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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 263 OF 2009

BALAJI VISHWANATH MANE

aged 45 years, Occ: Service
residing at T-24, P-106,
Gautam Nagar, Dinquary Road,
Behind Shivsena Shakha,
Panjarapol Chowk, Trombay,
Mumbai-400 088.

..Appellant
(Orig. Accused)

Vs.

THE STATE OF MAHARASHTRA

at the instance of Trombay Police
Station, vide their C.R.No.190/06.

..Respondent

Smt. Nasreen S.K. Ayubi, Advocate appointed for the Appellant.
Mrs. A.S. Pai, APP for the Respondent-State.

**CORAM: SMT. V.K. TAHILRAMANI &
A.S. GADKARI, JJ.**

Date: 1st September 2015.

Oral Judgment (Per Smt. V.K. Tahilramani, J.):

1 The appellant original accused has preferred this appeal
against the judgment and order dated 20th November 2008 passed by

the learned Additional Sessions Judge, Greater Mumbai in S.C. No.935 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to suffer R.I. for life and to pay fine of Rs.1000/-, in default of payment of fine further R.I. for one year.

2 The prosecution case can briefly be stated as under:

Deceased Kalpana @ Papabai Balaji Mane was the wife of the appellant. They were married 20 years prior to the incident. They had four children i.e. three sons and one daughter. The appellant along with his wife and their children used to reside at Gautam Nagar, Panjrapole, Mumbai. The appellant was addicted to liquor. On 12.6.2006, there was a function in the house of the appellant in relation to his daughter Pooja. At about 3.30 p.m., Kalpana was inside the house. Her children at that time were sitting outside the house. At that time the appellant came in an intoxicated condition. He abused Kalpana and stated beating her. Thereafter the appellant poured kerosene on Kalpana and set her on fire. PW-1 Nagesh and his friend Ramesh pushed open the door. They extinguished the fire.

Thereafter they took Kalpana to Sion hospital. In the hospital Kalpana gave two dying declarations. The first dying declaration was recorded by PW-3 SEO Mrs. Nirmala Singh. The said dying declaration is at Exhibit 12. The second dying declaration was recorded by PW-8 API Ms. Nagin Kale. The said dying declaration is at Exhibit-19. In both dying declarations Kalpana stated that her husband poured kerosene on her person and set her on fire. PW-1 Nagesh lodged F.I.R. Thereafter the investigation commenced. Kalpana expired on 13.6.2006 at about 7 a.m. Thereafter the said offence was converted into Section 302 of the Indian Penal Code. After completion of investigation, the chargesheet came to be filed.

3 Charge came to be framed against the appellant under Section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that his wife Kalpana accidentally caught fire due to which she died. After going through the evidence adduced in this case, the learned Sessions 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 APP for the State. We have carefully considered their submissions, facts and circumstances of the case, judgment passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons we are of the opinion that the appellant poured kerosene on his wife Kalpana and set her on fire.

5 At the outset, it may be stated that PW-1 Nagesh who is the first informant in the present case and who is the son of the appellant and deceased Kalpana, has turned hostile and has not supported the prosecution. So also PW-4 Nagubai Pawar and PW-7 Ramesh who were relatives of the appellant have not supported the prosecution. PW-5 Kausalya who is the neighbour of the appellant and deceased Kalpana has also not supported the prosecution. In order to prove that the appellant poured kerosene on his wife Kalpana and set her on fire, the prosecution is mainly relying on the evidence of PW-3 SEO Mrs. Nirmala and PW-8 API Kale. Both of them recorded the dying declarations of Kalpana in Sion hospital. In

both the dying declarations Kapana has stated that her husband i.e. appellant has poured kerosene on her and set her on fire.

6 PW-3 SEO Mrs Nirmala Singh has stated that she was appointed as Special Executive Officer in the year 2006. On 12.6.2006, she received telephone call from Trombay police station at about 5.00 to 5.30 p.m. informing her that one lady with burn injuries was admitted in Sion hospital and she should go there for recording the statement of that lady. Mrs. Nirmala stated that accordingly she went to Sion hospital. She asked Medical Officer whether the said patient is in a position to give statement. The Medical Officer stated that the patient was in a position to give a statement. Mrs. Nirmala then asked the patient her name. The patient gave her name as Papabai @ Kalpana Balaji Mane. On enquiry, the patient gave her age as 40 years. On further enquiry the patient stated that she had got married about 20 years prior to the incident. Thereafter Mrs. Nirmala Singh asked the patient how many children she had. Thereupon Kalpana stated she had four issues and she resides at Panjarapole. On enquiry about how she sustained burn

injuries, Kalpana stated to Mrs. Singh that there used to be frequent quarrel between herself and her husband on money matters. Kalpana further stated her that on the date of incident also there was a quarrel and her husband poured kerosene on her person from the kerosene container which was lying in the house and set her on fire. This dying declaration is at Exhibit-12. Nothing has been elicited in the cross-examination of this witness which would cause us to disbelieve the testimony of SEO Mrs. Singh. Hence, we have no hesitation in relying on the same.

7 The second dying declaration was recorded by PW-8 API Kale. API Kale has stated that while she was on mobile vehicle, she received telephone call from the police station that one lady had sustained burn injuries and she should go to the hospital. Accordingly, she went to Sion hospital. She located the said patient. She saw the patient was under the examination of the doctor. She asked the patient how the incident had occurred. The patient stated to her that when she was inside the house, her husband on account of some quarrel poured kerosene on her person and set her on fire.

PSI Kale has stated that she recorded the dying declaration in the presence of Medical Officer and she asked the Medical Officer whether the patient was in proper condition to make a statement and pursuant thereto the Medical Officer gave endorsement on the statement. The endorsement on the statement shows that the patient was in the condition to give a statement. This dying declaration is at Exhibit 19 and the endorsement of PW-9 Dr. Jadhav on the dying declaration is at Exhibit 19(A). Dr. Jadhav has stated that the patient was admitted in the hospital at about 6.45 p.m.. At the time of admission, the patient gave history of homicidal burns at 3.30 p.m. Dr. Jadhav has further stated that police made enquiry with him whether the patient was in a position to speak. Accordingly he gave endorsement 19A which shows that the patient was in a position to speak.

8 Thus it is seen that two dying declarations of Kalpana were recorded i.e. the first dying declaration was recorded by PW-3 SEO Mrs. Singh and second dying declaration was recorded by PW-8 API Kale. Both the dying declarations are consistent. In both the dying

declarations, Kalpana has stated that her husband poured kerosene on her and set her on fire.

9 It is the prosecution case that the appellant poured kerosene on Kalpana and set her on fire. This is supported by the medical evidence and report of the Chemical Analyzer. PW-6 Dr. Pathak conducted postmortem on the dead body of Kalpana. He has stated that he found total 85% burns and cause of death was shock due to 85% dermoepidermal burns. As stated earlier, the defence of the appellant is that Kalpana had accidentally sustained burns. However, the C.A. report shows that the clothes of Kalpana tested positive for kerosene residues. If it was a case of accidental burns on account of over flaming of stove, there would not be kerosene residues on the clothes of deceased Kalpana. The alternate defence put forward by the learned Counsel for the appellant is that Kalpana sustained burn injuries due to bursting of stove. The spot panchanama does not show any presence of stove which had burst. Thus we find no substance in this defence.

10 Thereafter the learned Counsel for the appellant submitted that even if it is accepted that the act of the appellant of setting his wife Kalpana on fire resulted in her death, the case would not fall under Section 302 of the Indian Penal Code, but it would fall under Section 304-Part-II or at the most Section 304 Part-I of IPC. She pointed out that the evidence on record shows that a quarrel was going on in between the appellant and his wife Kalpana which has been deposed by PW-3 SEO Mrs. Nirmala Singh and PW-8 API Kale. She has drawn our attention to the evidence of PW-3 SEO Mrs. Nirmala Singh who has stated that she asked Kalpana how she sustained burn injuries. Thereupon Kalpana told her that there used to be frequent quarrels between herself and her husband. Kalpana further told her that on the day of the incident there was such quarrel. Her husband then poured kerosene on her person from the kerosene container which was lying there and set her on fire. Thereafter, Ms.Ayubi has drawn our attention to the evidence of PW-8 API Kale. API Kale has stated that she asked Kalpana how the incident occurred, whereupon Kalpana stated her that on account of some quarrel her husband poured kerosene on her person from the

kerosene container and set her on fire. Ms. Ayubi submitted that the evidence on record shows that the act of the appellant was not pre-meditated or preplanned, but it happened on the spur of the moment in the heat of anger. She submitted that the fact that the incident occurred during the course of a sudden quarrel and without any pre-meditation on the part of the appellant would bring the case under Exception 4 to Section 300 of IPC and would thus be covered by Section 304 Part -II of IPC.

11 Considering the evidence on record, we are of the view that Exception-4 to Section 300 of IPC applies to the facts of the present case. However, we are not prepared to accede to the submission of Ms. Ayubi that the case would fall under Section 304 Part-II of IPC. In our view, the case would fall under Section 304 Part-I of IPC because we are of the opinion that the appellant did not just have the knowledge that his act is likely to cause death, but in fact the appellant intended to cause the death of his wife Kalpana. We say so on the basis of the act of the appellant and the extent of the burn injuries sustained by Kalpana. The injuries as seen from the

evidence of PW-6 Dr. Pathak are extensive in nature. Looking to all these facts, we are of the considered opinion that the case cannot fall under Section 304 Part-II of IPC.

12 We have already stated earlier that we are of the view that Exception 4 to Section 300 applies to the facts of this case. In our view, the appropriate conviction would be under Section 304 Part-I of IPC. Hence, the conviction under Section 302 of the IPC is set aside, instead, the appellant is convicted under Section 304 Part-I of IPC. In our view custodial sentence of 10 years R.I. and fine of Rs.1000/-, in default S.I. for 15 days, would meet the ends of justice. Appeal is allowed to the aforesaid extent.

13 We quantify legal fees to be paid by the High Court Legal Services Committee to Smt. Nasreen S.K. Ayubi at Rs.5000/- .

14 Office to communicate this order to the appellant who is in jail.

(A.S. GADKARI, J.)

(SMT. V.K. TAHILRAMANI, J.)

CERTIFICATE

I certify that this judgment uploaded is a true and correct copy of original signed judgment.