

PETITIONER:
NATHU

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT: 04/08/1999

BENCH:
G.T.Nanavati, S.N.Phukan

JUDGMENT:

The appellant has been convicted under Section 302 IPC by the Court of Sessions Judge, Nagpur, for causing death of his wife, by pouring kerosene on her person and setting her ablaze. The High Court of Bombay has confirmed his conviction. Hence, this appeal by Special leave.

The conviction of the appellant is based upon dying declarations. Apart from the three oral dying declarations made before PW-1, Ambar, PW-2 Suresh and PW-5 Mandabai, the prosecution had relied upon two written dying declarations. The first such dying declaration was recorded by P.S.I. Mashirkar PW-6 who was then attached to Kotwali police station. After receiving a telephone message at the Police Station at about 3 p.m. that one woman had sustained burn injuries in Hiwarl Nagar Zopadpatti near the Power House he rushed to that place and recorded the statement (Ex. 34) of Vandana. He then went back to the Police station and registered an offence on the basis thereof.

Vandana was then taken to the Medical College Hospital. Police Inspector Dhamankar who was also attached to Kotwali Police Station and was on patrolling duty received a wireless message regarding Vandana having received burn injuries at about 4.00 p.m. He first went to the place of the incident but on coming to know that Vandana was taken to the Medical College Hospital he went to the hospital. As her condition was serious and as the Doctor in charge certified that she was fit enough to make a statement he recorded her statement (Ex.23) in the presence of two panch witnesses, PW-1 Ambar and Janardan Vithobaji Bhanarkar. It was recorded at about 5 p.m. Police Inspector Dhamankar was not then aware of the fact that an offence was already registered at the Police Station.

The evidence of Mashirkar and Dhamankar has remained unshaken and it clearly establishes that Vandana was in a fit condition to make these statements. There is no reason to doubt that whatever she had stated was taken down by them correctly.

PW-1 Ambar was a neighbour of the accused. He has deposed that on the date of the incident about 2.00 p.m. he heard shouts coming from the hut of the accused, he rushed to that place and saw Vandana lying near their hut in a burnt condition. She had told him that it was the accused who had set her ablaze. He has also deposed about his going

with Vandana to the Hospital. There in his presence Police Inspector Dhamankar had recorded her

statement and he had also put his signature thereon. He categorically stated that. Vandana was conscious and was in a position to make the statement. Dr. Deshpande's evidence supports him on this point. Only suggestion made to this witness was that he had not really gone to the hospital and his signature was obtained on a blank piece of paper at the Police Station. This suggestion was denied by the witness. We do not find any material on record to create any doubt regarding reliability of this witness, he being a neighbour, has no reason to falsely involve the accused or be a party to a wrong statement made by Vandana. The trial Court and the High Court after appreciating his evidence and that of the other two witnesses have found it trustworthy. We see no reason to differ from this finding recorded by the Courts below. In view of the evidence of three witnesses and the two dying declarations, it clearly stands established that the appellant had poured kerosene over the body of Vandana and had set her ablaze because she had protested when the appellant started beating their son. We find no substance in this appeal and it is accordingly dismissed.