

Order below Exh. 5 in Sessions Case No. 42/2011

The accused arrested and charge sheeted for committing murder of his wife by setting her on fire, seeks bail.

2. As per the police papers on record, deceased Ushabai was serving in Primary Health Centre at Dhanrat. She was married to the accused in 2004 and was having a son namely Abhay aged 5 years and a daughter namely Suhani aged 3 years from him. Her husband was a labourer and he was in the habit of consuming liquor. He used to assault her regularly under the influence of liquor.

3. On 2/9/2011 at 5.30 pm when Ushabai was cooking food on chool in her house, her husband came from outside and demanded money from her for liquor and when she declined to pay money he poured kerosene on her person and set her on fire by using the burnt firewood from the chool. Ushabai started shouting and came out. The neighbours gathered and extinguished fire by pouring water. She sustained extensive burns to the extent of 89%. Her parents were called there and she was immediately shifted to Sub District Hospital Nawapur. Her dying declaration was recorded by one Head Constable on the same day after obtaining certificate of the doctor and it is treated as FIR. It was registered as FIR at 7.30 pm. Again on the same night Naib Tahsildar recorded her second dying declaration in the same hospital. Then she was shifted to Civil Hospital Dhule where one Head Constable Khairnar recorded the third dying declaration on 3/9/2011 at 12.05 a.m. The statements of the neighbours disclose that one Lalitabai was the first person to arrive on the spot. She had seen the accused trying to gag

Ushabai so that she should not shout. Then Lalitabai raised shouts and people gathered, and Ushabai's parents were also called there. Then Ushabai was taken to the hospital initially on the bike of one Dileep Gavit and after some distance they engaged one rickshaw to go to the hospital. Ushabai succumbed to the injuries on 10/9/2011.

4. The accused was also brought to the hospital on 2/9/2011 at 9.00 p.m. He had six injuries including some burns.

5. Ld.APP Shri RR Patil argues that there are several dying declarations and statements of witnesses showing involvement of the accused. The deceased Ushabai had sustained 89% burns. Kerosene was used for setting her on fire. The offence is very serious. The accused was in habit of consuming liquor and assaulting his wife. He deserves no sympathy.

6. On the contrary Id.Adv.Shri S.A.Vora argued for bail on following submissions:-

- 1] The 3 dying declarations are inter-se contradictory.
- 2] The accused has sustained burn injuries for which there is no explanation.
- 3] There were no previous incidents.
- 4] There was gas cylinder in the house.
- 5] In 3rd dying declaration Ushabai has stated that the accused poured water on his wife, while one Minabai has not stated about presence of the accused when she arrived on the spot after hearing the shouts.

7. It is the defence of the accused that he was not present at the time of the incident. When he came to the house, his wife was afire. He tried to extinguish the fire and poured water on her. He had carried Ushabai to the hospital with the help of her

parents and neighbours. There are suppression of facts. Hence the accused should be released on bail.

8. After carefully considering the documents on record in the light of the arguments advanced, I notice following material facts:-

1] The informant Ushabai was married to the accused in 2004 and was having a son and a daughter from him,

2] She was serving in PHC while the accused was a labourer.

9. Though the spot panchanama shows that there was stove of Supersaver, with cylinder attached to it, it also shows that there was a choola (domestic stove) and there was a big plate (प्लेट) with dough and other articles of cooking food on the spot. It indicates that the deceased was cooking food. There were firewoods in the chool in disturbed condition and the spot was smelling of kerosene. One empty can having smell of kerosene was lying there. Some burnt pieces of clothes were lying on the spot. The soil containing kerosene was collected from the spot.

10. From the undisputed fact that Ushabai sustained wound by fire on 2/9/2011 after 5.30 p.m. and the medical certificate of the accused shows that he also sustained some burns. It shows his presence in the house. It is also on record that the neighbours had gathered there and extinguished the fire of Ushabai, and then her parents residing in the same village were immediately called and she was shifted to Sub District Hospital Nawapur. The FIR in the form of the dying declaration was recorded by one Head Constable before 7.30 p.m. Thus there was no time gap to think about false implication and to concoct a story.

11. The accused is husband of the deceased Ushabai and he does not give any explanation why the deceased would falsely implicate him.

12. There are some contradictions in the 3 dying declarations. The first dying declaration shows that the accused was not present initially in the house; he came from outside and demanded money for purchasing liquor but Ushabai declined to pay amount and thereafter the incident took place.

13. The second dying declaration by Naib Tahsildar shows that Ushabai told him that her husband was in the habit of consuming liquor and quarrelling with her. On the day of incident he was sitting with her, near the choola and there was a quarrel between them. The Naib Tahsildar has not recorded the details of the quarrel.

14. The third dying declaration recorded at Dhule by Head Constable Khairnar shows that the accused came from outside under the influence of liquor and picked up quarrel with Ushabai. The material contradiction is that in the first two dying declarations Ushabai was set on fire by using fire wood, whereas as per the third declaration Ushabai was set on fire by lighting a match stick. The first two dying declarations do not disclose that the accused had tried to extinguish the fire, but the third dying declaration shows that the accused poured water on Ushabai and left the house. All the dying declarations are recorded after obtaining certificate of the doctor about consciousness and orientation of the patient. The first 2 dying declarations disclose that Ushabai after receiving the burns raised shouts and came out and the neighbours extinguished the fire by pouring water on her person.

15. Lalitabai has stated that when she heard shouting of Ushabai she went there and saw that the accused was trying to gag Ushabai so that she should not raise shouts. Hence she herself raised shouts.

16. Minabai had been to the spot after hearing the shouts. She stated that the neighbours extinguished the fire by pouring water. She did not state about the presence of the accused.

17. The spot panchanama shows that the deceased Ushabai was cooking food. She had prepared dough for baking chappatis/bhakarīs. The door of the house was open. I therefore find that these facts rule out the possibility of suicide. A person committing suicide will close the door so that nobody should come there to prevent him/her from committing suicide. The presence of the accused is clear from the burn injuries sustained by him. The consistent record shows that the accused had not taken his wife to the hospital. The parents and the neighbours of the deceased had taken Ushabai to the hospital.

18. The medical certificate shows that the accused was examined at the hospital at 9.00 p.m. He was having one CLW on parietal region and two contusions; one on nose and the other on eye. This probably relates to some earlier incident just before the present incident. There are two burns; one is on dorsum of palm of 1%, and other over right knee region of 1%. These minor burns do not indicate that the accused attempted to extinguish the fire on his wife. If he would have attempted to extinguish the fire there would have been higher percentage of burns on his person. 1% burns indicate that there might be some splashing of kerosene on his person which might have caught fire. Thus the minor burns do not indicate that the accused attempted to save

his wife.

19. The contradiction regarding the nature of quarrel is not material. The Naib Tahsildar recorded that there was quarrel between the accused and his wife, whereas the Head Constable has recorded that it was on account of demand of money for purchasing liquor and denial by the wife to pay money to the accused.

20. There is consistent material showing that kerosene was poured on the person of Ushabai, and the accused had set her on fire. Out of the 3 dying declarations, two were recorded immediately after the incident; one is recorded by Naib Tahsildar. All the dying declarations are recorded in the presence of the medical officer who have certified about the conscious and oriented condition of the patient to make the statement. If the accused was innocent he would have taken his wife to the hospital but nobody stated that the accused brought his wife to the hospital. There is no strong motive, either for the deceased or for her parents, to falsely implicate the accused particularly when Ushabai was having two children aged 5 years and 3 years.

21. Though there was no previous specific incident disclosed, the dying declarations disclose that the accused was in the habit of consuming liquor and assaulting his wife Ushabai. It appears that just before the incident the accused had sustained injuries either by fall or by assault by somebody, and the accused must be in bad mood when he came to the house and demanded money and his wife refused to pay money. There is prima facie strong material to show that the accused set his wife on fire by pouring kerosene.

22. The third dying declaration is suspicious. Head Constable Khairnar has tried to save the accused by trying to change the story and by showing that the accused tried to extinguish the fire.

23. In State of U.P. Vs. Hari Mohan – AIR 2001 SC 142 it is held that merely because investigation is bad the Court cannot avoid its responsibility to sift the evidence and try to find out the truth. In that case it was observed that the investigation officer had not left any stone unturned to save the accused but still the Honourable Supreme Court held that the accused cannot always get the benefit of bad investigation.

24. Considering the facts on record I find that this is not a fit case for grant of bail. Hence I proceed to pass the following order:-

ORDER

- 1] The application is rejected.
- 2] Copy of this order be sent to Dist. Superintendent of Police, Nandurbar for intimation to the Dist. Superintendent of Police, Dhule about the conduct of Head Constable Khairnar.

Date : 20/1/2012

[A.M.Dhavle]

Additional Sessions Judge,
Nandurbar.