

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.97 OF 2022

Samsher Abulesh Devang (say),
Age 39 years, Occ.Watchman,
originally r/o.Baheria, Post Gaur,
Rajpur Nagar, Palka, Ward No.9,
Near Bihar Boundary, Dist.Rohatak,
State Tarai, Nepahl
now r/o.Plot No.36,
Aditi Construction Building Dhruv Nagar,
Nashik
(Presently in Nashik Road Central Prison, Nashik)
versus
The State of Maharashtra

Appellant

Respondent

Mr.Sushil A.Inamdar for Appellant.

Mr.Ajay S.Patil, APP, for Respondent.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

Date of Reserving the Judgment : 21st April 2026

Date of Pronouncing the Judgment : 15th July 2026

JUDGMENT – (Aarti Sathe, J.) :-

1. The Appellant-Accused who stands convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC), and sentenced to suffer life imprisonment and pay a fine of Rs. 1000/-, and in default of payment of the fine has to undergo rigorous imprisonment for a further period of 3 months by the Learned Sessions Judge, Nashik, by judgment and order dated

20th March 2021 (“**impugned judgment and order**”) in Sessions Case No. 449 of 2018, by this appeal, questions the correctness of his conviction and sentence.

FACTS

2. Case of the Prosecution :

(i) The Appellant-Accused was residing with his wife Ayesha Khatun Samsher Shah in a tin-shed, suspected her fidelity. On 12th June 2018, in the backdrop of such suspicion, the Appellant-Accused allegedly poured kerosene on his wife Ayesha (hereinafter referred to as “**Deceased**”) and set her on fire, resulting in her death. A nearby witness-(PW-5) noticed the incident and informed the police.

(ii) Upon receiving such information, the police reached the spot, found the Deceased in a burnt condition, and initiated investigation. The Appellant-Accused, who had also sustained burn injuries, was later taken into custody. The investigation included spot panchanama, inquest, post-mortem, seizure of articles, and recording of statements of witnesses. After completion of investigation, charge-sheet was filed.

(iii) Since the case was triable exclusively by the Court of Sessions, Nashik, it was committed thereto. In the trial, the prosecution examined 12 witnesses and relied on documentary evidence, the Appellant-Accused came to be convicted as aforesaid. Aggrieved by the said conviction and sentence, the Appellant-Accused has preferred the present appeal.

We proceed to examine the evidence of the prosecution witnesses.

3. The Prosecution Witness No.1 (PW-1) Police Sub Inspector **Mr. Dattatray Lahanu Mali**, attached to Gangapur Police Station, Nashik, who recorded the Khabar (Exhibit-21), conducted inquiry, inquest panchanama and also prepared the spot panchanama (Exhibit-25) and seized the articles, was on 11th June 2018, on duty in the vicinity of Gangapur Police Station in the night. He was on a round at about 9.00 p.m. with the other staff. At about 00.45 hours, he received information from the control room that in Shivaji Nagar from PW-5 Satish Prakash Devare, at a construction site, there was an incident of fire in the house of the Appellant-Accused (hereinafter referred to as the 'site'). PW-1 was accordingly instructed to reach the site immediately. On reaching the site, he saw the room of the Appellant-Accused on fire. He has deposed that the door of the house was in open condition and when he went inside, he came across a body of a female in burning condition. PW-1 with the help of staff and neighbours tried to douse the fire by using water. After making inquiries with the persons gathered at the site, he learnt that the female who was found in burning condition resided with her husband i.e. the Appellant-Accused, who was a watchman at the construction site and had recently shifted to the site, two months back. The PW-1 further deposed that the Appellant-Accused had fled from the site and returned after half an hour. Both the palms of his hands and the right eyebrow were noticed in burnt condition along with other parts of the body. PW-1 deposed that Appellant-Accused was evading answers to his questions. The Appellant-Accused was thereafter immediately sent to the Civil Hospital, Nashik for treatment. Also,

'Khabar' given by PW-5 Satish Devare was noted and on the basis of said Khabar, information was noted under Section 74 of Criminal Procedure Code, 1973 (Cr.P.C) at Gangapur Police Station and accidental death (for short "AD") was registered vide no. 44 of 2018. PW-1 further deposed that the order of inquiry of AD shown to him on the date of deposition is the same and is marked as (Exhibit-22). Thereafter, an inquest panchanama was drawn in the presence of panchas which was also shown to PW-1 during his deposition, the contents thereof, he verified it be correct and it bears his signature and it is marked as (Exh.-23). PW-1 deposed that the deceased had suffered 100% burns. He deposed to have issued a communication (Exh.24) to the Doctor to conduct postmortem examination. He further deposed that the communication shown to him at the time of deposition, the contents of which he verified to be correct and bearing his signature. The PW-1 deposed that subsequently, a forensic team was called at the site, who collected the samples from the site, which were sent for analysis. Also a spot panchanama (Exh.25) was drawn in the presence of panchas, which PW-1 being shown during his deposition qua its contents was verified bearing his signature. PW-1 further deposed that all the articles and clothes in the house were gutted in the fire and the samples handed over by forensic team were forwarded to police station by drawing a report (Exh.26) which he identified it. PW-1 deposed that the samples received from forensic team were sent to the chemical analyzer. Also a communication (Exh.27) was sent to the Commissioner's office, Nashik seeking information of details of Call Detail Record (CDR) of mobile number of the Appellant-Accused. He deposed that the said communication was also under his signature, contents

thereof were deposed to be correct. PW-1 further deposed that during his visit to the site it was revealed that there was a bore-well and water storage drum at a very short distance from the site i.e. the tin-shed where Appellant-Accused resided. PW-1 recorded the statements of eleven witnesses. PW-1 deposed that the investigation revealed that the Appellant-Accused was addicted to liquor, and he suspected the character of his deceased wife and use to beat her. He further deposed that the investigation revealed that on the night of the incident, the Appellant-Accused picked up a quarrel with the deceased, as also had beaten her and set her on fire and ran away. He therefore deposed that had it been an accidental fire, the Appellant-Accused would have immediately taken steps to douse the fire by using water available near his house, but the Appellant-Accused failed to do so. Accordingly he registered a crime (Exh.28) against the Appellant-Accused for the offence punishable under Section 302 of IPC the contents of which he verified to be correct, bearing his signature. On the basis of the complaint, the crime No. 128 of 2018 was registered for the offence punishable under Section 302 of IPC. PW-1 on 8th August 2018, recorded a statement of father and son of the Deceased who stated that his daughter i.e. the Deceased had told him that her husband i.e. the Appellant-Accused suspected her character and was beating her. He further deposed that he had clicked photographs from his mobile handset as well as mobile handset of his staff and prints thereof were obtained and made part of charge sheet. He identified the photographs shown to him marked as Article No.1 collectively.

PW-1 further deposed that for the purposes of carrying out DNA test, samples of blood of father and son of the Deceased were collected vide order of Police Inspector, More, dated 6th August 2018 and the same are marked as (Exhibit-29). He further submitted that he personally went to Azamgad, Uttar Pradesh (UP), and handed over the communication to the Police Station, at Azamgad, UP, to receive their assistance and communication for receiving the blood sample was forwarded to Civil Hospital, Azamgad, UP. The said communication is marked as (Exhibits-30 and 31). He further deposed that blood samples were taken in his possession and the same were forwarded to the Police Station along with report which was shown to him and identified by him to be the same and marked as (Exhibit-32). He further deposed that the said samples were also sent to Forensic Science Laboratory (FSL), Meri, Nashik for analysis and the investigation was further handed over to the Senior Police Inspector, More.

In the cross-examination PW-1 has admitted that no complaint or crime was registered against the Appellant-Accused in Gangapur Police Station prior to the incident in question, and further, that Patrol Mobile Vans were on rounds during nighttime. He has denied that all vehicles move at one and the same time. He admitted that when he received the wireless message of the incident, at that time he was patrolling in Gangapur Road area. He denied that it took him ten minutes to reach the site. He deposed that it took about four minutes for him to reach the site. He denied that before he reached the site other police vans had already reached there. He admitted that when he reached the site, people had gathered near Parth Residency Society (society abutted to the site). He further

admitted that fire brigade vehicle had not reached there and he personally called for it after reaching at the site. He also admitted that fire had not affected the abutting residential house and denied that because of fire and smoke he could not enter the room where the fire had broken out. He admitted that he personally doused the fire by use of water by entering the room. He denied that he had falsely stated that he had doused the fire by use of water. He further denied that because of suffering burns, the Appellant-Accused was not in a position to speak and after questioning the Appellant-Accused about his name, he was sent to the hospital. He further denied that from the site he went directly to the police station. He admitted that on the basis of Khabar given by PW-5, the same was noted at Gangapur Police Station and he had signed over the said Khabar in the capacity as PSO. He also admitted that the order directing investigation was made by him and under his signature and he further admitted that the body of the Deceased was sent to Civil Hospital, Nashik for postmortem examination by calling ambulance. He also admitted that the Appellant-Accused was sent to the hospital prior to sending the dead body of the Deceased and denied that the spot panchanama was prepared at the police station as per his convenience and signatures were obtained thereof later. He further denied that the informer did not inform about the Appellant-Accused to be present at the time of incident. He denied that he falsely stated that the Appellant-Accused was present at the time of spot panchanama, however, admitted that the First Information Report (FIR) was lodged by him at 18.28 hours on 13th June 2018 and the signature appearing on the FIR was his, as officer in-charge of the police station. He also admitted that there was no signature over

signature of the complainant and the informer on the printed format, and there was no need of reporting in writing about drawing proceedings under Section 173 of Cr.P.C to the superiors. He further admitted that it will not be correct to say that the statements of the witnesses during AD inquiry were recorded on 13th June 2018 and admitted that in fact he had recorded the statement of Bharat Kokate prior to 13th January 2018. He, however, admitted that he did not record the statement of witnesses during AD inquiry prior to 13th June 2018. He also denied that it was not the case that because he was aware of the accidental death that he did not record the statements of the witnesses. He admitted that he did not record statement of the Appellant-Accused while he was admitted in hospital on 12th June 2018 and 13th June 2018 and admitted that the Appellant-Accused was discharged on 2nd July 2018. He admitted that the papers of treatment of the Appellant-Accused in the hospital were not collected by him and he did not make it a part of the charge sheet and did not personally seize the clothes of the Appellant-Accused. He further denied that the photographs placed on record are false or manipulated and denied that the site was reconstructed and thereafter photographs were taken. He admitted that in the statements of the father and son of the Deceased, they had informed that the Appellant-Accused used to consume liquor. He also submitted that before lodging the complaint, copy of postmortem report was received by him and then has denied that he has not received the copy of postmortem report prior to lodging the complaint. He has further denied that he gave complaint only on the basis of statements and did not have personal knowledge about the incident and also denied that false complaint was lodged against the Appellant-Accused. He

also denied that he did not depose anything false in his examination-in-chief. He also admitted that on 13th June 2018 he had recorded statement of Arun Laxman Medhe and further admitted that Arun Medhe had not stated that he asked the Appellant-Accused about the occurrence and the Appellant-Accused gave evasive answers. He further admitted that when he went to the site, Police Constable (P.C.), Zankar, was in another vehicle. Everybody was summoned by making a phone call. He also admitted that he and P.C., Borkar, were together and denied that at the time of lodging the complaint, P.C., Zankar, was with him. He admitted that in fact P.C., Zankar, went to Civil Hospital, Nashik along with dead body of the Deceased. He also admitted that the Appellant-Accused was not sent along with P.C., Zankar, and further denied that he did not conduct any AD inquiry, and it was not revealed during the said inquiry that the Appellant-Accused gave evasive answers. He further denied that the complaint lodged was false.

4. **PW-2, Mr. Umesh Laxman Medhe**, who is the brother of the employer of the Appellant-Accused, in his examination-in-chief deposed that his brother has been in the construction business for the past 2-3 years, and that the Appellant-Accused had been appointed as a watchman at the site i.e. the construction site of a building. He deposed that the Appellant-Accused was residing in a tin-shed which was erected beneath the stairs of the aforesaid construction. He further deposed that on 12th June 2018, his brother received a phone call from the police at midnight, informing him that the watchman's room on their construction site was on fire. He deposed that they went to the site and saw that the room where the Appellant-Accused resided was in a burnt condition from the inside, and that there

was a lady lying there in a burnt condition. He deposed that a panchanama was drawn in their presence, and a lady from the forensic team collected samples of ash, blood, and remains. He deposed that the police seized a plastic can and a matchbox from the site. He further deposed that there were a water drum and a bore-well near the room where the Appellant-Accused resided, and that he had seen that the aforesaid water drum filled with water. He deposed that the police had prepared a spot panchanama in his presence and had drawn a hand-sketch of the site. Upon being shown the spot panchanama, he had deposed that it bore his signature and that the contents thereof were correct. He deposed that the plastic can, stove, matchbox, and sample of earth/ash shown to him were the same as those mentioned above, and that the labels on the articles bore his signature. He further deposed that at that time the Appellant-Accused was also present there, and that he had suffered burns to his hands, cheeks, and legs. He further deposed that the Appellant-Accused suspected the character of the Deceased, and that there were quarrels between the Appellant-Accused and the Deceased on this count. He deposed that his statement was recorded by the police, and that the Appellant-Accused was present in the Court during the deposition.

During his cross-examination, PW-2 admitted that the construction site was on a sloppy part, and that there is a garden and housing society on the upper side, approximately 20 feet away from the construction site. He also admitted that abutting to the construction site, there are residential houses and a school by the name 'Mickey Mouse'. He admitted that the police had shown him the site, and that other people had also gathered there. He admitted that when the panchanama

was being drawn up, the people had brought the Appellant-Accused and reiterated that the Appellant-Accused came there himself. He admitted that the panchanama was drawn at early dawn, and that he had signed on the prepared panchanama. He denied that he knew who all were present at the time of the panchanama, and that the articles were not seized in his presence. He denied that he had gone out when the articles were being seized. He admitted that the gauze which is meant for cleaning stoves was also seized in his presence. He further admitted that he had gone through the panchanama before signing it. He admitted that there was no reference of the seizure of the gauze in the panchanama. He denied that he had falsely stated that the Appellant-Accused suspected the character of the Deceased and that the Appellant-Accused quarreled with the Deceased. He admitted that he did not know how much time would be required to reach the site from his house, and whether the distance between his house and the site was 4 kms. He admitted that the police had recorded his statement 2-3 times at the police station. He denied that he had falsely stated that he had seen the Accused at the spot of the incident. He further denied that he had falsely stated that the panchanama was drawn in his presence and that the articles were seized from the site and also denied that he was deposing falsely at the behest of the police.

5. **PW-3, Anjali Nitin Salunke**, in her examination-in-chief deposed that the police had called her for panchanama work at the site where the Deceased had suffered burns. She deposed that the site was near the construction site, which was near her house. She deposed that the police were present at the site. She deposed that the dead body of a woman was lying in the tin room, which was erected at the

construction site, and that it was in a prone condition. She deposed that the woman had suffered 100% burns. She deposed that the police prepared the panchanama of the dead body, and when the panchanama was shown to her she recognized it. She admitted that the panchanama bore her signature and that its contents were correct. She further deposed that the photographs which were shown to her at the time of deposition were of the dead body.

PW-3 during the course of cross-examination admitted that it was noted in the inquest panchanama that there was no apparel on the person of the Deceased. She admitted that on the day of deposition she did not remember whether the Deceased was wearing any silver bangles. She denied that she had signed on an already prepared panchanama.

6. **PW-4, Mr. Ajay Ramji Pandit**, who was the contractor at the construction site, in his examination-in-chief deposed that on 5th July 2018 he was at a construction site at Dhruv-Nagar, Nashik, and that he was called to Gangapur Police Station. He deposed that the Appellant-Accused was present at the Police Station at that time. He deposed that the police asked the Appellant-Accused in his presence as to what had happened and how it had happened. He deposed that in his presence the Appellant-Accused had admitted that he had quarreled with the Deceased, and that thereafter had poured kerosene on her and set her on fire. He further deposed that the Appellant-Accused informed that when the Deceased was on fire, she had tried to catch the Appellant-Accused, and that he had suffered burns on his hands and other parts of his body. PW-4 further deposed that the Appellant-Accused in the Police Station had informed that he was ready to show

the site and had thereafter taken them to Dhruv-Nagar. He deposed that all the information that was given by the Appellant-Accused was noted down by the police, and that the memorandum shown to him during the deposition was the same. He deposed that they went to Dhruv-Nagar, where the Appellant-Accused showed them the incident, and the police thereafter prepared the panchanama. Upon being shown the panchanama, he deposed that it was the same panchanama, and that it bore his signature and the thumb impression of the Appellant-Accused.

In his cross-examination, PW-4 admitted that he was working as a contractor on the site. He admitted that Nirmal Pandit is from his native place and that he was acquainted with him. He admitted that the police had called him to the Police Station to obtain his signature. He admitted that he knew the Appellant-Accused since the beginning because he worked for PW-4. He denied that the Appellant-Accused had been demanding dues and that he was falsely deposing against the Appellant-Accused. He denied that he did not go to the Police Station and that the Appellant-Accused did not give any memorandum. He denied that the Appellant-Accused did not take him to any spot, and that PW-4 did not sign on any memorandum and panchanama.

7. **PW-5, Satish Prakash Devre**, who was resident of Parth Residency Society (society abutted to the site) and who lodged the Khabar by dialing 100, was resident of Dhruv Nagar, Nashik for the past seven years, as deposed by him. He has deposed that on 11th January 2018, he returned to his residence at 12.15 mid-night after completing second shift in the company where he works. Two of his friends who were also residents of the same building, telephoned him from the

parking area and therefore he went down. It is at that time, that opposite to their building a tin-shed over a construction site was seen by PW-5 which was in flames and smoke. He deposed that seeing the flames and smoke, he dialed 100 from his mobile phone and within fifteen minutes police arrived there. He deposed that he went to the site and saw a lady in burning condition who was lying motionless. He also deposed that the husband of the Deceased i.e. the Appellant-Accused reached the site after half an hour and continued standing there and he had also suffered burns. He therefore gave Khabar of the aforesaid incident to the police station and he deposed that the same was shown to him and it bears his signature and marked as (Exhibit-21). He further deposed that police prepared false panchanama in his presence.

In the cross-examination PW-5 has admitted that he had no idea whether previously watchman by name Pawar was staying near the site. He admitted that he learnt his name on the date of incident and further admitted that he did not attempt to save the Deceased because of huge fire flames. He also admitted that in the tin-shed electric wiring was affected by burns and there was no light in the tin-shed. He further admitted that the hands of the husband of the Deceased i.e. the Appellant-Accused were also affected by burns and to some extent his face was also affected. He also admitted that he was not aware whether the Appellant-Accused was in a position to talk and he was standing where others were gathered and police took him in ambulance. He further admitted that he was not aware as to how the Deceased and her husband i.e. the Appellant-Accused had suffered burns.

8. **PW-6, Namdev Ananda Borkar**, Police Constable, who was attached to Gangapur Police Station, Nashik, has deposed that on 11th June 2018 he was on duty of vehicle peter mobile from 21.00 hours to 21.00 hours of 12th June 2018 i.e. as R.T.P.C. He further deposed that at 00.45 a.m. a call was received from Control Room informing that at Dhruv Nagar fire has broken near a new construction site. PSI Mali was with him. He further deposed that on reaching the site, he saw a tin-shed room which was on fire and when he went inside the room he saw the dead body of a lady i.e. the Deceased in the burning condition. He also saw household items, utensils which were affected by burns and crowd had gathered there. He further deposed that outside the tin-shed room there was bore-well with tube and drum with water, which was unused. He also deposed that with the help of neighbours he tried to extinguish the fire, and the police officer telephoned the fire brigade, after which after half an hour the watchman i.e. the Appellant-Accused reached there. He deposed that the Appellant-Accused's palms, face and stomach were in somewhat burnt condition and thereafter inquest panchanama was drawn and dead body of the Deceased was referred for autopsy. He deposed that the Appellant-Accused was also referred to the hospital and thereafter the Investigating Officer (IO) recorded his statement and he was in a position to identify the Appellant-Accused.

In his cross-examination, PW-6 has admitted that the I.O recorded the statement of Appellant-Accused as narrated by him and circumstances at the site were narrated by PW-6. He further denied that there was no reference in his statement of use of water in room and then admitted that there was reference of

water use in the room in his statement. PW-6 deposed that PSI Mali with the help of neighbour had used water and in that context use of water has appeared his statement. He admitted that in his statement reference to PSI Mali used water for extinguishing the fire does not appear and the witness stated that he cannot assign reason as to why such text was not appearing in his statement. He denied that he has falsely stated that the PSI Mali, used water for extinguishing the fire and hence reference to that extent was appearing in his statement. He stated that the Appellant-Accused was sent in ambulance to hospital along with P.C. Zankar. He denied that whatever he has stated in his examination-in-chief was false.

9. **PW-7 Gopal Yashwant Patil**, Police Head Constable (PHC) attached to Satpur Police Station, Nashik has deposed that on 11th June 2018 he was posted at Gangapur Police Station as PHC. He further deposed that on the night of 18th June 2018 he was on duty as PSO as well as chowki-in-charge and he was in C.R. mobile van. He admitted that PHC Zankar and Tandale were present. He deposed that a phone call was received from police station at 00.45 hours informing that fire had broken out at Dhruv Nagar and thereafter PW-7 reached there where PSI, Mali and other police staff was already present. On reaching there, he saw that there was fire at the tin-shed at the new construction site and water was used already at the site. He further deposed that a lady by name Ayesha was inside the tin-shed in completely burnt position and all household items were completely burnt. He deposed that PSI, Mali prepared the panchanama and after a short time one person reached the site, and he had suffered burns to his hands and face. He further deposed that an inquiry was made with the Appellant-Accused and he was

sent to Civil Hospital, Nashik in an ambulance. He further deposed that the I.O had recorded his statement.

In his cross-examination PW-7, admitted that he was on duty from 2014 to 2020 at Gangapur Police Station. He stated that as construction was going on, he cannot say how many floors the said building had and further he went there because call was received. He admitted that he did not know the name of the Deceased. He learnt the name of Deceased from the crowd. He admitted that the Contractor, who was present at the site, gave the name of the Deceased and that the statement of the PW-7 was recorded as he narrated. He further admitted that it is not appearing in his statement that inquiry was made with the man, who had suffered burns and he was not aware why it was not appearing in his statement. He further denied that merely on the say of his superior he stated so in his examination-in-chief and denied that he was falsely deposing.

10. **PW-8 Dipak Vitthal Jagtap**, Police Constable, attached to Gangapur Police Station, Nashik, deposed that on 28th June 2018, he was posted at Anandvali Police Chowki. He stated that police officer of Gangapur Police Station had issued orders in his name to carry muddemal to forensic laboratory. He stated that he carried the said muddemal and deposited with FSL, Meri, Nashik and obtained acknowledgement. PW-8 was shown the communication, and it was the same and marked as (Exhibit-42). He stated that the I.O had recorded his statement.

In his cross examination, PW-8 denied that the muddemal was handed over to him in unsealed condition. He denied that he had falsely stated that he

acted as carrier and deposited the muddemal to FSO. He denied that he had deposited falsely.

11. **PW-9 Arun Laxman Medhe**, whose occupation was Agriculture and Business and was residing at Gangapur Road, Savarkar Nagar, Nashik, in his examination-in-chief has deposed that he knew the Appellant-Accused because he was appointed as watchman on his construction site in 2018. The Appellant was residing on the Ekdant site in a tin shed with his wife. He stated that on 12th June 2018 at around 01.15 to 01.30 a.m. he received a phone call from PSI Mr. Mali and he informed PW-9 that there is fire on the construction site and whether the PW-9 knew about it and asked whether he was the owner. PW-9 went to the construction site, and he was taken to the tin-shed. He stated that everything had turned black and body of a female was lying in prone condition in a fully burnt condition. PW-9 deposed that shortly thereafter the Appellant-Accused came, and he had also suffered burns to his hands, forehead, face and chest. PW-9 asked the Appellant-Accused about the incident. The Appellant-Accused gave evasive answers. The Appellant-Accused was taken in ambulance. He stated that the Appellant-Accused had stayed on the construction site for three months. PW-9 stated that once when he was at the construction site, he saw one chair in broken condition. He therefore asked how the chair broke. At that time the wife of Appellant-Accused i.e. the Deceased had informed that the Appellant-Accused hit the chair in her head. He did not make any inquiry with her and the Deceased did not give him more information. PW-9 stated that at the construction site he had dug a bore well with tube and drums for storing water. He further stated that the

police made inquiries with him and recorded his statement. He also stated that the Appellant-Accused was present in the court.

In his cross-examination, PW-9 admitted that at the time of incident only one site was under construction. He stated that he gets the work of construction done through Contractor, Shatrughan Pandit. He admitted that the Appellant-Accused was engaged as watchman at the behest of the Contractor, Shatrughan Pandit. The Appellant-Accused was not present when PW-9 visited the site. Hence, PW-9 visited the site later. He denied that the police recorded his statement on the next day or thereafter. He further denied that he had falsely stated that the Appellant-Accused gave evasive answers. He admitted that his statement was corrected recorded as narrated by him. PW-9 stated that he did not know why his statement dated 13th June 2018 it does not appear that when he asked the Appellant-Accused what happened, the Appellant-Accused gave evasive answers. He denied that the Appellant-Accused was not in a position to speak. He admitted that in his statement that he had not informed that once he had been to the said construction site and at that time, he saw one chair in broken condition. Therefore, he asked how the chair broke and at that time the wife of the Appellant-Accused i.e. the Deceased informed him that the Appellant-Accused had hit the chair in her head. PW-9 denied that the Deceased did not inform him about it. He denied that because the Deceased did not inform him, he did not inform the same to the police. He further admitted that he had not asked the deceased to wash his vehicle. PW-9 denied the suggestion that the Appellant-Accused had objected on the ground that he was in PW-9's employment and that no work

should be taken from the deceased. He stated that he rarely visited the said construction site and denied that he was annoyed with the Appellant–Accused on that account. PW-9 denied the suggestion that he was deposing falsely against the Appellant–Accused due to refusal to pay a demand of ₹4,000/- of the Appellant–Accused for his work.

12. **PW-10 Dr. Sandesh Sampat Pawar**, attached to Civil Hospital, Nashik deposed that on 12th June 2018 he had examined the patient by name Samsher Shaha, who was brought by police of Gangapur Police Station. The patient had suffered burns. PW-10 examined the patient i.e. the Appellant-Accused. He came across superficial to deep burns to lower face, upper chest, upper arms, both palms, both knees and lower upper back. He stated that the patient i.e. the Appellant-Accused suffered approximately 40% burns. The patient was admitted and treated. PW-10 stated that the burn injuries noted by him are possible if another burning person embraces such person. He stated that exact duration of injury or age of injury cannot be ascertained in case of burns. He stated that in this case they assumed that the burns were fresh. PW-10 stated that he said so because of the condition of clothes and smell emanating from his person. The patient-Appellant-Accused was discharged on 2nd July 2018. PW-10 brought the medical papers with him and was ready to place the same on record and they are marked as (Exhibit-46) collectively. He also deposed that he could identify the patient, if shown to him. He also deposed that the communication received from police shown to him was the same. The case papers shown to him were the same.

In his cross-examination, PW-10 admitted that he was not carrying Medico-Legal Case (MLC) papers and at 01.30 a.m. the Chief Medical Officer (CMO) first examined the patient i.e. Appellant-Accused and then the CMO called him. He denied that the patient was administered sedatives along with other medicines. PW-10 admitted that pain killers were administered. He also admitted that the record does not show that after examining the patient was discharged. He further admitted that the patient was directly discharged after 21 days. The injuries found by him on the patient were possible in accidental burns also. PW-10 admitted that he had not read Modi's Medical Jurisprudence and therefore never relied on the same. He admitted that dizziness is possible on inhaling fumes of plastic burns or kerosene burns and if inhalation is in large quantity, the patient may fall unconscious. He admitted that 40% and above percentage burns are considered as fatal. He admitted that after saturation of carbon dioxide, the patient can inhale to normalcy.

13. **PW-11 Kishor Jairam More**, Senior Police Inspector (P.I.), attached to Satpur Police Station, Nashik, has deposed in his examination-in-chief that in 2018 he was posted as Senior P.I at Gangapur Police Station, Nashik. The investigation of C.R No.128/2018 was taken over by him on 13th June 2018. He deposed that on the night of 12th June 2018, information was received about an AD regarding a lady suffering burns in Dhruv Nagar. The night officer registered the AD, and PW-11 went to the site. Khabar, by the person, who saw, was noted. He deposed that night officer prepared inquest panchanama and spot panchanama. The forensic team was called at the site for collecting material. During the accidental

death inquiry, said officer recorded statements of witnesses. He deposed that the dead body was referred to Civil Hospital, Nashik and final cause of death certificate was procured, which was marked as (Exhibit-48). He deposed that the medical opinion received about the death was due to shock due to burns. PW-11 registered crime vide C.R No.128/2018 for the offence punishable under Section 302 of the I.P.C. He stated that after he took over the investigation, all AD inquiry papers were received by him. He deposed that as the Appellant-Accused was affected by burns, he was admitted to Civil Hospital, Nashik. He made inquiries with the Appellant-Accused in the hospital. Brothers of the Appellant-Accused were also called for inquiry. On recording their statements, it was revealed that the Appellant-Accused was suspecting the character of his wife-the Deceased. He deposed that the muddemal collected during the accidental death inquiry was sent for analysis to FSL vide communication under his signature, which was marked as (Exhibit-42). He stated that the photographs of spot were snapped during the accidental death inquiry and were included in the charge sheet. PW-11 stated that the articles, photographs shown to him during deposition were the same and were already marked as Article 1. He stated that after the Appellant-Accused was discharged, he was arrested on 2nd July 2018 at 20.30 hours. He deposed that while in custody, the Appellant-Accused expressed his willingness to give memorandum and therefore it was noted in the presence of two panchas i.e. memorandum regarding showing the site. The said memorandum (Exhibit-36) was shown to him, which bore his signature. He verified all the statements of witnesses recorded previously and recorded their supplementary statements. He deposed that from

the statements of witnesses it was revealed that due to the suspicion of the Appellant-Accused on the character of his wife i.e. the Deceased, the accused had poured kerosene over the Deceased and ignited her. PW-11 deposed that the chemical analyzer reports on the analysis of muddemal were received and made part of investigation papers. He deposed that the investigation revealed that the Appellant-Accused was suspecting character of his wife i.e. the Deceased since the beginning and on the fateful night, there was quarrel between them on same count after which the Appellant-Accused poured kerosene over her and set her on fire. He deposed that after recording statements of all the relevant witnesses and after gathering sufficient evidence, the Appellant-Accused was charge sheeted. He identified the Appellant-Accused in the Court.

In the cross-examination PW-11 admitted that including the DCP, they all visited the site at that fateful night. He denied that PSI Mali was PSO that time. He admitted that prior to receipt of Khabar, the Appellant-Accused was already taken to hospital. He admitted that it takes about 10 to 15 minutes to cover the distance between the site and Civil Hospital, Nashik. He admitted that he recorded statements of P.Cs. Borkar and Patil on 16th June 2018. He admitted that he had personally interacted with the relatives of the Deceased. He admitted that the relatives of the Deceased had informed that they had no relations with the Deceased whatsoever. He admitted that it was not revealed during their inquiry that the Appellant-Accused suspected the character of the Deceased. He denied that after discharge the Appellant-Accused produced himself before the police. He further denied that he was demanding articles seized during accidental death

inquiry. He denied that Appellant-Accused informed that he had been to celebrate birthday on 11th June 2018 in the evening and after that the Deceased was cooking inside the house and the Appellant-Accused was sitting outside and after hearing her shouts the Appellant-Accused rushed for her rescue and he tried to douse the stove which had burst, and while the Appellant-Accused tried to save his wife i.e. the Deceased, Appellant-Accused himself also suffered burns. He denied that the Appellant-Accused had informed that he came out to seek help and he fell there because of dizziness. He denied that the Appellant-Accused told that when he gained consciousness, he found crowd there and he was taken to hospital by those people. He denied that he had falsely stated that the Appellant-Accused gave memorandum and showed the site and panchanama was drawn. PW-11 admitted that he recorded statement of Uttam Devram Mahale on 6th June 2018 and he gave information as passed on by the Appellant-Accused and it was matching. He denied that the signature of the Appellant-Accused was obtained even when he did not understand Marathi. He denied that all the statements were recorded falsely. He admitted that there was no witness stating that the Appellant-Accused was running away from his room. He denied that in no statement of accidental death inquiry there was any reference about use of water for extinguishing the fire. He stated that there was no delay in FIR as already accidental death was registered. He denied that the clothes of the Appellant-Accused were not seized. He admitted that the investigation did not reveal that against which person the Appellant-Accused suspected relations of his wife i.e. the Deceased. He denied that faulty investigation was carried out and the Appellant-Accused was falsely charge sheeted.

14. **PW-12 Dr. Shravan Narayan Gaikwad**, Medical Officer, attached to Civil Hospital, Nashik, has deposed that he is MBBS. Till the date of deposition, he had conducted almost 3,000 to 3,500 postmortems. He deposed that on 12th June 2018, the dead body of Ayesha Khatun Samsher Shah i.e. the Deceased was referred by Gangapur Police Station for autopsy along with inquest panchanama. He went through the inquest panchanama. On examination PW-12 found 100% burn injuries. He deposed that according to Rule 9, percentage of burns of each part of body is noted in column 17 of postmortem report, which is as under:

The injuries were deep.

Body area	Anterior	Posterior
Head	4%	4%
Neck	1%	-
Trunk	18%	18%
Right UL	4.5%	4.5%
Left UL	4.5%	4.5%
Right LL	9%	9%
Genitalia	1%	-
Total Burn	100%	

Dermoepidermal burn injuries were present all over the body. Superficial layer of the burnt skin was peeled off revealing reddish white base. Singeing of hair was present at places over burnt skin. Blackening and charring of burnt skin were present at the place. PW-12 deposed that the injuries shown in column nos.17 and

18 are ante-mortem injuries. He deposed that on examination, his observations are mentioned in column No. 19 are that:

- | | | | |
|-------|--|---|-------------------------------------|
| (i) | Injuries under the scalp
their nature | : | Intact and NAD |
| (ii) | Skull-Vault and base
describe fractures their sites,
dimensions, directions etc. | : | Intact and NAD |
| (iii) | Brain | : | Weight around 1100 gm
congested. |

PW-12 opined the cause of death was 'shock due to burn injury', which is sufficient to cause death in ordinary course of nature'. He deposed that the burn injuries are ante-mortem in nature and fresh in duration. He deposed that he accordingly prepared the postmortem report which bore his signature and the contents thereof were correct, which was marked (Exhibit-54). He was shown medical certificate of cause of death certificate, which bore his signature and the contents thereof were correct, which was marked (Exhibit-55).

In the cross-examination, PW-12 admitted that the burns found by him on the dead body could be accidental one. He admitted that he relied on and referred to Modi's Medical Jurisprudence, and he agrees with the propositions laid therein. He admitted that he agrees with the proposition laid down in Modi's medical jurisprudence that death may occur due to shock and fright because of burns. He admitted that burns suffered to the genital and lower limbs are also fatal. He admitted that synthetic clothes catch fire very soon. He stated that there was no circular directing postmortem to be done in the presence of two doctors. If burns have occurred in a closed room, then death may also occur due to inhaling carbon monoxide.

SUBMISSIONS ON BEHALF OF APPELLANT-ACCUSED

15. Mr. Sushil Inamdar, Learned Counsel for the Appellant has urged before us that the evidence which had come on record before the Trial Court was extremely loose and also it could not be such, which proved beyond reasonable doubt that the Appellant-Accused had committed the murder of the Deceased. It was his submission that the entire case rests on circumstantial evidence and the prosecution have completely failed to establish the motive and chain of circumstances beyond reasonable doubt and therefore adverse inference could not be drawn against the Appellant-Accused under Section 106 of the Indian Evidence Act, 1872. He further submitted that the Appellant-Accused has made out his defense and therefore the burden cast upon the Appellant-Accused as contemplated under Section 106 of the Indian Evidence Act, 1872 was sufficiently discharged.

16. He further submitted that the evidence of PW-2 and PW-5 was not trustworthy and reliable, as the spot panchanama records presence of PW-2, PW-5 and the Appellant-Accused, however, the perusal of timing with respect to completion of spot panchanama and timing as regards admission of the Appellant-Accused in the hospital certainly indicated that the Appellant-Accused was falsely implicated and charged under Section 302 of the Indian Penal Code, 1860 (IPC). He further submitted that there was no witness who has come forward with a specific case that they saw the Appellant-Accused at the time of committing offence or that he had run away from the site. He also submitted that the theory

put up by the prosecution that the Appellant-Accused suspected the character of the Deceased could not be established inasmuch as nothing in the investigation revealed the same. He further submitted that the testimony of the prosecution's witnesses are inconsistent and that the witnesses had failed to prove the presence of the Appellant-Accused at the time of committing crime and or at the time of carrying out spot panchanama and hence the chain of circumstantial evidence is not complete, and entire investigation is controversial and is ought to be set aside. He therefore submitted that the Appellant-Accused could not be convicted of the offence under Section 302 of the IPC and prayed that the impugned judgment and order be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENT-STATE/PROSECUTION

17. Learned Counsel on behalf of the Respondent State/ Prosecution, Mr. Patil, Addl. P.P. for State submitted that the prosecution had rightly carried out the investigations to come to a conclusion that the Appellant-Accused had committed the murder of the Deceased. He submitted that it is the case of the prosecution that the Appellant-Accused set the Deceased on fire resulting in her death due to extensive burn injuries. He further submitted that on the night of 12th June 2018 the Deceased sustained 100% burn injuries inside the tin-shed at the construction site where she and the Appellant-Accused were residing together. He further submitted that the police found the Deceased in a completely charred condition and the Appellant-Accused who should have otherwise saved his wife i.e. the Deceased, by dousing the fire had instead chosen to flee away from his house and later appeared with burn injuries. He further submitted that the prosecution had

examined 12 witnesses to prove the guilt of the Appellant-Accused and the medical evidence supported the case of the prosecution inasmuch as the PW-12-Autopsy Doctor and PW-10 Doctor had examined the burn injuries of the Appellant-Accused. He further submitted that in the facts of the present case it was only the Appellant-Accused and the Deceased who cohabited together, where only the two of them were present. In such a circumstance, when the incident had occurred, inside a dwelling house, only the husband i.e. Appellant-Accused and wife i.e. the Deceased were present, failure of the Appellant-Accused to explain the unnatural conduct and to explain how the Deceased sustained fatal burns shifts the burden upon the Appellant-Accused under Section 106 of the Indian Evidence Act, 1872 and considering that the said burden had not been discharged by the Appellant-Accused an adverse inference could be drawn against him.

18. Further, he has also submitted that the Appellant-Accused, neither tried to save the Deceased nor raise alarm to seek help and to douse the fire and in fact left the place of the incidence and returned later and on questioning gave evasive answers. He therefore submitted that the conduct of the Appellant-Accused was clearly incriminating. He further submitted that in fact the Appellant-Accused had confessed to committing the crime and the same was corroborated by medical and circumstantial evidence which is reliable. He also submitted that it is settled principle that even if the motive of the Appellant-Accused is not conclusively proved the same is not fatal to the prosecution's case. He further submitted that though the defense has attempted to rely on minor inconsistencies in the statements of the witnesses, these discrepancies are natural and do not affect the

core of the prosecution case and such inconsistencies are not fatal to the prosecution's case and therefore in conclusion he submitted that the findings recorded in the trial court were based on cogent evidence and settled principles of law and did not warrant interference.

ANALYSIS AND FINDINGS

19. On examining the evidence on record, we find that the case of the prosecution against the Appellant-Accused is principally based on circumstantial evidence. However, considering the evidence led by the prosecution, we are of the view that the prosecution has established the chain of events successfully to show that the complete chain of events would undoubtedly prove that the crime has been committed by the Appellant-Accused. We come to the aforesaid conclusion on the basis of examination of the evidence on record and also on the basis of the statement given by the Appellant-Accused under Section 313 of the Cr.P.C, wherein the guilt of the Appellant-Accused can be strongly established. We discuss the evidence which would prove that it was only the Appellant-Accused who is guilty of the commission of crime under Section 302 of the IPC for having murdered his wife i.e. the Deceased by pouring kerosene on her and setting her ablaze.

20. We analyze the evidence so as to consider whether the prosecution has brought home the guilt of the accused.

21. PW-1 i.e. the PSI Dattaray Lahanu Mali, has deposed that the Appellant-Accused had fled and came after half-an-hour while he was present there, and the palms of both hands and eyebrows of the Appellant-Accused were

burnt along with other parts. He also deposed that on making enquires with the Appellant-Accused of the incident he gave evasive answers to PW-1. PW-1 also deposed that he had examined 11 witnesses and recorded their statements and the investigation revealed that the Appellant-Accused was addicted to liquor and the Appellant-Accused suspected the character of the Deceased wife and beat her up. Further, he also deposed that the investigation revealed that on the same night of the incident the Appellant-Accused had picked up a quarrel with his Deceased wife, beaten her and set her on fire and ran away. He also deposed, that in his opinion, had the fire been an accidental fire then the Appellant-Accused would have taken steps to douse the fire by using water resources available near the tin-shed. However, he deposed that the Appellant-Accused had not done the same. He further deposed that on 8th August 2018, when he recorded the statement of the father and son of the Deceased, the father of the Deceased categorically informed PW-1, that the Deceased had informed her father, that the Appellant-Accused suspected her character and beat her up. In the cross examination also, PW-1, had admitted that he personally used the water to douse the fire. This deposition of PW-1 clearly goes to show that the Appellant-Accused had made no attempts to save his wife i.e. Deceased from the fire.

22. PW-2, Mr. Umesh Laxman Medhe, i.e., the brother of the employer of the Appellant-Accused has deposed that when he had arrived at the site, he saw a lady i.e. the Deceased, lying on the floor in a burnt condition. He also deposed that, the police had seized a plastic can and matchbox, that had been recovered from the site. He further deposed that, a bore well and a water drum were present

near the tin-shed, where the Appellant-Accused and the Deceased were residing. He also deposed that the drum was filled with water and further deposed that the Appellant-Accused suspected the character of his wife i.e. Deceased and there were frequent quarrels between them on this count. He also deposed that the Appellant-Accused suffered burns on his hands, cheeks, and legs. Further, in his cross-examination PW-2 has admitted that the Appellant-Accused came to the site. It can, therefore, be seen on a perusal of the aforesaid deposition of PW-2 that the Appellant-Accused had made no attempts to save his wife from burning inasmuch as the water in the drum was full and not used to douse the fire. It is also apparent that the Appellant-Accused tried to flee from the site and he was not present at the site when PW-2 reached there.

23. PW-4, Mr. Ajay Ramji Pandit, the Contractor, in his examination-in-chief has deposed that when he had arrived at Gangapur Police Station, the police had, in his presence, asked the Appellant-Accused as to what had happened, and Appellant-Accused had confessed that he had quarreled with his wife i.e. Deceased, and had poured kerosene on her and set her on fire. The Appellant-Accused had also confessed that after he had set the Deceased on fire, she had attempted to catch him, which is why the Appellant-Accused had suffered burns on hands and other parts of his body. PW-4, in his cross-examination, has further denied that he deposed falsely because the Appellant-Accused had been demanding money from him. The confession of the Appellant-Accused to the police and PW-4 at the Gangapur Police Station, further establishes the guilt of the Appellant-Accused in the present case.

24. PW-5, Mr. Satish Prakash Devre, who is a resident of Parth Residency Society, and had lodged the Khabar, in his examination-in-chief has deposed that the Appellant-Accused had arrived at the site half an hour after PW-5 had arrived there, after which PW-5 called the police, yet the Appellant-Accused had suffered burn injuries and in his cross examination also he has admitted to the same facts. A perusal of the deposition of PW-5 corroborates that the Appellant-Accused was not there at the site and tried to run away and did not make any attempt to save his wife i.e. Deceased.

25. PW-6, Mr. Namdev Ananda Borkar, in his deposition has stated that when he arrived at the site, he saw that the tin-shed was on fire, and when he went inside, he saw that there was a dead body of a lady inside. He also deposed that there was a bore-well and water drum near the tin-shed, but they looked like they had remained unused, and that he along with the neighbours had attempted to douse the flames. Further, like other witnesses, he has also deposed that the Appellant-Accused had arrived at the site after half an hour, and that he had burn injuries on his face, palms, and stomach. In his cross-examination he had admitted that there were signs of water being used in the tin-shed to douse the flames, and that was because PSI Mali, along with the neighbours had tried to douse the flames. The deposition of PW-6 further points to the fact that the Appellant-Accused had not attempted to save the Deceased even though it was within his capability, and that he had tried to flee from the site after the incident.

26. PW-9, Mr. Arun Laxman Medhe, the Employer of the Appellant-Accused, deposed that he had appointed the Appellant-Accused as a watchman on

the construction site in 2018 and on 12th June 2018 when he reached the site, he saw a body of a female lying in prone condition which had turned black and also deposed that shortly thereafter the Appellant-Accused came at the site with burns to his hands, forehead, face and chest. He also deposed that the Appellant-Accused gave him evasive answers when he enquired with him as to what had happened. He further deposed that in the past also when he had visited the construction site, he had seen broken chair there and the Deceased i.e. wife of Appellant-Accused had informed him that the Appellant-Accused had hit her on the head with the aforesaid chair, which proves history of beating Deceased i.e. his wife. In cross examination also, PW-9 denied that he had given any false statement against the Appellant-Accused as Appellant-Accused had demanded Rs. 4000/- for his work and he had refused to give him the same. This deposition of PW-9 goes to corroborate the fact that the Appellant-Accused displayed aggressive behaviour towards his wife i.e. the Deceased.

27. PW-10, Medical Officer, Dr. Sandesh Sampat Pawar, had deposed that he had examined the Appellant-Accused and that he had suffered 40% burns and such burns could be caused if one burning person embraces the other. He also admitted in his cross examination, that he had discharged the Appellant-Accused after 21 days and admitted that dizziness is possible on inhaling fumes of plastic burns or kerosene burns and if inhalation is of large quantity, patient may fall unconscious. The aforesaid deposition of PW-10, if read with the deposition of PW-4, wherein the Appellant-Accused had confessed to the crime and also to the fact that his wife i.e. Deceased had tried to embrace him while burning goes on the

prove that the Appellant-Accused indeed suffered burn injuries when his wife i.e. Deceased tried to embrace him and the Appellant-Accused did not make any attempts to save her.

28. PW-11, Mr. Kishore More, has deposed that during the course of investigation it was revealed that the Appellant-Accused suspected the character of the Deceased i.e. his wife and there were frequent quarrels between them and on the same count he had poured kerosene on her and set her on fire. He further in his cross examination, has denied that the Appellant-Accused had informed him that he had gone to celebrate a birthday on 11th June 2018 in the evening and after that the Deceased i.e. wife of the Appellant-Accused was cooking inside the house and he was sitting outside and after hearing her shouts he rushed for her rescue and he tried to douse the stove which had burst and had tried to save the Deceased i.e. Appellant-Accused's wife and in the process also suffered burns. PW-11 also denied that Appellant-Accused came out to seek help and fell out of dizziness and when he gained consciousness Appellant-Accused found that there was a crowd there and then he was taken to the hospital by the crowd present there. He further, denies that in no statement in accidental death inquiry there was any reference about use of water for extinguishing the fire. The aforesaid deposition and cross examination of PW-11 go on to show that in his statement before the police dated 26th February 2021, the Appellant-Accused had given a false narration of the entire incident and tried to mislead the IO in a desperate attempt to cover up his guilt.

29. Now having examined the evidence on record of the trial as discussed hereinabove, we now also consider the version of the accused, which is the

statement recorded by the Court under Section 313 of Cr. P.C. would reveal. The rationale behind the requirement to comply with Section 313 of Cr. P.C. has been subject matter of consideration in several decisions. We may, however, refer to the recent decision of the Supreme Court in **Premchand vs. State of Maharashtra**¹, in which, in regard to the rationale and importance of the task after scanning of the evidence by the Court to trace the incriminating circumstances in the evidence and to prepare relevant questions to extend the opportunity to the accused to explain any such circumstances in the evidence, that could be used against him, the Court is tasked to frame relevant questions and put the same to the accused. Also this would be relevant in relation to the facts within the special knowledge of the accused requiring satisfactory explanation, before being held to be the factor against the accused. The position in law is succinctly laid down by the Court in the said decision considering the prior decisions. The following observations as made by the Supreme Court are required to be noted :

“14. A Bench of three Hon'ble Judges of this Court in *State of U.P. v. Lakhmi*² has extensively dealt with the aspect of value or utility of a statement under Section 313 CrPC. The object of Section 313 CrPC was explained by this Court in *Sanatan Naskar v. State of W.B.* The rationale behind the requirement to comply with Section 313 CrPC was adverted to by this Court in *Reena Hazarika v. State of Assam*. Close on the heels thereof, in *Parminder Kaur v. State of Punjab*, this Court restated the importance of Section 313 CrPC upon noticing the view taken in *Reena Hazarika* and *M. Abbas v. State of Kerala*.

15. What follows from these authorities may briefly be summarised thus:

15.1. Section 313 Cr.PC [clause (b) of sub-section (1) is a valuable safeguard in the trial process for the accused to establish his innocence.

15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question

1 (2023) 5 SCC 522

the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).

15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.

15.10. Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

16. Bearing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of Section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of Section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare.

17. For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, Parliament amended Section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and defence counsel in preparing such questions [the first part of sub-section (5)]. Ideally, with such assistance (which

has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like "false", "I don't know", "incorrect", etc. Many a time, this does more harm than good to the cause of the accused.

18. For instance, if facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it. The exercise under Section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under Section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility."

30. It is in the light of the aforesaid position in law, we are of the opinion that considering the evidence on record of the present case, the relevant questions as put by the Court and the statements of the accused as recorded under Section 313 of the Cr.P.C. are required to be noted, which reads thus:

(i) In response to Question No. 31, the Appellant-Accused has replied that he is not aware if he is the husband of the Deceased and thereafter in the subsequent question i.e. Question No. 32 he has submitted that he was residing in the tin-shed along with his wife i.e. Deceased and working as a watchman on the construction site.

(ii) Further, another extremely glaring falsity in the statement of the Appellant under Section 313 of CrPC is reflected in response to the Question No. 44, wherein the Appellant-Accused has denied that he had quarrel with his wife i.e.

the Deceased and thereafter he poured kerosene and set her on fire. He also has denied that while the Deceased was on fire, she tried to catch the hands of the Appellant-Accused. Hence, he has suffered burns to his hands and other parts of the body. However, in the deposition of PW-4 it is clear that the Appellant-Accused had himself informed PW-4 that he actually had a quarrel with his wife and he poured kerosene and set her on fire and his hands and other body parts had suffered burns as his burning wife i.e. the Deceased had tried to catch him. This glaring contradiction and falsity in the statement of Appellant-Accused unequivocally goes to prove that the Appellant-Accused is shifting stands only to prove his innocence.

(iii) On a reading of the responses to Question Nos. 50, 64 and 71, it is clear that the Appellant-Accused has constantly taken contradictory stand, wherein he has first denied that he was not aware about his own burns to his body but thereafter, subsequently, in response to Question No. 71 has replied that it was true that he had suffered the burns, but not true that he gave evasive answers.

(iv) The other glaring inconsistency is in respect of response of the Appellant-Accused to question No. 46 where the Appellant-Accused has denied that he went to Dhruv Nagar i.e. the site and saw the spot and prepared the panchanama thereafter. However, in his statement recorded on 26th February 2021 before the Learned Session Court, Nashik, the Appellant-Accused has stated to the absolute contrary and in fact narrated the entire incident of the Deceased and him being involved in the fire. The relevant statement is reproduced below:

सेशन केस नं. ४४९/२०१८

नाशिक येथील मे. जिल्हा व सत्र न्यायालय यांचे कोर्टात,

सरकार : फिर्यादी

विरुद्ध

समशेर अबुलेश देवांग : आरोपी

या कामी आरोपीचा मे. कोर्टास सदर केसमध्ये त्यांचे स्पष्टीकरण येणेप्रमाणे: -

उस दिन मैं शाम बाजार गया था। वहाँ से आने के बाद मेरी बीवी आयशा ने पडोस में रहनेवाले उत्तम महाले के बच्चे का जनमदिन पर जाना है, ऐसे कहा। हम दोनो वहाँ जन्मदिन पर गए। बच्चे को बिस्कुट पॅकेट दिया। बाद में हमारे रूम पर चले गए। थोड़ी देर सीढ़ियों पर बैठने के बाद आयशा रूम में कपडे बदलकर खाने की तैयारी करने गई। बाहर बैठे बैठे मेरी आँख लग गई। कुछ देर बाद मेरे रूम से आ रही आवाज से मेरी नींद खुली। मैंने देखा तब रूम में आग लगी थी और बहुत धुवाँ निकल रहा था। मैं दौडकर रूम में गया तो मैंने देखा की स्टोव्ह से बहुत आग निकल रही थी और आयशा जलती हुई बेहोश पड़ी थी। मैंने स्टोव्ह की आग बुझाने की कोशिश की। वह करते समय मैं भी जल गया। मैंने आयशा को बचाने की कोशिश की मगर वो बेहोश पड़ी थी। मैं मदद के लिए बाहर दौडा। कुछ दूर जाने पर मैं भी चक्कर खा कर बेहोश गिर पडा। होश आने पर मैंने देखा की बहुत लोग और पुलिस मेरे रूम के यहाँ जमा हुए थे और उन्होने मुझे अस्पताल भेज दिया।

अस्पताल से छुटने के बाद पुलिस थाने गया। मैंने उन्हें यह सारी बाते बताई। उन्होने कुछ कागजोंपर मेरे अंगुठे की छाप लगवाली। पुलिस ने मुझे आयशा के बिल्लासे में पूछा दिखाने के बाद उसे दफनाया गया। मैंने किसी को नही मारा, मुझे फसाया गया है।

नाशिक.

दिनांक: २६/२/२०२१.

'Seen'.

(Signature
illegible)

[=====]

(अंगूठे का निशान)

आरोपी
समशेर अबुलेश
देवांग

(Signature illegible)

'Left thumb impression before me in Sessions Court.

Adv Nilesh Rathi
Defence Counsel System
Legal Aid, Nsk.'

(Official Translation of a photocopy of an Explanation, typewritten in Marathi and Hindi)

Sessions Case No. 449/2018

IN THE COURT OF THE HON'BLE DISTRICT AND SESSIONS COURT,
AT NASHIK

State : Complainant

Versus

Samsher Abulesh Devang : Accused

In this case, the explanation of the Accused submitted before the Hon'ble Court is as mentioned hereinbelow :-

On that day, in the evening I had gone to the market. After I returned from there, my wife Ayesha told me that we had to attend the birthday party of the child of our neighbor, Uttam Mahale. Both of us went there for the birthday. We gifted a packet of biscuits to the child. Thereafter, we returned to our room. After sitting on the stairs for a while, Ayesha went inside the room to change her clothes and prepare dinner. While sitting outside, I dozed off. Some time, thereafter, I was woken up by a noise coming from my room. When I looked, the room was on fire and a lot of smoke was coming out. I rushed into the room and saw that huge flames were coming out from the stove and Ayesha was lying unconscious, engulfed in flames. I tried to extinguish the fire on the stove. While doing so, I also sustained burn injuries. I tried to save Ayesha, but she was lying unconscious. I ran outside for help. However, after going ahead for a short distance, I too felt dizzy and fainted. Upon regaining consciousness, I saw that a large crowd of people and the Police had gathered near my room and they had sent me to the hospital.

After being discharged from the hospital, I went to the Police Station. I narrated all these facts to them. They took my thumb impressions on some papers. The Police inquired (Illegible) after showing me the dead-body of Ayesha, she was buried. I have not killed anyone but I have been falsely implicated.

Nashik,
Date : 26.02.2021

[=====]
(Thumb Impression)
Samsher Abulesh Devang
Accused”

31. Therefore, on perusal of the entire statement given by the Appellant-Accused under Section 313 of CrPC, and the statement dated 26th February 2021, we are of the considered view that the Appellant-Accused has not been able to establish that he was not guilty of the crime and in fact inconsistencies in the statements go on to prove that the Appellant-Accused was himself involved in the murder of his wife i.e. the Deceased.

32. Thus, on examining the evidence on record and on examining the statements and deposition as given by the witnesses we are of the view that all the aforesaid witnesses have unanimously deposed that the Appellant-Accused was not there at the site and had returned to the site after a considerable gap with burns on his body which go to prove that the Appellant-Accused tried to flee from the site.

The depositions of the witnesses also make it clear that the water which was available in the drum and bore well near the site was not used and this further goes on to prove that the Appellant-Accused had made not attempts to douse the fire by using the water available nearby. The common thread in most of the depositions of the witnesses is also that the Appellant-Accused suspected the character of the Deceased i.e. his wife and used to frequently quarrel with her which establishes that the Appellant-Accused clearly had a motive to kill the Deceased and hence the submission made by Learned Counsel on behalf of the Appellant-Accused that motive was missing in the facts of the present case, and hence the case of the prosecution had to be discarded, needs to be rejected. In fact, in the facts of the present case, the complete chain of circumstances as narrated above go on to show that the chain of events is such and is so complete that there is no escape from the conclusion that the crime was committed by the Appellant-Accused and no one else. In such an event, when the chain of circumstance is complete then the absence of a strong motive would not weaken the case of the prosecution. Therefore, the reliance of the Learned Counsel for the Appellant-Accused on the decision of **Nandu Singh vs. State of Madhya Pradesh**² would not be apposite in the facts of the present case, inasmuch as in that case, the prosecution had failed to establish through clear, cogent and consistent evidence the chain of events on the basis of which the guilt of the Appellant-Accused could be established and hence the Supreme Court had taken a view that in the absence of motive in such a case the conviction of the Appellant-Accused was not sustainable and therefore it was set

2 (2022) 19 SCC 301

aside. In the facts of the present case, however, the chain of events goes on to prove that the finger of suspicion/doubt point only to the Appellant-Accused, and all the incriminating facts and circumstances were incompatible with the innocence of the Appellant-Accused or the guilt of any other person.

33. Further, on a perusal of the statement dated 26th February 2021, the Appellant-Accused has stated that there was fire from the stove where the Deceased was cooking and on account of this fire the Deceased was lying unconscious at the site. However, on perusal of the photographs which are annexed as Article 1, at Page 80 to 85 of this appeal, it is clear that there is no damage to the stove which was recovered from the site, which further, fortifies our view that the finger of suspicion/doubt clearly points to the Appellant-Accused and there is no other inference which can be drawn in favour of the Appellant-Accused. We further, also are of the firm view that the Appellant-Accused has falsely submitted that when he ran into the room to save the Deceased she was lying in unconscious state inasmuch as all the witnesses have consistently deposed that when they reached the site, the body of the Deceased was found lying in a charred/burnt condition. This to our mind, adds another facet to the chain of events which prove the guilt of the Appellant-Accused.

34. We find much substance in the submission made on behalf of the Learned Counsel on behalf of the Respondent State/ Prosecution, that the burden of proving the fact was on the Appellant-Accused under Section 106 of the Indian Evidence Act, 1872, inasmuch as the Appellant-Accused and the Deceased cohabited together and the incident occurred inside the dwelling house of the

Appellant-Accused and the Deceased where only both of them were present. In such circumstances, as provided under Section 106 of the Indian Evidence Act, 1872, when any fact is especially within the knowledge of any person, the burden of proving that fact is only upon them. In the facts of the present case, the Appellant-Accused was unable to prove as to how the Deceased sustained the fatal burns, and therefore, the same provides an additional link in the chain of circumstances to prove the guilt of the Appellant-Accused. For ease of reference the provisions of Section 106 of the Indian Evidence Act, 1872 are reproduced: -

“106. Burden of proving fact especially within knowledge. — When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him. (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

35. The reliance of the learned counsel for the Respondent-State on the decision of **Trimukh Maroti Kirkan v. State of Maharashtra**³ would also be of assistance to him in canvassing the proposition that the burden of proof under Section 106 of the Indian Evidence Act would be on the Appellant-Accused, inasmuch as held in the aforesaid case, the provisions of Section 106 are clear, that where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be comparatively of a lighter character.

3 (2006) 10 SCC 681

36. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer any explanation. In the case of Trimukh Maruti Kirkan (*supra*), the Supreme Court was seized with a matter regarding dowry death and the Supreme Court applying the principles of Section 106 of the Indian Evidence Act upheld the decision of the High Court and convicted the accused under Section 302 of the Indian Penal Code inasmuch as they were of the view that the accused was last seen together with the deceased wife who had died on account of the dowry death and in applying the principles of Section 106 of the Indian Evidence Act, the Supreme Court came to the conclusion that based on circumstantial evidence, it was clear that it unerringly pointed towards the guilt of the accused and if the circumstances were taken cumulatively, then the entire chain would be of such a nature that the only conclusion was that there was no escape with all human probability that the crime was committed by the accused. In the facts of the present case also, the Appellant-Accused was last seen together with his wife i.e. the Deceased and he resided in the tin-shed which was the site and the said tin-shed had caught fire and it was the burden upon the Appellant-Accused to give a cogent explanation as to how the Deceased had suffered the burn injuries, which has not been discharged by the Appellant-Accused successfully.

In view thereof, we are of the firm view that the circumstantial evidence coupled with the fact that the Appellant-Accused has not been able to discharge the burden as stipulated under Section 106 of the Indian Evidence Act. Therefore, we are of the view that the only unerring conclusion that can be drawn in the present case is that the Appellant-Accused is guilty of the crime of killing the Deceased i.e. his wife.

37. We are also of the view that the Appellant-Accused had made an extra-judicial confession before the police and PW-4 accepting his act of killing his wife i.e. the Deceased by pouring kerosene over her and setting her on fire and the same was not retracted by the Appellant-Accused, nor the same was caused by inducement, threat or promise making it irrelevant to establish the crime of the Appellant-Accused. We are cognizant of the settled principle of law that extrajudicial confession is a weak evidence by itself, however, if the same is made voluntarily and does not fall foul of Section 24 of the Indian Evidence Act, and is also supported by a chain of cogent circumstances then the same can be accepted by Courts as an admissible piece of evidence capable of forming the basis of conviction of the Appellant-Accused of the offence. Reliance placed by Learned Counsel on behalf of Respondent State on the decision of **Sahadevan and Anr. Vs. State of Tamil Nadu**⁴ would be appropriate to the facts of the present case. The Supreme Court, in the case of Sahadevan and Anr. (supra) has summarized the principles which would make an extra-judicial confession an admissible piece of

⁴ (2012) 6 SCC 403

evidence capable of forming the basis of conviction of an accused. The relevant extract from the aforesaid judgment is reproduced below-

“16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v). For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other: fact and in accordance with law.” (emphasis supplied)

38. In view of the aforesaid settled principles of law, and on a holistic appreciation of the evidence on record we are of the view that the aforesaid extra-judicial confession is a crucial/additional link in the chain of circumstances which proved the guilt of the Appellant-Accused.

CONCLUSION

39. Thus, whether the chain of circumstantial evidence would point out, to the guilt of the Appellant-Accused in our opinion the following evidence, and which in our opinion, is a complete chain of the circumstances to bring home the guilt of the Appellant-Accused so as to clearly indicate that it is none other than the Appellant-Accused who committed the murder of the Deceased is as follows:-

i. The Appellant-Accused and the Deceased were husband and wife, residing in a tin-shed at a construction site, which is the place of the site.

ii. The evidence on record establishes that the Appellant–Accused and the Deceased were in a strained marital relationship, marked by frequent quarrels and repeated instances of physical abuse by the Appellant–Accused

iii. The Appellant–Accused also made an extra-judicial confession to the police and PW-4, that he killed his wife by pouring kerosene on her and setting her ablaze.

iv. PW-1, PW-5, and PW-6 have deposed that the Appellant–Accused arrived at the scene of the incident approximately half an hour later, suffering from burn injuries on various parts of his body, including both palms, eyebrow, face, and abdomen. PW-5 further deposed that upon arriving at the scene, the Appellant–Accused remained standing there.

v. PW-1, PW-2, PW-6, and PW-9 deposed that the water available in the drum and borewell near the site was not used to douse the fire, which indicates that the Appellant–Accused made no attempt to extinguish the fire using the water available nearby. PW-9 deposed that he had dug a borewell at the construction site and installed a tube and drums for storing water. PW-1 deposed that he personally doused the fire by entering the room and using water. PW-2 also stated that the Appellant–Accused made no attempt to save his wife from the fire, as the drum was found full of water and had not been used. PW-6 deposed that he, with the help of neighbours, attempted to extinguish the fire, following which the police contacted the fire brigade.

vi. In light of the contradictory and false statements made by the Appellant–Accused in his statement under Section 313 of CrPC, as noted in paragraph 30, his guilt stands strongly reinforced. A perusal of the said statement reveals glaring inconsistencies and falsities in his responses. The Appellant–Accused has failed to offer a credible explanation, and these inconsistencies further point towards his complicity in the offence.

vii. The statement of the Appellant–Accused before the police dated 26th February 2021, wherein he claimed that a fire from the stove caused the Deceased to become unconscious, stands contradicted by the evidence on record. The material annexed at page 80 as Article 1 of the appeal indicates that the stove was in proper condition, thereby disproving the theory of a stove-related incident and suggesting that the Deceased’s death was not caused by a stove explosion.

viii. PW-1 and PW-9 deposed that the Appellant–Accused gave evasive answers when questioned about the incident. PW-1 stated that upon making inquiries, the Appellant–Accused responded evasively. PW-9 similarly deposed that shortly after arriving at the scene, with burn injuries on his hands, forehead, face, and chest, the Appellant–Accused was questioned about the incident and gave evasive replies.

ix. PW-10, the doctor, deposed that upon examination, the Appellant–Accused had sustained 40% burn injuries, which could be caused if a burning person embraces another. This testimony, read with the deposition of PW-4, wherein the Appellant–Accused confessed that his wife i.e. the Deceased had attempted to embrace him while she was on fire which indicates that the

Appellant–Accused sustained the burn injuries in that manner. Significantly, it also reflects that he made no attempt to save the Deceased.

x. In the postmortem report, PW-10 i.e. the Doctor, opined that the cause of death was ‘shock due to burn injuries, sufficient in the ordinary course of nature to cause death.’ He further deposed that the burn injuries were ante-mortem and recent in duration.

xi. PW-2 deposed that the police seized a plastic can and a matchbox from the scene of the incident, which are incriminating articles clearly indicating the use of kerosene by the Appellant-Accused to set the Deceased on fire.

xii. On the motive, a cumulative consideration of the evidence of PW-2, PW-9 and statement of the father of the Deceased recorded by PW-1 on 8th August 2019, clearly indicates that the Appellant-Accused was harassing and physically abusing the Deceased as he was suspecting character of the Deceased, and hence even on the day of the incident the finger of suspicion/doubt points towards the guilt of the Appellant-Accused

40. The chain of all such circumstances, in our opinion, unequivocally pointed the finger towards the Appellant-Accused to have committed the murder of the Deceased inasmuch as there was a motive which was on account of the consistent abusive behaviour, physically and mentally, by the Appellant-Accused towards the Deceased.

41. As a result of the aforesaid, in our considered opinion, we do not find that the Learned Sessions Judge, in any manner has erred in coming to a

conclusion that the Appellant-Accused is guilty of an offence under Section 302 of the IPC. The impugned judgment and order passed by the Learned Sessions Judge, convicting the Appellant-Accused under Section 302 of the IPC needs to be confirmed. We, accordingly, dispose of this appeal in terms of the following order:

ORDER

- (i) The impugned judgment and order dated 20th March 2021 passed by the Learned Session Judge, Nashik, in Sessions Case No. 449/2018, convicting the Appellant-Accused under Section 302 of the IPC stands confirmed. The appeal accordingly stands dismissed.
- (ii) In view of the disposal of the above appeal, interim application would not survive and is accordingly disposed of.
- (iii) A copy of this judgment be sent to the Appellant-Accused who is undergoing sentence in jail.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)