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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 144 OF 2014

Rupesh Tukaram Zingare	]
Kolhapur Central Prison, Kalamba	]
Circle 5/1, C/6082	]
Dist. Kolhapur - 416007	]..Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]..Respondent
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Smt. Sonia S. Miskin Advocate appointed for the Appellant
 Mr. A.S. Shitole A.P.P. for the State

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CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI,JJ.

DATED : JULY 20, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original accused against the judgment and order dated 30.9.2013 passed by the learned Additional Sessions Judge, Greater

Mumbai in Sessions Case No. 341 of 2012. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life and fine of Rs.500/- i/d S.I. for seven days.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Nirmala was the mother of the appellant. The appellant was residing with his parents i.e. Nirmala and Tukaram (P.W. 1) at Ashmi chawl. P.W. 2 Lissi and P.W. 4 Mariama were residing near the house of the appellant. Lissi's house was adjoining the house of the appellant and Nirmala's room was situated three rooms away from the room of the appellant. The appellant used to regularly demand money from his mother Nirmala. On account of this, quarrels used to take place between the appellant and his parents.

(ii) The incident occurred on 14.1.2012. On that day at 6.30 a.m. the appellant demanded money from his father P.W. 1 Tukaram. Tukaram told the appellant that the appellant used to spend all the monies earned by Tukaram and used to have meals without doing any work. Tukaram told the appellant that

he has no money to give the appellant to satisfy his vice for liquor. The appellant then abused his father Tukaram and a scuffle took place between the appellant and his father Tukaram. Due to this, Nirmala the mother of the appellant abused the appellant. Thereafter, Tukaram went to the police station and lodged non-cognizable case against the appellant. When Tukaram returned home, he saw that his wife had sustained burn injuries. He then took her to the hospital. Nirmala expired in the hospital after few days. In the hospital, the dying declaration of Nirmala was first recorded by P.W. 14 P.S.I. Yadav. The said dying declaration is at Exh. 40. This dying declaration was recorded on 14.1.2012 at about 1.50 p.m. This dying declaration was treated as F.I.R. Thereafter investigation commenced. Thereafter P.W. 13 Special Executive Officer (SEO) Ms. Kotian recorded the dying declaration (Exh. 37) of Nirmala. In both the dying declarations, Nirmala stated that her son i.e. the appellant poured kerosene from the stove on her person and thereafter set her on fire. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3 Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we find that there is no merit in the appeal.

5 The conviction is mainly based on two dying declarations Exh. 40 and 37. Exh. 40 was recorded by P.W. 14 PSI Yadav and dying declaration Exh. 37 was recorded by P.W. 13 SEO Ms. Kotian. The dying declaration Exh. 40 was recorded on 14.1.2012 at 1.50 p.m. P.W. 14 PSI Yadav who

recorded the said dying declaration, has stated that at about 1.30 p.m. he received a message from Mulund General hospital that one lady namely Nirmala was set on fire and she was admitted in the hospital, hence, he visited Mulund General hospital. When PSI Yadav went to the hospital, he met P.W. 1 Tukaram who told him that his son set his wife on fire. PSI Yadav then asked the Medical Officer whether he could record statement of Nirmala. The Doctor told him that he could record her statement. Thereafter PSI Yadav recorded the statement of Nirmala. Nirmala told him that her son Rupesh had the habit of drinking alcohol. On 14.1.2012 in the morning at about 7 a.m. her son Rupesh demanded money from his father (P.W. 1 Tukaram) for alcohol but her husband refused to give any money to their son Rupesh and instead Tukaram went to lodge complaint against their son. After Tukaram left, their son Rupesh demanded money from her. She told her son that she was unable to pay money to him for drinking alcohol, therefore, Rupesh started abusing her and giving threats to kill her if she did not give money to him. Then her son Rupesh picked up stove and poured kerosene on her person. Then Rupesh took a match box and set her on fire. She started shouting.

Thereupon, neighbours came to the spot and poured water on her and extinguished the fire. In the meanwhile, her husband came there and took her to Mulund General hospital for treatment. Nirmala has further stated that Rupesh attempted to kill her, therefore, she has complained against him.

6 The second dying declaration was recorded by P.W.
13 SEO Ms. Kotian. Ms. Kotian has stated that she was requested to record the dying declaration of Nirmala Zingare at Mulund General hospital, hence, she went to the hospital. She then recorded the dying declaration of Nirmala. Nirmala told her that her son poured kerosene from stove on her person and set her on fire. This dying declaration is at Exh. 37. Thus, both the dying declarations Exhs. 37 and 40 show that Nirmala has stated that the appellant poured kerosene from stove on her and set her on fire. The spot panchnama Exh. 35 clearly shows that the stove was lying in the house and lid of the stove was open. This further corroborates the prosecution case that the appellant opened the lid of the stove and poured kerosene on his mother Nirmala and set her on fire.

7 The prosecution has examined Tukaram (P.W. 1) who is the father of the appellant and who was the husband of deceased Nirmala. Tukaram has stated that he was residing with his wife and son i.e. the appellant at Ashmi chawl which is situated in Bhandup West in Mumbai. Though Nirmala has made oral dying declaration to Tukaram wherein she stated that the appellant had poured kerosene on her and set her on fire, Tukaram has turned hostile and has not supported the prosecution on this aspect, however, after Tukaram was declared hostile, he was cross-examined by the prosecution. In the cross-examination, Tukaram has admitted that on 14.1.2012 at about 6.30 a.m. his son Rupesh demanded money from him. He told his son Rupesh that Rupesh used to spend all the monies earned by Tukaram and used to have meals without doing any work. Tukaram also told Rupesh that he had no money to give him to satisfy his vice for liquor. Tukaram has further stated that at that time, the appellant abused him and scuffled with him. Due to this, his wife Nirmala abused his son Rupesh. Thereafter Tukaram went to the police station to give a report against his son. When he came back from the police station, he saw that his wife had sustained burn injuries.

He then took his wife to the hospital. Thus, though Tukaram has turned hostile, his evidence shows that on 14.1.2012 at about 6.30 a.m. the appellant demanded money for liquor. As Tukaram did not give him the money, the appellant abused his father Tukaram and scuffled with him. Due to this, Nirmala had abused Rupesh and thereafter Tukaram went to the police station to lodge complaint against his son. When he returned back, he noticed that his wife had sustained burn injuries. There was no one else in the house except the appellant and the deceased at the time of the incident. The dying declarations of Nirmala Exhs. 37 and 40 clearly show that it was her son Rupesh who had set her on fire after pouring kerosene on her.

8 Two neighbours have also been examined by the prosecution, one of them is P.W. 2 Lissi and the other is P.W. 4 Mariama. Lissi was declared hostile, however, though she was declared hostile, her examination-in-chief & cross-examination by the learned A.P.P. also supports the prosecution case. In examination-in-chief, Lissi has stated that in the morning, she heard mother of the appellant shouting. Smoke

was coming out from her house. When she pushed door of the house of the appellant, she found the appellant present in the house and his mother Nirmala was burning. The appellant did not allow Lissi to remain there and told her to go out of the house. Therefore, Lissi came out of the house. In the cross-examination, Lissi has admitted that smell of kerosene was coming from the house of the appellant. Lissi has further admitted that when other ladies asked Nirmalabai about what had happened, Nirmalabai told the neighbours who had gathered there that as she did not give money to her son Rupesh, he set her on fire. Thus, the evidence of Lissi also supports the prosecution.

9 P.W. 4 Mariama was residing three rooms away from the house of the appellant. She has stated that the family of the appellant consisted of the appellant and his parents Nirmala and Tukaram. Mariama has stated that the appellant and Nirmala used to quarrel every day. These quarrels used to take place because Rupesh used to demand money from his mother. The evidence of Mariama further shows that on 14.1.2012 at about 7.30 a.m. when she was sitting in the door

of her house, she heard noise of quarrel going on between Rupesh and his mother. She heard shouts of Nirmala and she also saw smoke coming out of the house of Nirmala. When she went near the house and peeped through the door, at that time, she found that Rupesh was dragging his mother out of the house. They saw that Nirmala had sustained burn injuries. Nirmala called out to Mariama. Mariama has stated that one Lissi was also present on the spot. At that time, the appellant was under the influence of alcohol. After dragging his mother out of the house, the appellant was abusing people and later on the appellant ran away. Nirmala was taken to the hospital where she expired after few days.

10 It is the prosecution case that the appellant set his mother Nirmala on fire and caused her death. This is supported by the medical evidence. P.W. 9 Dr. Kachare conducted the post-mortem on the dead body of Nirmala. At the time of post-mortem, he found 45% superficial to deep burn injuries on the body of Nirmala and in his opinion, the cause of death was "septicemic shock due to 45% superficial deep burns (unnatural)".

11 On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellant poured kerosene on his mother Nirmala and set her on fire which led to her death. Thus, we find no merit in the appeal and the appeal is dismissed.

12 We quantify legal fees to be paid to Advocate Smt. Sonia S. Miskin by the High Court Legal Services Committee at Rs. 5000/-.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]