

Order below Exh.1 in Sessions Case No. 13 of 2023

CNR: MHST190004552023

(State of Maharashtra Vs. Balu Bhagwan Kale & 1 other)

1] Evidence of PW-4 Police Constable Krushndev Narad Shedage is being partly recorded. He is claiming that on 11.07.2019 he recorded statement of deceased Aishwarya as per her say and that statement is at Exh.56. Relevant portion of Exh.56 is reproduced as under : -

“आज दि. ११/०७/१९ रोजी सकाळी मी लोणंद येथे असताना मला पैशाची गरज असलेने मी माझा चुलत सासरा बाळ्या भगवान काळे यास पैसे मागितले. माझी आई व इतर लोक लोणंद पो. स्टे. च्या पाठीमागे राहणेस आहेत. त्या ठिकाणीच मी पैसे मागितल्याच्या रागातून बाळ्या भगवान काळे याने माझ्या अंगावर रॉकेल ओतून मला पेटविले.....”.

Thus, above reproduced portion shows that, on the day of incident, at that relevant time, **deceased Aishwarya was present on the spot of incident.**

2] PW-4 Police Constable Krushndev Narad Shedage has deposed relevant facts in following manner : -

“जखमी ऐश्वर्याने सांगितले की, लोणंद पोलीस स्टेशनचे पाठीमागे तिची आई आणि त्यांचेतील अजून लोक राहणेस आहेत. ती त्या ठिकाणी गेली होती. तिला पैशांची गरज असलेमुळे तिने तिचा चुलत सासरा बाळू भगवान काळे याला पैसे मागितले, त्या कारणावरून बाळू याने राग धरून तिचे अंगावर रॉकेल ओतून तिला पेटवून दिले. ”

Thus, above portion reproduced shows that deceased Aishwarya had gone there i.e. at Lonand on the day of incident at that relevant time.

3] In above mentioned facts and circumstances, question has arisen

whether deceased had informed PW-4 Police Constable Krushndev that whether she had gone there i.e. (ती त्या ठिकाणी गेली होती काय). In consequence of this, further question arises, whether the fact of informing by deceased to PW-4 Police Constable Krushndev about "ती त्या ठिकाणी गेली होती काय " amounts to omission. In this context, objection is to be decided at present.

4] I have heard learned defence Counsel Shri. V.B.Patil and learned APP Shri. D.S.Patil for prosecution.

5] As per prosecution case, incident of setting Aishwarya on fire by accused Balu at Lonand on 11.07.2019 in the morning, is relevant allegation. The learned Counsel of accused has asked question to PW-4 Krushndev, whether in Exh.56, deceased Aishwarya had informed him whether she had gone "there". "There" means, at Lonand on the spot of incident in the morning on 11.07.2019. Above mentioned portion from Exh.56 shows the presence of deceased at Lonand, where accused Balu was present and where he had allegedly set her on fire.

6] While stating facts before Court from the side of PW-4 Police Constable Krushndev, he had stated that deceased Aishwarya had informed him that she had gone there, i.e. to say, she had gone on back side of Police Station at Lonand, where alleged incident of setting her on fire took place. Here, what is important, whether context of disputed fact that deceased Aishwarya had gone to the spot of incident at Lonand at that relevant time is covered in the statement Exh.56 or not. What is important here, whether deceased Aishwarya was present on the spot on

the day of incident in the morning, where accused Balu was present has been appearing in Exh.56 or not. If above described portions appearing in Exh.56 and portions appearing in the evidence of PW-4 Police Constable Krushndev are taken into consideration, then it will find that, the fact of going of deceased Aishwarya at Lonand on the spot of incident and it has been informed by her to PW4 Police Constable Krushndev, is already covered. Crucial point is that, Exh.56 statement reveals that facts are shown to be written (in the manner described above) by PW-4 Police Constable Krushndev in the words narrated by deceased Aishwarya. Now, those facts are deposed by PW-4 Police Constable Krushndev, which were narrated to him by the deceased Aishwarya. Therefore, here, reference of material facts is important. While deposing those material facts, in which words they are described, they are not relevant one. Court has to see, whether subject matter has been covered in evidence as per previous statement or not. Furthermore, facts heard from some other person prior to considerable period of years, while deposing such facts, wordings of those facts cannot be expected from deponent in tape-recorder manner. Therefore, considering all these material aspects, the fact that deceased Aishwarya had gone at Lonand on the spot of incident in the morning, where accused Balu was present and said fact was informed by deceased to PW-4 Police Constable Krushndev is already covered in Exh.56. In consequence of this, I do not find that the fact that deceased Aishwarya had gone to the spot of incident is not mentioned in the statement Exh.56. In other words, deceased Aishwarya had gone to the spot of incident on 11.07.2019 in the morning is very well mentioned in Exh.56 and same was informed by her to PW-4 Police Constable Krushndev. It can be gathered from above mentioned portion.

7. In brief, it can be stated that in Exh.56, it is stated that deceased was present on the spot at Lonand and in deposition, it is stated by PW-4 that deceased had gone there, i.e. at Lonand on the spot of incident. Both are having one and same meaning. They are not contradictory to each other. Therefore, in view of this, I do not find any substance in the question asked by learned defence Counsel while putting the same i.e. “जबाब निशाणी ५६ मध्ये, ‘ती त्या ठिकाणी गेली होती’ असे नमूद नाही व तुम्ही आज हे प्रथमच कोर्टात सांगत आहात, याबाबत तुम्हाला काय सांगायचे आहे.”. Therefore, permission is not granted to ask such question to PW-4 Police Constable Krushndev, inasmuch as, facts covered in disputed question is not amounting to omission, if it is compared with Exh.56. Parties to note it. Case to proceed further.

Wai
Date: 05.05.2025

(R.N.Mehare)
Additional Sessions Judge, Wai.