

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.482 OF 2006

Chainsingh Papsing Rathod.	]	
Age - 32 years,	]	
R/o. - Jyoti Park, Gala No.10, Smashan	]	
Road, Opp. Indralok, Bhayander (East),	]	
Dist. Thane.	]	
(At present in Kolhapur Prison.)	]	... Appellant (Orig. Accused)

Versus

The State of Maharashtra	]	... Respondent
(Through Bhayander Police Station.)	]	(Orig.Complainant)

Smt. Sarojini Upadhyay, Advocate appointed for Appellant.
 Smt. A. S. Pai, APP for State.

CORAM :- SMT. V. K. TAHILRAMANI AND
SMT. I. K. JAIN, JJ.
DATE :- JANUARY 28, 2015

ORAL JUDGMENT (PER SMT. V. K. TAHILRAMANI, J.) :-

1. The Appellant/original accused has preferred this Appeal against the Judgment and Order dated 23/03/2006 passed by the learned I Ad-hoc Additional Sessions Judge, Thane, in Sessions Case No.211 of 2005. By the said Judgment and Order, the learned Sessions Judge convicted the Appellant under Section 302 of Indian Penal Code and sentenced him to

rigorous imprisonment for life and to pay fine of Rs.3,000/-; in default R.I. for 3 months

2. The prosecution case briefly stated is as under :

Deceased Sunita was the wife of PW 4 Pawankumar. She was residing along with her husband and children at Bhayander. Sunita and her family knew the Appellant. The Appellant had a saree shop, therefore Sunita used to go to his shop. Later on, Sunita started tying Rakhee to the Appellant. Earlier the shop of the Appellant was situated at 63 ft. road at Bhayander but thereafter he shifted his business to Shop No.10, Suraj Super Market, Jyoti Park, Bhayander. Sunita had lent Rs.5.00 lacs to the Appellant. This amount was given about 5 years prior to the incident. Thereafter Sunita started demanding her money back from the Appellant. However, the Appellant did not return the money to Sunita. On 27/11/2004 at about 7.00 p.m., Sunita went to the shop of the Appellant at Jyoti Park. Sunita had gone to the shop of the Appellant and demanded her money back from him. Thereupon, the Appellant got angry and he went to the rear portion of his

shop, brought a can of kerosene and poured it on Sunita and set her on fire. Sunita started shouting loudly due to which people nearby came and extinguished the fire and took her in an autorickshaw to Bhagwati Hospital, Borivali. PW 4 Pawankumar, husband of Sunita, and PW 5 Harish, brother of Sunita, were informed. They came to the hospital. When both these persons made inquiries with Sunita, Sunita informed them that she had gone to demand Rs.5.00 lacs from the Appellant, however, the Appellant poured kerosene on her and set her on fire. Thereafter, the dying declaration (Ex.39) of Sunita was recorded by PW 7 PSI Vankoti. This dying declaration was treated as F.I.R. Thereafter investigation commenced. In the dying declaration also, Sunita stated that she had lent Rs.5.00 lacs to the Appellant. On 27/11/2004 at 7.00 a.m. when she went to the shop of the Appellant and told him to return her money, the Appellant poured kerosene on her and set her on fire. Sunita died in the night between 27/11/2004 and 28/11/2004 at about 2.30 a.m. After completion of investigation, 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. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Additional Sessions Judge convicted and sentenced the Appellant as stated in para 1 above, hence this appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, the Judgment and Order passed by the learned Additional Sessions Judge and the evidence in this case. After carefully considering the same, for the below-mentioned reasons, we are of the opinion that the Appellant poured kerosene on Sunita and set her on fire which resulted in her death.

5. The conviction of the Appellant is mainly based on dying declaration (Ex.39) which was recorded by PW 7 PSI Vankoti and 2 oral dying declarations made by Sunita to PW 4

Pawankumar and PW 5 Harish who are husband and brother respectively, of deceased Sunita.

6. PW 7 PSI Vankoti has stated that on 27/11/2004, he was on duty at Mira Road Police Station. He went to Bhagwati Hospital and recorded the statement of Smt. Sunita Saraf. Prior to recording the statement, he took endorsement of the doctor that the patient was in a condition to give statement. On perusal of dying declaration (Ex.39), we find that the doctor has given a clear endorsement thereon that the patient was in a condition to give a valid statement. PSI Vankoti then recorded the dying declaration of Sunita. Sunita told him that she regarded the accused as her brother and was on visiting terms with him since last 7 years. She had given Rs.5.00 lacs cash to him by way of loan about 5 years back. She used to frequently go to the accused and demand her money but the accused avoided to pay. Sunita further told PSI Vankoti that on 27/11/2004 at about 7.00 p.m., she went to the shop of the accused at Shop No.10, Suraj Super Market, Jyoti Park, Bhayander (East), to demand her money. Thereupon the

accused became angry. The accused went to the rear side of his shop and brought a kerosene can. He poured kerosene on Sunita and set her on fire. She started shouting loudly whereupon people in the neighbourhood came and extinguished the fire and took her to Bhagwati Hospital in an autorickshaw. This dying declaration was recorded on 27/11/2004 at 10.30 p.m. Nothing has been elicited in the cross-examination of PSI Vankoti to cause us to disbelieve his evidence. We find that his evidence inspires confidence, hence we have no hesitation in relying on the same.

7. In addition to dying declaration (Ex.39), the prosecution has relied on two oral dying declarations made by Sunita to PW 4 Pawankumar and PW 5 Harish. PW 4 Pawankumar was the husband of Sunita and PW 5 Harish was the brother of Sunita. Pawankumar has stated that he knew the Appellant. The Appellant had a saree shop, hence his wife used to go to the shop of the Appellant. His wife regarded the Appellant as her brother and she used to tie Rakhee to him. Pawankumar has further stated that his wife Sunita told him

that she used to go to the shop of the accused for demanding her money which she had given to him as loan. On 27/11/2004, Pawankumar went to his office. He returned home at 10.15 p.m. His son informed him that his mother had sustained burn injuries. He learnt that his wife Sunita was admitted in Bhagwati Hospital. He then went to the hospital at 11.00 p.m. He made inquiry with his wife. His wife told him that she had gone to the Appellant for demanding money, thereupon the Appellant poured kerosene on her and set her on fire.

8. PW 5 Harish was the brother of Sunita. He has stated that Sunita was living in front of his house. On 27/11/2004, husband of Sunita telephoned him at about 11.30 p.m. and called him to Bhagwati Hospital. He then went to Bhagwati Hospital. When he went to the hospital and met Sunita, she told him that she had gone to demand Rs.5.00 lacs from the Appellant but he poured kerosene on her and set her on fire.

9. It is the prosecution case that the Appellant poured kerosene on Sunita and set her on fire. This is borne out by the medical evidence as well as forensic evidence. PW 6 Dr. Sanap conducted post-mortem on the dead body of Sunita on 28/11/2004. He noticed superficial to deep burns all over the body, total about 100% burns. In the opinion of Dr. Sanap, cause of death was 'shock due to burns (unnatural)'. The clothes of deceased Sunita were sent for chemical analysis. The C.A. report (Ex.34) shows that pieces of her clothes tested positive for kerosene residue.

10. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the Appellant poured kerosene on Sunita and set her on fire which led to her death. Thus, we find no merit in the Appeal. The Appeal is dismissed.

11. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Smt. Sarojini Upadhyay at Rs.5,000/-.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)