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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.973 OF 2009

Shri Rajesh Babu (Gaju) Choutale
Aged about 22 years, Occu: Laborer
R/at Pokhran Road No.2, Vartak Nagar,
Thane Dist. Thane.

..Appellant.

Vs.

The State of Maharashtra
(At the instance of Vartaknagar
Police Station.)

...Respondent.

Ms. Rohini M. Dandekar, appointed Advocate for Appellant.
Ms. R.M. Gadhvi, APP for Respondent-State.

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

22nd September, 2015

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

1 The appellant original accused has preferred this appeal against the judgment and order dated 8th April 2009 passed by the Ad-hoc Additional Sessions Judge, Thane in Sessions Case No.349 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to suffer R.I. for life and to

pay fine of Rs.1000/-, in default R.I. for one month.

2 The prosecution case can briefly be stated as under:

Deceased in the present case is Bhagwati. Bhagwati was residing at Gandhinagar, Thane with her children including PW-2 Vinod, her brother-in-law PW-3 Giriraj and his family. The appellant was the son of sister of Bhagwati. The appellant was residing at some distance from the house of Bhagwati. The relations between Bhagwati and the appellant were strained on account of previous dispute between them.

The incident occurred in the night between 22.5.2006 and 23.5.2006. Bhagwati was sleeping in the varanda of the house and other inmates were sleeping inside the house. At about 3.30 a.m., the appellant came where Bhagwati was sleeping and poured some inflammable substance on her and set her on fire. Bhagwati started shouting due to which her son Vinod (PW-2) and her brother-in-law Giriraj (PW-3) came outside the house. Both of them saw Bhagwati burning and saw the appellant running away from the spot. Bhagwati was rushed to the hospital. In the hospital PW-1 S.E.M. Smt.Haldankar and PW-8 API More recorded dying declaration of Bhagwati. The dying

declaration recorded by API More was treated as FIR. Thereafter investigation commenced. Bhagwati expired after three days on account of shock due to 60% burn injuries. After completion of investigation, the chargesheet came to be filed.

3 Charge was framed against the appellant initially under Section 307 of IPC and later on the charge was altered to 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 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 appointed 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 there is no merit in the appeal.

5 The conviction of the appellant is mainly based on two dying declarations, Exhibit 14 and Exhibit 55. The dying declaration at Exhibit 14 was recorded by PW-1 S.E.M. Smt. Haldankar and the dying declaration Exhibit 55 was recorded by PW-8 API More. Smt. Haldankar has stated that at the relevant time she was working as S.E.M. On 23.5.2006 at about 5.00 a.m. the police of Vartaknagar Police station called her and requested her to record the dying declaration of one woman who was admitted in the Civil Hospital at Thane. Hence, she immediately went to the Civil Hospital. She met the concerned doctor who was on duty. After examining the patient, doctor opined that the woman was in condition to speak and she was in a condition to give her statement. Smt. Haldankar then made enquiry with the lady. The lady informed her that while she was sleeping outside the house, Rajesh Choutale, son of her sister poured some inflammable substance on her person and set her on fire. The lady further disclosed that her son Vinod (PW-2) brought her to the hospital.

6 The second dying declaration was recorded by API More. API More has stated that on 23.5.2006 he was informed

that one lady Bhagwatibai was admitted in Civil Hospital Thane. He then contacted S.E.M. Smt. Haldankar on telephone and requested her to record the dying declaration of Bhagwatibai. He thereafter went to the hospital. He gave memo to the doctor on duty to issue certificate whether injured lady Bhagwatibai was in a position to give her statement. Doctor examined the patient Bhagwati Choutale and put an endorsement on the memo that the injured was conscious and able to give a statement. API More then recorded the statement of Bhagwati. Bhagwati told him that the appellant Rajesh was on inimical terms with her due to previous quarrel. Bhagwati further told him that the appellant poured some inflammable liquid on her person and set her on fire. Bhagwati further stated that when she was set on fire, she was sleeping in the courtyard in front of her house.

7 PW-5 Doctor Udge was attached to the Civil Hospital Thane at the relevant time. PW-5 Doctor Udge has stated that he was on night duty on 23.5.2006. One patient Bhagwati was admitted in their hospital. She had burn injuries on her person. API More (PW-8) of Vartaknagar Police station visited the ward

along with one lady. They both enquired from Dr. Udge whether the patient was in a position to talk. Dr.Udge stated that the patient was in a position to talk. Dr. Udge gave an endorsement to that effect.

8 In addition to two dying declarations Exhibit 14 and Exhibit 55, the prosecution has relied on two oral dying declarations. The first oral dying declaration was made to PW-2 Vinod who was the son of Bhagwati. Vinod has stated that the appellant is son of sister of his mother Bhagwati. Vinod has stated that Bhagwati was his mother. Vinod further stated that the relations between his mother Bhagwati and the appellant were strained on account of previous dispute between them. On 22.5.2006 he, his mother Bhagwati, his uncle's wife and children of Vinod were sleeping in the house. His mother was sleeping in the varanda of the house. At about 3.00 to 3.30 a.m., they heard shouts of his mother. They came out in the Varanda and saw that appellant was running away. They found that Bhagwati was in burning condition. They extinguished the fire. At that time his mother Bhagwati told him that Rajesh (appellant) had set her on fire. The evidence of PW-3 Giriraj who is the brother-in-law of

Bhagwati is on similar lines as that of PW-2 Vinod.

9 Nothing has been elicited in the cross-examination of PW-1, PW-2, PW-3, PW-5 and PW-8 to cause us to disbelieve their testimony. We find that their testimony inspires confidence and hence we are of the opinion that we can safely rely on the same.

10 It is the prosecution case that the appellant set Bhagwati on fire which led to her death. This is supported by the medical evidence. PW-7 Dr. Ghuse conducted the postmortem on the dead body of Bhagwati. Dr. Ghuse found that Bhagwati had sustained 60% burn injuries and these burn injuries were sufficient to cause her death. According to Dr. Ghuse the cause of death is due to shock due to extensive burns. Dr. Ghuse has stated that petrol is highly inflammable liquid and burn injuries are possible if the person is set on fire after pouring petrol on that person.

11 On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellant set his aunt i.e. Bhagwati on fire and caused her

death. Thus, we find no merit in the appeal. Appeal is dismissed.

12 We quantify legal fees to be paid by the High Court Legal Services Committee to Ms. Rohini Dandekar at Rs.5000/-

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

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

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