

**(2004) 02 BOM CK 0093**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 115 of 2000**

|                                  |            |
|----------------------------------|------------|
| Raosaheb Fulcand Jadhav @ Gosavi | APPELLANT  |
| Vs                               |            |
| State of Maharashtra             | RESPONDENT |

**Date of Decision :** 09-02-2004

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302

**Citation :** (2004) 2 DMC 142

**Hon'ble Judges :** V.G. Palshikar, J;P.V. Kakade, J

**Bench :** Division Bench

**Advocate :** P.D. Dalvi, for the Appellant; V.R. Bhosle, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.V. Kakade, J.—The appellant has preferred this appeal against the judgment and order dated 20.1.2000 passed by the Addl. Sessions Judge, Kolhapur in Sessions Case No. 35 of 1997 wherein the appellant was convicted for Commission of offence of murder of his wife and was sentenced to suffer life imprisonment and also to pay fine of Rs. 2,000/- in default to undergo S.I. for six months.

2. We heard Mr. Dalvi, the learned Counsel for the appellant and Mrs. Bhosale, the learned A.P.P. for the State at length.

3. The facts giving rise to the present case, in brief, are thus--

4. The accused is charged that on 13.8.1996 at about 10.00 p.m. in his house situated in Ward No. 10, Gavali Lane, in Kolhapur committed murder of his wife Rekha by pouring kerosene on her person and by setting her on fire. The parental house of deceased Rekha was located at Jaysinghpur. She along with her husband was staying at Ichalkaranji. The accused as well as the deceased belonged to "GOSAVI" community. They used to maintain themselves by collecting rags and scrap material by moving in the area in the town. After the

marriage the accused treated wife Rekha normally for some time, however, subsequently he became addicted to liquor and used to harass and assault Rekha under the influence of alcohol and also started asking to bring money from her parents. Rekha was also earning something by collecting rags. Her marriage was performed about three years prior to the incident. On 13.8.1996 at about 3.00 p.m. the accused had come to the house under the influence of drink and when Rekha asked why he had consumed liquor and had not given any amount to her for household expenses, he started to quarrel and beating her. At about 10.00 p.m. Rekha gave milk to her son and slept in the house with him. Accused also slept there. Immediately he got up and took can of kerosene and poured kerosene on her person. He then threw burning kerosene lamp on Rekha's person, due to which she immediately caught fire. When she raised shouts the persons residing in the neighbour gathered there and poured water on her person to extinguish fire. The accused was also present on the spot itself. Somebody from the crowd came with rickshaw and thereafter Rekha was moved to K.E.M. Hospital at Ichalkaranji. P.W. 3 Dr. Hoskalle was on duty. He immediately admitted the patient in the hospital and started treatment. He recorded history from Rekha. She told doctor that her husband poured kerosene on her person and set her on fire. The history recorded by doctor accordingly is part of the case papers of the hospital. At that time there was nobody from parental home of Rekha near her. Dr. Hoskalle gave intimation to the police station. P.W. 5 Koli was Station Officer at Shivajinagar Police Station and at about 10.30 p.m. Head Constable attached to Gaonbhag Police Station informed him that Rekha was admitted in K.E.M. Hospital. Therefore, A.S.I. Koli effected necessary entry in the police station and sent P.W. 7 Koli to K.E.M. Hospital with direction to record the dying declaration of burnt Rekha. Head Constable immediately went to the hospital and with due permission and under supervision of Dr. Hoskalle recorded the dying declaration of Rekha, wherein she implicated the accused to be culprit, who had set her on fire. After the statement was recorded it was sent to the police station, on which basis the offence was registered against the accused u/s 307 of the Indian Penal Code at C.R. No. 114 of 1996. The dying declaration itself was treated as F.I.R.

5. P.W. 8 Shaikh took over the investigation. In which course he visited the scene of incident and prepared Panchnama and also seized incriminating articles from the spot. He also recorded statement of various witnesses. The accused was present in the town and was arrested under the Panchnama. In the meantime Rekha was moved from K.E.M. Hospital to Sangli Civil Hospital due to her deteriorating condition. At Sangli Hospital P.W. 6 Dr. Gurav also recorded the case history given by Rekha, in which Rekha again implicated her husband to be the person who set her on fire. The incriminating articles seized in the course of investigation were sent to Chemical Analyser for examination, whose report was received and is part of the record. Rekha succumbed to the injuries in Civil Hospital, Sangli on 18.8.1996, and, therefore, the offence against the accused was converted into Section 302 of the Indian Penal Code. The inquest

Panchnama was prepared and body was sent for post-mortem examination. The post-mortem report was received in due course and after completion of investigation the charge-sheet was sent to the Court of law. The learned Magistrate committed the case to the Court of Sessions.

6. The learned Sessions Judge framed the charge against the accused for the impugned offence of murder of his wife, to which he pleaded not guilty. The defence of the accused is that of total denial of any criminal liability. The prosecution led its evidence at length, in which course one oral dying declaration and three written dying declarations formed foundation of the prosecution case and on that basis the learned trial Judge concluded that the said offence was sufficient to bring home the guilt and consequently convicted and sentenced the accused in aforesaid manner.

Hence the appeal.

7. As is evident from the record, the prosecution case is based on one oral dying declaration and three written dying declarations including two dying declarations in the form of recording of case history by the Medical Officers at K.E.M. Hospital at Ichalkaranji as well as Sangli Civil Hospital and one dying declaration recorded by the police which was ultimately treated as F.I.R. in this case.

The evidence of Dr. Hoskalle shows that he was on duty at K.E.M. Hospital at Ichalkaranji on 13.8.1996 and patient Rekha was brought in the hospital by her distant father-in-law. On examination, he found that she had suffered 95% burns. He noted the injuries on the person and started treatment to her. He made inquiry with the patient as to how she sustained the injuries and Rekha informed him that her husband had poured kerosene on her person and set her on fire with the help of kerosene lamp. This fact was recorded on the case papers. The case papers Exh. 23 are proved by said Medical Officer, which aspect also shows that the case history of homicidal burn was recorded by the said Medical Officer at 10.15 p.m. i.e., immediately on admission of Rekha in the hospital. Dr. Hoskalle stated that the patient was well oriented and conscious when she gave the information to him, which was duly recorded on case papers.

Thereafter, as per the version of Dr. Hoskalle, he informed the police station and police arrived on the scene and sought his permission to record the statement of Rekha. He examined the patient and it was found that she was fully conscious and oriented and was in a position to give statement and, therefore, police were permitted to record the statement. Dr. Hoskalle is said to have been present through the process of recording dying declaration and observed the patient during the course of recording the statement. After recording the dying declaration it was read over to Rekha and thereof he made endorsement to the effect that the statement was taken in front of him and the patient was fully conscious at that time. The dying declaration document Exh. 25, which was also treated as FIR, clearly implicates the accused to be the author of the crime. Rekha has stated that on the day of incident accused had started quarrels and at

about 10.00 p.m. she gave milk to her son and slept in the house. Accused also slept in the house and suddenly he got up and took kerosene can and poured kerosene on her from that can and thereafter threw kerosene lamp on her person and as a result of which she caught fire and got injuries. She raised shouts. The persons residing in the neighbour gathered there and poured water on her to extinguish fire. The accused was also present on the spot itself. Somebody from the crowd came with rickshaw and thereafter she was moved to K.E.M. Hospital at Ichalkaranji. The document of dying declaration also shows that the Medical Officer Dr. Hoskalle has made endorsement thereon which was at about 11.15 p.m. The evidence of P.W. 7 Head Constable Koli supports the version of Dr. Hoskalle. RW. 7 is the person who has recorded the statement. He has stated that after reaching the hospital he contacted Dr. Hoskalle and in his presence the statement came to be recorded. At which time the patient was fully conscious and was in a position to give statement. Thereafter he obtained thumb impression of the patient on the statement and also obtained endorsement from Dr. Hoskalle on it. He further stated that the patient was examined by Dr. Hoskalle before recording the statement. According to him, this is the statement which was again forwarded to the police station on which basis the offence was registered against the accused.

8. Therefore, the case history recorded by Dr. Hoskalle at 10.15 p.m. i.e., immediately after the admission of the patient in the hospital, coupled with dying declaration Exh. 25 recorded by P.W. 7 Koli, corroborated by the evidence of Dr. Hoskalle himself, are the pieces of evidence which are found to be not only reliable but also trustworthy and sufficient to inspire confidence. The Medical Officers as well as the Head Constable have absolutely no animosity against the accused person as to why they should falsely implicate the accused while recording the case history as well as dying declarations of Rekha. It is also significant to note that during the course of recording the case history and dying declarations, none from parental home of Rekha were present, nor there was any opportunity for anybody to tutor Rekha to implicate the accused falsely. Mr. Dalvi the learned Counsel for the appellant submitted that it" was unlikely that Rekha was only suffered burn injuries when her child was nearby and, therefore, the entire prosecution story should be held to be unreliable. However, it is obvious that Rekha's child did not suffer burn injuries because it was natural that Rekha must have pushed the child away so as to save him from burn injuries. Moreover the contents of dying declaration itself shows that kerosene was poured over Rekha from the can by the accused and thereafter kerosene lamp was thrown at her, therefore, it can safely be presumed that when Rekha realised what was about to happen, she must have pushed her child away and, therefore, the child did not suffer any burn injuries. Be as it may, the fact remains that the evidence of hospital case history at K.E.M. Hospital, coupled with dying declaration at Exh. 25 are sufficient evidence to bring home the guilt.

9. It is also evident that when Rekha's condition deteriorated she was taken to Sangli Civil Hospital. P.W. 6 Dr. Gurav has stated that on 13.8.1996 Rekha was

referred to his hospital and he examined her and he recorded the history wherein she told him that it was her husband who had poured kerosene upon her and set her on fire and as a result of which she suffered burn injuries. Dr. Gurav accordingly, made record of the said history given by Rekha. The said case papers are duly proved by Dr. Gurav. According to him, she was conscious when she was admitted in the hospital and was able to talk. Actually, according to Dr. Gurav, Rekha was conscious till 7.00 p.m. on 16.8.1996 and was under medical treatment. This position further strengthens the prosecution case about involvement of the accused in the sad episode.

10. P.W. 4 Bedi Gosavi, is mother of deceased Rekha. She in her evidence had spelt out as to how Rekha suffered harassment at the hands of the accused. She had further stated that when she came to know about the incident from one Hariba her relative, she hurriedly went to Ichalkaranji along with her husband and others and enquired with Rekha as to how it had happened and Rekha disclosed to her that it was accused who had poured kerosene upon her and set her on fire with the help of kerosene lamp. Bedi has further stated that Rekha also told her that she should look after her son instead of giving in the custody of the accused. This oral dying declaration given to mother of Rekha also corroborates the earlier evidence of the prosecution on record, which leaves no doubt to say that the accused is to be the author of the crime.

11. Mr. Dalvi, the learned Counsel for the appellant sought to bring to our notice the various so-called discrepancies in the evidence, and particularly in dying declarations. However, on critical perusal of the entire evidence on record we totally satisfied that the prosecution evidence is sufficient to establish the guilt of the accused beyond reasonable doubt and, therefore, the reasoning adopted and findings recorded by the trial Judge need to be confirmed.

In the result the appeal stands dismissed.