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NATHA SHANKAR MAHAJAN
v.
STATE OF MAHARASHTRA
(Criminal Appeal No. 970 of 2006)

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APRIL 28, 2011

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

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Penal Code, 1860: s.302 – Conviction based on dying declaration – In the dying declaration, the victim had alleged that her husband-accused suspecting her chastity, beat her up and set her ablaze by pouring kerosene over her body – Court below relied upon the dying declaration and convicted the husband u/s.302 – On appeal, held: There was endorsement made by the doctor on the statement of victim to the effect that she was conscious and in a position to make statement – The doctor had very categorically stated in his evidence that the victim was in a position to understand herself and was in a position to give statement – Dying declaration was recorded by the Magistrate – The evidence of the doctor and the Magistrate was not at all shaken in the cross-examination – The victim also made an oral dying declaration to her father – The courts below did not err in relying upon the dying declaration and convicting the accused – Evidence – Dying declaration.

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The prosecution case was that the relations between the accused-husband and his wife were not cordial inasmuch as he suspected her chastity. The accused thrashed his wife whole night and the next morning, set her ablaze. Her screams were heard by the neighbour (PW2) who came there and sent the information to her father that the deceased was burnt. The father came and took the deceased to the hospital. After reaching the hospital, she was treated by the doctor (PW5) who also

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arranged for recording her dying declaration. The dying declaration was recorded by the Executive Magistrate (PW3). PW5 also made an endorsement on the dying declaration that the deceased was conscious and was in a position to give a statement. Both the courts below relied on the dying declaration and convicted the accused under Section 302 IPC. The instant appeal was filed challenging the order of conviction.

Dismissing the appeal, the Court

HELD: The evidence of PWs 3 and 5 was not shaken in the cross-examination at all. PW5 had very categorically stated in his evidence that the deceased was in a position to understand herself and was in a position to give statement. Therefore, even if the doctor stated that he was not attentive as to what exactly was told to the PW3, would not matter particularly in view of statement of PW-3 who recorded the dying declaration of the deceased that he recorded the same as per the version of the deceased. In the dying declaration, the deceased had clearly alleged that she was beaten by her husband on account of the suspicion that he had about her chastity and ultimately, he poured kerosene over her body and set her ablaze. She also gave the name of the person with whom she was allegedly in tow. There was one more circumstance which was not adverted to, i.e., the oral dying declaration made by the deceased to her father. As soon as he reached the house of the deceased, he asked her as to how she was burnt. There was no cross-examination of the witness on this point who was examined as PW6. Both the courts below committed no error in relying upon the dying declaration and convicting the accused. [Paras 4-6] [961-C-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 970 of 2006.

A From the Judgment & Order dated 24.06.2004 of the High Court of Judicature of Bombay Bench at Aurangabad in Criminal Appeal No. 176 of 1996.

Ranjan Mukherjee, S. Bhowmick for the Appellant.

B Shankar Chillarge (for Asha Gopalan Nair) for the Respondent.

The Judgment of the Court was delivered by

C **SIRPURKAR, J.** 1. This appeal is against the concurrent judgments of the Sessions Court as also the High Court whereby the accused stands convicted for the offence punishable under Section 302 IPC on the allegation that he committed the murder of his wife Sakhubai by pouring kerosene on her person and setting her ablaze.

D 2. As per the prosecution case, the relations between the accused and his wife were not cordial inasmuch as the husband suspected the chastity of his wife and believed that she had illicit relations with one Babulal Parsharam Mahajan. E It is alleged that on the fateful day i.e. 19.3.1985, the accused thrashed the deceased whole night and ultimately, in the morning, he set her ablaze. Her screams were heard by her neighbour PW2 Bhagwan Mali who came and sent a information to her father Babu Lal Daga Mahajan that the deceased was burnt. It is the father who had taken the F deceased to the hospital. After reaching the hospital, she was treated by PW5 Dr. Dagadu Pawar who also arranged for recording her dying declaration. It is the prosecution case that her dying declaration was recorded by PW3 Bhalerao Bhimsing G Salunke, an Executive Magistrate. PW5 Dr. Dagadu Pawar also made an endorsement on the dying declaration that the deceased was conscious and was in a position to give a statement. Both the courts below have relied on the dying declaration.

H 3. Mr. Ranjan Mukherjee, learned counsel appearing for

the accused argued that the sole basis of the conviction in this case is the aforesaid dying declaration and, therefore, if there is any suspicion about this dying declaration, the benefit must go to the accused. That is a correct proposition of law. However, it is also the settled position that where the dying declaration is believable, credit worthy and appeals to the court, the same can be made the sole basis of the conviction. That appears to be the case here. A B

4. We have gone through the dying declaration ourselves and also seen the evidence of PWs 3 and 5 whose evidence was not shaken in the cross-examination at all. PW5 Dr. Dagadu Pawar has very categorically said in his evidence that the deceased was in a position to understand herself and was in a position to give statement. Therefore, even if the doctor says that he was not attentive as to what exactly was told to the PW3, would not matter particularly in view of statement of PW3 who recorded the dying declaration of the deceased that he recorded the same as per the version of the deceased. In the dying declaration, the deceased had clearly alleged that she was beaten by her husband on account of the suspicion that he had about her chastity and ultimately, he poured kerosene over her body and set her ablaze. She has also given the name of the person with whom she was allegedly in tow. C D E

5. There is one more circumstance which has not been adverted to, i.e., the oral dying declaration made by the deceased to her father. As soon as, he reached the house of the deceased, he asked her as to how she was burnt. There is no cross-examination of this witness on this point who was examined as PW6. F

6. Under the circumstances, we feel that both the courts below have committed no error in relying upon the dying declaration and convicting the accused. Therefore, this appeal fails and is dismissed. G

D.G.

Appeal dismissed. H