

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 15 OF 2002.

Basvaraj Patil,  
Central Jail, Aguada.

... Appellant.

Versus

State.

... Respondent.

Mr. J. Godinho, Advocate under Legal Aid Scheme for the  
Appellant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent  
State.

Coram: D.G. DESHPANDE AND  
P.V. HARDAS, JJ.

Date: 25th February 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The appellant/accused, who was convicted by the learned Additional Sessions Judge, South Goa, Margao, for an offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay fine of Rs. 10,000/-, in default to undergo simple imprisonment for six months, by Judgment, dated 4th March 2002, in Sessions Case No. 41 of 2000, has filed the present appeal challenging the aforesaid conviction and sentence.

2. The facts giving rise to the present appeal are as hereunder:-

P.W.12 P.S.I. Harish Madkaikar was working as Police Sub Inspector and Officer in Charge of the Quepem

Police Station. On 5th June 2000, P.W.1 Flora Fernandes, wife of Sebastiao Fernandes, presented the complaint at Exhibit P.W.1/A. In the complaint it was stated by P.W.1 Flora that the deceased, one Suvarna, wife of Basavraj Patil (wife of the appellant/accused) had made an oral dying declaration to her that the appellant/accused had poured kerosene and had set her on fire. P.W.12 P.S.I. Madkaikar then went to the scene of offence and drew the scene of offence panchanama, which is at Exhibit P.W.6/A. From the scene of offence a white plastic can, match box and a cotton towel were seized. The rough sketch map of the scene of offence is at Exhibit P.W.6/B. The accused was arrested vide arrest panchanama at Exhibit P.W.3/A in the presence of P.W.3 Selvyn Goes. The clothes of the accused came to be attached. Deceased Suvarna was initially referred to the PHC, Kakoda and from there to Hospicio Hospital. At the PHC Kakoda, Curchorem, the deceased was examined by P.W.4 Dr. Antonio Colaco, who found that she had 60% burns and had sustained burns on the face, neck, upper chest, upper back and both the upper limbs. the certificate is at Exhibit P.W.4/A. From the PHC she was shifted to Hospicio Hospital and thereafter to the Goa Medical College, Bambolim. In the evening of the same day P.W.8 Agnelo Pereira, who was working as Deputy Collector and SDM at Quepem was requested to record the dying declaration of Suvarna. P.W.12 P.S.I. Madkaikar

had issued a request letter to the Ward In-Charge of the Goa Medical College, Bambolim. The said letter is at Exhibit P.W.12/B. The Ward In-Charge had endorsed on the said letter Exhibit P.W.12/B that the patient is fit to give dying declaration. The said endorsement is dated 5th June 2000 and was made at 9.15 p.m.. P.W.8 Agnelo had reached the Goa Medical College at 9.00 p.m. and had met the Senior Resident Doctor Vardhan Bhobe, who had, accordingly, certified that Suvarna was in a position to give her statement, which endorsement is on Exhibit P.W.12/B. P.W.8 Agnelo then in the presence of Doctor Bhobe recorded the dying declaration of the deceased, which is at Exhibit P.W.8/A. In the dying declaration Suvarna had stated that she was married to the appellant/accused about 20 years back. They have two children, namely, a daughter aged 13 years called Madhavi and a son aged 7 years called Santosh. She has further stated that the appellant/accused was not supporting the family and used to spend money on alcohol and other things due to which there used to be frequent quarrels. About two months back the appellant/accused had disappeared and had gone to his native place at Dharwad. It is also stated in the dying declaration that the appellant/accused has another spouse named Nagava and a son named Krishna. Suvarna has further stated in the dying declaration that on 1st June 2000 the appellant/accused came to her sister's place at

Karwar and had told her that he had come to Xeldem Quepem on Wednesday 31st May 2000. In respect of the incident Suvarna has stated that on 5th June 2000 the appellant/accused again picked up a quarrel with her and he had brought 2 kgs. of rice, 2 lts. of kerosene and fish worth Rs. 10/-. The appellant/accused did not permit her to cook. Her children had gone to school and she was alone in the house. At about 3.30 p.m. the appellant/accused entered the house, woke her up and again started quarrelling. He lifted the plastic can and poured some kerosene on her and was shouting that he would finish her. The appellant/accused then trust a match box in her hands and insisted that she set herself on fire, which she refused. The appellant/accused then angrily snatched the match box and set her ablaze. She shouted for help and ran outside and rolled herself on the ground where there was a puddle of water.

3. On 10th June 2000, P.W.12 P.S.I. Madkaikar received information from the Goa Medical College that Suvarna had expired. P.W.12 P.S.I. Madkaikar then drew the inquest panchanama at Exhibit P.W.7/A in the presence of P.W.7 Harischandra Diukar. Vide Exhibit P.W.9/C request was made for postmortem examination of Suvarna. The postmortem on the dead body of Suvarna was conducted by P.W.9 Dr. E.J. Rodrigues, who found that the approximate area of burns was 65%. P.W.9 Dr.

Rodrigues opined that the death was due to septicemia and shock consequent to infected flame burns, which were fatal in ordinary course of nature. The postmortem report is at Exhibit P.W.9/A. The blood group of deceased Suvarna was identified as A Rh positive vide report at Exhibit P.W.9/B.

4. On 14th June 2000 P.W.12 P.S.I. Madkaikar requested the Assistant Engineer of P.W.D. to draw a map of the scene of offence. The letter is at Exhibit P.W.11/A. The map is at Exhibit P.W.11/B, which was drawn by P.W.11 Augusto Pereira, Junior Engineer, working in the P.W.D.. The property which had been attached included the pink colour maxi, which the deceased was wearing, the clothes of the accused and the articles seized from the scene of offence were sent to the Central Forensic Science Laboratory for examination. The report of the Central Forensic Science Laboratory is at Exhibit P.W.12/D. Residues of kerosene were detected on the clothes of the accused and the pink colour maxi stated to have been worn by the deceased Suvarna. Kerosene was also detected in the plastic can and the towel which was seized. After completion of the investigation a charge-sheet came to be filed against the appellant/accused.

5. On committal of the case to the Court of

Sessions, the IIIrd Additional Sessions Judge, Margao, vide Exhibit 8, framed a charge against the appellant/accused for an offence punishable under Section 302 of the Indian Penal Code on the allegation that on 5th June 2000 at 3.30 p.m. the appellant/accused had committed the murder of his wife Suvarna Patil by pouring kerosene on her body and setting her ablaze due to which she had received flame burn injuries and had succumbed to the injuries on 10th June 2000, at Goa Medical College. The appellant/accused denied the charge and claimed to be tried. The prosecution in support of its case had examined 12 witnesses. The defence of the appellant/accused was of denial. The learned trial Judge, on appreciation of the evidence, accepted the oral dying declaration made to P.W.1 Flora and the dying declaration, at Exhibit P.W.8/A, recorded by P.W.8 Agnelo and convicted and sentenced the appellant/accused as aforestated.

6. P.W.1 Flora states that she had rented one room to the accused and the other room to one Suresh. On 5th June 2000, at about 4.00 p.m., one Anasta Fernandes had come to her and told her that Suvarna was burnt. She came to the rented house of the accused and saw that Suvarna was burnt. Suvarna told her that she should be taken to a doctor. P.W.1 Flora asked Suvarna

as to what had happened and Suvarna had informed her that accused had poured kerosene on her and set her on fire with the help of match box. P.W.1 Flora further stated that Suvarna was wearing a pink nightie. P.W.1 Flora then went to the Police Station and lodged a complaint, which is at Exhibit P.W.1/A. After the arrival of the police, Suvarna was taken to the hospital. P.W.1 Flora has further stated that the accused and Suvarna were always fighting with each other and accused was harassing Suvarna. Because of the frequent quarrels, P.W.1 Flora had asked the accused to vacate the rented quarters. In the cross-examination P.W.1 Flora has admitted that when Suvarna told her about the incident one Antonette and one Greta were present. She has also admitted that she had not seen the assault but it was told to her. She also stated that she had not seen the accused harassing his wife. She has admitted that she did not state to the police that Suvarna was shivering due to the burn injuries and, therefore, P.W.1 flora had requested that they should go to the doctor, which was refused by Suvarna and she had directed P.W.1 Flora to go to the police station first. She denied the suggestion that she had not gone to the house of the accused on an earlier day with a request to vacate the quarters. She has also admitted that at the time of the incident, the children were not in the house. She has also denied the suggestion that Suvarna

did not inform her that the accused had poured kerosene and had set her on fire.

7. At the close of the cross-examination P.W.1 Flora emerges as a truthful witness. Her assertion in the examination-in-chief that the relations between Suvarna and the accused were strained and that Suvarna had informed her that the accused had set her ablaze are not at all shaken in the cross-examination. There is nothing in the cross-examination to affect the veracity of the testimony of P.W.1 Flora.

8. P.W.8 Agnelo has recorded the dying declaration of Suvarna, which is at Exhibit P.W.8/A. In the cross-examination he has denied the suggestion that Doctor Bhobe had not certified that Suvarna was in a fit position to give her statement. He has also denied the suggestion that Suvarna had given the statement under the influence of the Police. In fact, he adds that Suvarna was giving the statement spontaneously. He has further stated that Suvarna was speaking in Konkani and he had translated the Konkani version into English. He has denied the statement that Suvarna was not in a fit condition to give her statement.

9. Again in respect of P.W.8 Agnelo, we have to record that the cross-examination does not discredit the



version of this witness.

10. The prosecution has examined P.W.2 Sapnesh Naik Dessai, who had sold one litre of kerosene to the accused on 5th June 2000 at about 12 noon. He has identified the said plastic container, which is M.O.4. In the cross-examination he has admitted that the police recorded his statement on 7th June 2000, that is, two days after the incident.

11. The prosecution has also examined P.W.5 Sureka Parwar, who was acquainted with the accused. She states on the earlier day she had seen the accused and Suvarna quarrelling with each other. She also speaks about the fact that Suvarna was telling the people, who gathered around her on 5th June 2000, that the accused had poured kerosene and had set her ablaze with a match box. She has identified the pink colour nightie worn by Suvarna as M.O.2. In the cross-examination she has reiterated that she heard Suvarna telling the people that she was burnt by her husband. Her statement also came to be recorded on the next day of the incident, as per the answer given in the cross-examination.

12. Mr. Godinho, the learned counsel, who has been appointed as a lawyer for the appellant/accused and who has very ably argued on behalf of the

appellant/accused, has urged before us that there is no evidence that deceased Suvarna was in a fit mental state to give her statement when the statement was recorded by P.W.8 Agnelo. According to him, the Medical Officer has not been examined.

13. Mr. Sardessai, the learned Public Prosecutor appearing on behalf of the respondent State, has submitted before us that there is an endorsement of the Medical Officer, at Exhibit P.W.12/D, that deceased Suvarna was in a fit condition to give her statement. The same Medical Officer was also present during the recording of the dying declaration, at Exhibit P.W.8/A. Thus, according to the learned Public Prosecutor, there is no substance whatsoever in the contention advanced on behalf of the appellant/accused.

14. With the assistance of the learned counsel for the parties, we have examined the evidence in detail. It is a fact that the Medical Officer has not been examined. However, there is an endorsement, on Exhibit P.W.12/D, made by the Medical Officer, that Suvarna was in a fit condition to give her statement. P.W.8 Agnelo, who has recorded the dying declaration, has stated that the Medical Officer was present during the recording of the statement. He has also stated that the deceased Suvarna was giving her statement spontaneously. No

material has been brought out in the cross-examination to even remotely suggest that deceased Suvarna was not in a fit mental condition to give her statement. From the circumstances on record, we are convinced that deceased Suvarna was in a fit mental condition to give her statement, despite non-examination of the Medical Officer. Apart from this, oral dying declaration had been made to P.W.1 Flora, who had immediately lodged the complaint, at Exhibit P.W.1/A. The version of oral dying declaration made by Suvarna to P.W.1 Flora is corroborated by the contents of the report at Exhibit P.W.1/A lodged by P.W.1 Flora. P.W.5 Sureka has also heard the deceased saying that she had been burnt by her husband. The statements of P.W.1 Flora and P.W.5 Sureka that deceased had stated that she had been burnt by the appellant/accused have not been shaken at all in the cross-examination. Thus, we find that there is strong and reliable evidence to hold that the appellant/accused had poured kerosene on Suvarna and had set her ablaze. According to us, the learned trial Court was right in holding that the guilt of the appellant/accused had been proved beyond reasonable doubt. We, thus, see no merit in the present appeal and the same is liable to be dismissed.

15. Criminal Appeal is, accordingly, dismissed and the conviction and sentence of the appellant/accused

passed by the learned trial Court are, hereby,  
confirmed.

(D.G. DESHPANDE)  
JUDGE.

(P.V. HARDAS)  
JUDGE.

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