

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.798 OF 2009**

Sitaram Shankar Hulgunde
Age 30 yrs. R/o. Kone
Tal. Trimbakeshwar, Nashik
(currently in Nashik Road Central Jail) ...Appellant.

versus

State of Maharashtra ..Respondent.

.....
Mr. H.E. Palwe for the Appellant.
Mr. A.S. Shitole, Addl.P.P. for the State.

.....
**CORAM : SMT V.K. TAHILRAMANI, Acting C.J.&
A.S. GADKARI, J.**

15th September, 2015.

ORAL JUDGMENT (PER SMT. V.K. TAHILRAMANI, Acting C.J. :

The Appellant - original accused No.1 has preferred this Appeal against the judgment and order dated 9th January, 2009 passed by the learned Ad-hoc Additional Sessions Judge, Nashik in Sessions Case No.155 of 2007. 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 imprisonment for life.

2. The prosecution case briefly stated is as under :

Deceased Lilabai was the wife of the Appellant. She was

residing in village Kone with the Appellant, the parents of the Appellant and her minor children. The Appellant was addicted to liquor. The incident took place on 24th January, 2007. On that day at about 9.00 p.m. the Appellant came home in intoxicated state. Lilabai told the Appellant that he has money for drinking liquor, but he is not giving her money for house expenses. A quarrel took place between the Appellant and deceased Lilabai. Lilabai then poured kerosene on herself. The Appellant then set Lilabai on fire. Lilabai was taken to the hospital. In the hospital two dying declarations of Lilabai were recorded. The first dying declaration was recorded by P.W.10- Police Constable Thakur. The said dying declaration is at Exhibit 40. This dying declaration was treated as First Information Report. Thereafter investigation commenced. The second dying declaration was recorded by P.W.9- SEM Shri Gadekar. He recorded the dying declaration Exhibit 37. In both the dying declarations Lilabai stated that after she poured kerosene on herself, the Appellant set her on fire. After completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant - original accused No.1 and original accused Nos.2 and 3. Original accused No.2 was the father-in-law of Lilabai and original accused No.3

was the brother-in-law of Lilabai. Charge came to be framed against all the three accused under Sections 302, 498-A, 504, 506 read with Section 34 of the Indian Penal Code. All the accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge acquitted original accused Nos.2 and 3 of all the charges. However, the learned Sessions Judge convicted and sentenced the the Appellant as stated in paragraph 1 above, hence, this Appeal.

4. We have heard learned counsel for the Appellant and the learned APP for the State. We have carefully considered their submissions, the facts and and circumstances of this case, the judgment and order passed by the learned Sessions Judge and the evidence on record. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the Appellant set Lilabai on fire which led to her death.

5. The conviction of the Appellant is mainly based on the dying declarations – Exhibit 40 and Exhibit 37. Dying declaration Exhibit 40 was recorded by P.W.10- Police Constable Thakur. This dying declaration was treated as F.I.R. The second dying

declaration was recorded by P.W.9- SJM Shri Gadekar. This dying declaration is at Exhibit 37. P.W.10- Police Constable Thakur has stated that on 25th February 2007 he received information about a patient with burn injuries being admitted in the hospital. Police Constable Thakur was directed to record the statement of the burns patient Lilabai. He then went to the hospital. He met the doctor on duty and expressed his desire to record the statement of the patient. The doctor (P.W.12- Dr. Ruchita Chavan) gave opinion that the patient is able to give a statement. Police Constable Thakur then himself got it confirmed that the patient was in a position to give the statement. Thereafter he recorded the statement of Lilabai. Police Constable Thakur has stated that Lilabai told him that on 24th January, 2007 when she was in the house, her husband Sitaram came home in intoxicated condition. She told him that he had money for drinking but he did not pay her for house expenses. Thereafter a quarrel took place between Lilabai and her husband. Lilabai then poured kerosene on her person. Thereafter the Appellant snatched matchbox from her and set her on fire.

6. The second dying declaration (Exhibit 37) is recorded by P.W.9-SJM Shri Gadekar. He has stated that on 25th January, 2007, he received a letter requesting him to record the dying

declaration of one Lilabai Sitaram Hulgunde who was admitted in the Civil Hospital, Nashik. Pursuant to the said letter he reached the said hospital at 1.25 p.m. He met the Medical Officer on duty Dr. Ruchita Chavan (P.W.12) and expressed his desire to record the statement of patient Lilabai. The doctor then examined patient Lilabai and opined that the patient is in proper state of mind to give the statement. Thereafter Lilabai stated that her husband used to frequently quarrel with her. On the day of the incident also a quarrel took place between her and her husband i.e. the Appellant. She then poured kerosene on herself. Immediately thereafter her husband set her on fire.

7. P.W.12-Dr. Ruchita Chavan is the doctor who examined Lilabai before both the dying declarations - Exhibit 37 and Exhibit 40 were recorded and gave her endorsement thereon that Lilabai was in a fit condition to give the statement. Nothing has been elicited in the cross-examination of P.W.9-SJM Shri Gadekar, P.W.10- Police Constable Thakur and P.W.12- Dr. Ruchita Chavan so as to cause us to discard their testimony. We find that their evidence inspires complete confidence. Hence, we have no hesitation in relying on the same.

8. It is the prosecution case that the Appellant set Lilabai on

fire due to which she died. This is supported by the medical evidence. P.W.11- Dr. Nampalli conducted the postmortem on the dead body of Lilabai. He found 96% superficial to deep burn injuries.

9. Mr. Palwe submitted that even if it is accepted that the act of the Appellant of setting his wife Lilabai 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 of the Indian Penal Code. He pointed out that the evidence on record shows that when the incident of the Appellant setting Lilabai on fire occurred, a quarrel was going on between the Appellant and his wife Lilabai. Mr. Palwe pointed out that this has been deposed by P.W.10-Police Constable Thakur and is also stated by Lilabai in her dying declarations - Exhibit 37 and Exhibit 40. P.W.10-Police Constable Thakur has stated that Lilabai told him that on the day of the incident her husband i.e. the Appellant came home in intoxicated state. She told her husband that he had money for drinking but he did not give her money for house expenses. Thereafter a quarrel took place between both of them. Then she poured kerosene on herself. Thereafter the Appellant snatched matchbox from her and set her on fire. In the dying declaration Exhibit 37 which is recorded by P.W.9-SJM Shri.

Gadekar, Lilabai has stated that on the day of the incident a quarrel took place between her and her husband i.e. the Appellant. She then poured kerosene on herself and her husband set her on fire. Same is the case in dying declaration Exhibit 40. Mr. Palwe further pointed out that the act of the Appellant of setting Lilabai on fire was not premeditated or preplanned, but it happened on the spur of moment in a fit of anger. Mr. Palwe reiterated that the fact that the incident took place during the course of a sudden quarrel and after Lilabai had poured kerosene on herself, It would bring the case under Exception 4 of Section 300 of the Indian Penal Code and would thus be covered by Section 304 Part II of the Indian Penal Code.

10. To invoke Exception 4 to Section 300 of the Indian Penal Code, four requirements must be satisfied viz. (i) it was a sudden fight; (ii) There was no premeditation; (iii) The act was done in the heat of passion and (iv) The assailant has not taken any undue advantage or acted in a cruel or unusual manner. The cause of the quarrel is not relevant, nor is it relevant as to who offered the provocation or started to assault first, but what is important is that the occurrence must have been sudden and not premeditated and the accused must have acted in a fit of anger. When on a sudden quarrel a person in the heat of the moment

picks up a weapon which is handy and causes injuries one of which proves fatal, the accused would be entitled to the benefit of this exception provided he has not acted cruelly.

11. In the present case, it is seen that during the course of a sudden quarrel, Lilabai herself poured kerosene on her person. Thereafter the Appellant snatched the matchbox which was in the hand of Lilabai and set Lilabai on fire. This fact is quite clear from the dying declaration Exh.40. In the present case, the Appellant has not come to the spot armed with a weapon but after Lilabai poured kerosene on herself and was standing with a matchbox in her hand, the Appellant snatched the matchbox from her hand and set Lilabai on fire. This further shows that the act was not preplanned or premeditated. However, we are not prepared to accede to the submission of Mr. Palwe that the case would fall under Section 304 Part II of the Indian Penal Code. In our view, the case would fall under Section 304 Part I of the Indian Penal Code, because we are of the opinion that the Appellant did not just have the knowledge that his act is likely to cause death as contended by Mr. Palwe, but in fact the Appellant intended to cause the death of Lilabai. We say so on the basis of the injuries sustained by Lilabai which as seen from the evidence of P.W.11- Dr. Nampalli were extensive in nature. Lilabai had sustained 96% burn injuries. Looking to all these facts, we are of the considered opinion

that the case cannot fall under Section 304 Part II of the Indian Penal Code.

12. Considering the evidence on record, we are of the opinion that Exception 4 to Section 300 applies to the facts of this case and the appropriate conviction would be under Section 304 Part I of the Indian Penal Code. Hence, conviction under Section 302 of the Indian Penal Code is set aside, instead the Appellant is convicted under Section 304 Part I of the Indian Penal Code. In our view, custodial sentence of eight years rigorous imprisonment and fine of Rs.2,000/-, in default simple imprisonment for one month would meet the ends of justice.

The Appeal is allowed to the aforesaid extent.

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment.