor has argued that the report which was received from the hospital had not disclosed any cognizable offence as the report was only to the effect that Sindhubai had been admitted with burns and as such the said information which was recorded in the station diary cannot be treated as F.I.R. and it is only the statement of Sindhubai which was recorded by P.S.I. P.W. 9 has to be treated as F.I.R. There is considerable merit in the

submission of Additional P.P. and the information received from the hospital could not be treated as F.I.R. P.S.I. P.W. 9 had recorded the statement of Sindhubai which eventually on the death of Sindhubai can be treated as dying declaration. This statement was recorded in the presence of Mahadeo P.W. 4 who has stated that he had gone to the hospital when the police came there and made enquiries with deceased Sindhubai. Deceased Sindhubai informed the police that Dhanraj, Subhash and Sukhdeo caught hold of her and accused Laxmibai and Venubai sprinkled kerosene oil on her person and her husband Ramesh ignited the match stick and set fire to her. The police had obtained thumb impression of the deceased as well as the thumb impression of Mahadeorao P.W. 4. It was urged by the learned Advocate for the appellants that Mahadeorao P.W. 4 is an interested witness since he resides in front of the house of Sindhubai's father and his relations with Sindhubai's father are good. When a person is in hospital, normally relations, friends and well-wishers come to enquire about the person admitted in the hospital. Except for bare suggestions to this witness, the testimony of this witness as to what was stated by Sindhubai could not be shaken during the cross-examination. P.S.I. P.W. 9 also has stated that Sindhubai informed him that Dhanraj, Subhash and Sukhdeo caught hold of her, accused Laxmibai poured kerosene oil on her person and her husband Ramesh set fire on her. The deposition of P.S.I. P.W. 9 and Mahadeorao P.W. 4 lends further credence to the dying declaration recorded by the Executive Magistrate P.W. 7. The evidence of these witnesses does not suffer from any infirmity which would render the statement recorded by P.S.I. P.W. 9 as doubtful or unworthy of credence. In *Paras Yadav v. State of Bihar* (supra), the statement of deceased was recorded by the Police Sub Inspector in a routine manner as complaint and not as a dying declaration, but which was subsequently taken as dying declaration after the death of the deceased. The deceased was found to be in a fit state of health to make a statement and the evidence of witnesses did not suffer from any infirmity which would render the dying declaration doubtful or unworthy of credence. The Apex Court held that there were omissions and lapses on the part of Police Sub Inspector and the prosecution evidence was examined de hors such evidence to find out whether such evidence is reliable or not. Keeping in view the said observations of the Apex Court, we find that the testimony of P.W. 9 P.S.I. and P.W. 4 Mahadeorao is reliable and trustworthy, but for the certificates from the doctor. The evidence on record shows that the deceased was in a fit state to give statement since Doctor Anita - P.W. 8 has categorically stated that the deceased was fit to give statement when recording of deceased's statement by Executive Magistrate - P.W. 7 started at 11.45 a.m. The Statement of the deceased was recorded by P.S.I. - P.W. 9 just prior to that.

17. The learned Advocate for the appellants had urged that the dying declaration which was recorded by the Executive Magistrate was not read over and explained to deceased Sindhubai and in this respect reliance has been placed by him on a Division Bench judgment of the Aurangabad Bench of the Bombay High Court reported in *Manohar v. State of Maharashtra* 2000(2) Mh.L.J. 3. In the said

judgment, it has been observed that it is the duty of the prosecution to specifically bring on record that deceased had heard the statement recorded by the Executive Magistrate and she admitted it to be true and correct. It was further observed that this is not mere formality but an essential part while recording the dying declaration. Because the person who cannot be examined afterwards, must at least, at that time, should have confirmed correctness of the statement. The said observations would not be attracted in the case under consideration, since the Executive Magistrate P.W. 7 had categorically stated in his deposition before the Court that he had recorded the statement of Sindhubai as per her say and read over the same to her and that she had admitted it to be correct. This statement of Executive Magistrate was not challenged at all in the course of cross-examination for the appellants in this respect.

18. In addition, Sindhubai had disclosed to her father Damodhar P.W. 6 that in the morning her mother-in-law Venubai had assaulted her by bamboo stick. Accused Dhanraj, Subhash and Sukhdeo had caught hold of her and accused Laxmibai and Venubai brought kerosene oil in the bottle, sprinkled it on the person of Sindhubai and her husband ignited match stick and set her on fire. The learned Advocate for the appellants has submitted before us that the statement of Damodhar P.W. 6 was recorded only on 28-3-1992 and on account of delay in recording the statement by the Investigating Officer not much credence can be given to the testimony of P.W. 6 Damodhar. In this respect he has relied upon Gopal Anjayya Falmari and Others Vs. The State of Maharashtra, and Mohd. Iqbal M. Shaikh and Others Vs. The State of Maharashtra, . In Gopal Anjayya Falmari v. State of Maharashtra (supra), the learned Single Judge felt that P.W. 9 Manohar was a got up witness and delay in recording his statement was on account of the endeavour of the investigating agency to create a trumped up witness. The learned Single Judge had placed reliance on Ganesh Bhavan Patel and Another Vs. State of Maharashtra, , wherein it was observed by the Apex Court that the delay in recording the statement may assume importance if there are concomitant circumstances to suggest that the investigator was deliberately making time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced.

19. In Ranbir and Others Vs. State of Punjab, also the Apex Court has held that the question of delay in examining the witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got up witness to falsely support the prosecution case.

20. In Dr. Krishna Pal v. State of Uttar Pradesh, 1996 S.C.C. (Cri.) 249 the Apex Court has observed that even in cases where the delay in examining a witness is not explained by the prosecution, the statement of such witness cannot be discarded simply on that ground if otherwise the statement of the witness is found to be convincing and reliable.

21. In Ramesh Gavli Vs. State of Madhya Pradesh and Others, the Apex Court

has laid down that delay in examining witnesses by the police u/s 161 Criminal Procedure Code by itself cannot be a ground to discard their testimony and more so when in the cross-examination of the witness nothing tangible had been brought out to impeach their testimony.

22. The other ruling quoted by the learned Advocate for the appellants is Mohd. Iqbal M. Shaikh v. State of Maharashtra (supra) in which it was observed that merely because a witness was examined after a considerable period from the date of occurrence, his evidence need not be discarded on that ground alone, but at the same time while testing the credibility and assessing the intrinsic worth of such witnesses, the delay in their examination by the police has to be borne in mind and their evidence requires a stricter scrutiny before being accepted.

23. Damodhar P.W. 6 had reached the hospital after hearing about the incident from Umesh P.W. 1. As we have already pointed out that the challenge to the statement of Damodhar is on the ground that his statement was recorded after about 10 days of the incident and that he had not disclosed to anybody the fact which was narrated to him by Sindhubai except to the police. We have already referred to the law laid down by the Apex Court to the effect that merely because the statement of a witness was recorded with delay, the evidence of such witness cannot be discarded on that ground alone. It is natural that deceased Sindhubai would disclose the incident to her father who had come to the hospital. The matters relating to the relationship of husband and wife are somewhat complex and efforts are made so that the relationship could be maintained. Sindhubai had suffered injuries on 17-3-1992 and till her death it is natural that her father Damodhar P.W. 6 might be entertaining the hope that the relationship could still go on and for that reason he did not disclose the incident narrated by Sindhubai to him. However, ultimately after the death of Sindhubai he disclosed what was revealed to him by Sindhubai. This witness was cross-examined but nothing material could be elicited to shake the testimony of this witness about the disclosure of the details of the incident by Sindhubai to him. We do not find any reason to discard the testimony of Damodhar P.W. 6.

24. The prosecution had also examined three eye-witnesses, viz. Umesh P.W. 1, Mangala P.W. 2, and Kamla P.W. 3. According to Damodhar P.W. 6, his son Umesh P.W. 1 had accompanied the deceased and the absconding accused Ramesh to their house prior to the incident. There was no challenge to this testimony of Damodhar P.W. 6. Umesh P.W. 1 has stated that the incident occurred at about 8.30 A.M. A dispute was going on between his sister Sindhubai and accused Venubai. Thereafter accused Dhanraj, Subhash and Sukhdeo came there from their houses and caught hold of his sister. Then Laxmibai and Venubai brought kerosene oil in two bottles and sprinkled kerosene oil on the person of his sister. Thereafter absconding accused Ramesh husband of Sindhubai, lighted the match stick and threw it on the person of Sindhubai who caught fire. Venubai then asked Ramesh to run away and Ramesh accordingly ran away from the spot. The evidence on record is that he had absconded. After the incident, he went to call

his parents and went along with them in the hospital at Warud. He also deposed that on the previous night of the incident, the husband of his sister tried his sister to strangulate by neck. There was no challenge to this statement of Umesh. The statement of this witness was promptly recorded by the police on the date of incident itself. He has stated that his statement was recorded at his house and he was alone in his house when his statement was recorded and his parents had gone to Amravati in the hospital. During cross-examination, he gave further details of the incident. During the course of cross-examination, it was suggested to this witness that accused Laxmibai and accused Venubai had removed cork of the bottle and then sprinkled kerosene on the person of his sister and this suggestion put by the defence itself was accepted by Umesh P.W. 1. This witness was not confronted with any part of his police statement from which it follows that the statement of this witness in Court is consistent with his police statement which was promptly recorded on the date of the incident itself. When the statement of this witness was recorded he was alone in his house and the possibility of there being tutoring is ruled out. Much capital was tried to be made by the learned Advocate for the appellants that Umesh P.W. 1 has admitted that his parents had informed him as to what he had to depose. We have already pointed out that on behalf of the accused it was suggested by the defence itself that accused Laxmibai and accused Venubai had removed the cork of the bottle and then sprinkled kerosene on the person of his sister. This witness has given details of the incident and has stood the test of cross-examination. The trial Court was conscious that the testimony of child witness requires scrutiny. In our opinion, the evidence of Umesh P.W. 1 stands the test of scrutiny and his evidence has a ring of truth.

25. It was next argued that even though according to the prosecution, nephews of Sindhubai viz. Sandeep and Satish were residing with deceased Sindhubai they have not been examined. There is nothing on record to suggest that the said Sandeep and Satish were present at the time of incident and the mere fact that they were residing with Sindhubai is of no significance.

26. The testimony of the two other witnesses viz. Mangala P.W. 2 and Kamla P.W. 5 was attacked on the ground that even according to the prosecution they had reached late at the place of incident. In their deposition they have admitted the suggestion that when they reached near the house of Sindhubai, Sindhubai was lying in the courtyard. Sindhubai admittedly had come to the courtyard after she was set on fire. If that is so, then the possibility of P.W. 2 and P.W. 5 having seen the main incident would be much less. However, it is to be noted, that it was suggested to P.W. 5 Kamla by the defence that accused Subhash caught hold of Sindhubai from the front side by holding her shoulder, accused Dhanraj and Sukhdeo caught hold of Sindhubai from her back side and Sindhubai was raising cries for help which suggestion was admitted by this witness. Thus, the defence itself admits that accused Subhash had caught hold of Sindhubai, accused Dhanraj and Sukhdeo had also caught hold of her and Sindhubai was raising cries. Even if the testimony of these witnesses viz. P.W. 2 Mangala and P.W. 5

Kamla is excluded, the prosecution in our opinion, has been able to establish with cogent evidence the prosecution case viz. participation of all the appellants in the murder of Sindhubai.

27. The learned Advocate for the appellants had pointed out that the clothes of appellants were not seized by the police and if the incident as described by the prosecution had taken place, obviously kerosene would have fallen on the clothes of the appellants. If the Investigating Officer had attached the clothes and if kerosene was found on them it would have certainly strengthened the prosecution case, but in the circumstances and evidence on record, the omission does not weaken the prosecution case. The delay in the arrest of the accused is also of not much consequence which was agitated by the learned Advocate for the appellants on the basis of the judgment of the Apex Court in *Sadaram Kalar Vs. The State of Madhya Pradesh*, . The decision rendered by the Apex Court is on the facts of that case and no general proposition of law has been laid down. The delay in arresting the accused by itself would be of not much significance.

28. The appellants had made attempt to put up false defence in this case. In the said attempt accused Laxmibai had lodged a complaint with the police that Sindhubai poured kerosene on her body and set herself on fire. Even a suggestion was given to the Investigating Officer P.W. 11 that during the investigation he had come to know through the statement of neighbours that Sindhubai had committed suicide. The husband of Sindhubai - accused Ramesh had absconded after the incident. The false defence provides additional link to the prosecution case. There is no material whatsoever on record to support the suicide theory which was advanced by the accused.

29. For the aforesaid reasons we find that the conviction and sentence of the appellants by impugned judgment dated 18-10-1994 in Sessions Case No. 183/92 is well founded. No interference whatsoever is called for in this appeal. The appeal is accordingly dismissed. Appellants Nos. 1 to 3 are stated to be in jail undergoing their sentence. Appellants Nos. 4 and 5 who are stated to be on bail shall surrender before the Sessions Court, Amravati within a period of 15 days from to-day. In case appellants Nos. 4 and 5 do not surrender during this period, the Sessions Judge, Amravati shall take coercive steps against the appellants Nos. 4 and 5 including issuing of arrest warrants and cancellation of surety bonds.