

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.722 OF 2009**

Maruti Gajanan Pawar
Age 21 years,
Residing at Shirvali Adivasiwadi
Taluka - Khalapur,
District - Raigad.
(Alibag Central Prison)

...Appellant.

versus

The State of Maharashtra
(At the instance of Sr. P.I.
Khalapur Police Station, Alibag)

..Respondent.

.....
Mr. Niranjan Mundargi for the Appellant.
Mr. H.J. Dedhia, Addl.P.P. for the State.

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

9th September, 2015.

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

The Appellant - original accused No.2 has preferred this Appeal against the judgment and order dated 15th May, 2009 passed by the learned Additional Sessions Judge, Raigad, Alibag in Sessions Case No.239 of 2008. 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 rigorous imprisonment for life and fine of Rs.1,000/-, in default rigorous imprisonment for one year.

2. The prosecution case briefly stated is as under :

Deceased Sitabai was the wife of P.W.1-Ramchandra. They were residing along with their son at Shiravali Adivasiwadi in Khalapur Taluka. The Appellant as well as original accused No.1 were residents of Shiravali Adivasiwadi. On the day prior to the incident i.e. on 7th September, 2008 the Appellant caused burn injuries with a lighted cigarette on the hand of deceased Sitabai. On account of this, Sitabai had slapped the Appellant. Sitabai and her husband P.W.1-Ramchandra went to lodge complaint in relation to this incident on the next day. However, the police did not take down the complaint. At that time, it was about 5.00 p.m. When Sitabai and her husband Ramchandra were returning home and they reached the house of P.W.2-Navsha, the Appellant and original accused No.1 caught Ramchandra and his wife Sitabai. Original accused No.1 Sudam gave a blow with stick on the head of Ramchandra. Ramchandra sustained bleeding injury. Sitabai ran inside her house. At that time, the Appellant chased Sitabai and went inside her house. Sitabai came running out of her house. At that time Sitabai was burning. Sitabai was saying that the Appellant had set her on fire. On hearing cries of Sitabai, her husband P.W.1-Ramchandra gave jerk to the hands of original accused No.1 and freed himself and went towards his wife. At that time, Ramchandra saw the Appellant inside his house. When Ramchandra was extinguishing the fire, he asked

Sitabai about who set her on fire whereupon Sitabai replied that it was the Appellant who had set her on fire. Meanwhile the Appellant ran away from the spot. Then P.W.1-Ramchandra went to the police station which was at about 5 to 10 minutes walking distance and informed the police about the incident. Sitabai was taken to the hospital. In the hospital, two dying declarations of Sitabai came to be recorded i.e. Exhibit 15/C and Exhibit 18/C . Dying declaration Exhibit 15/C was recorded by P.W.3-SEM Gurav and dying declaration Exhibit 18/C was recorded by P.W.7-PSI Navle. In both the dying declarations, Sitabai stated that the Appellant entered into her house, poured kerosene on her and set her on fire. The dying declaration Exhibit 18/C was treated as F.I.R. Thereafter investigation commenced. Sitabai expired on 14th September, 2008. The cause of death was septicemic shock due to 54% superficial to deep burns. On completion of investigation, the charge-sheet came to be filed.

3. Charge came to be framed against the Appellant and original accused No.1 under Section 302 read with Section 34 of the Indian Penal Code and under Section 323 read with Section 34 of the Indian Penal Code. Both the accused pleaded not guilty to the said charge and claimed to be tried. Their defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge

convicted original accused No.1 for the offence under Section 323 of the Indian Penal Code and sentenced him to suffer four months of imprisonment. However, the learned Sessions Judge was pleased to convict and sentence 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 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 poured kerosene on Sitabai and set her on fire which led to her death.

5. The conviction is based on the evidence of P.W.1- Ramchandra who is an eye witness to the incident. Ramchandra was the husband of deceased Sitabai. Ramchandra stated that he was residing along with his family including wife deceased Sitabai at Shiravali Adivasiwadi in Khalapur Taluka. His house consisted of two rooms. There was only one door for entering the house. The Appellant and original accused No.1 were also residents of Shiravali Adivasiwadi. One day before the date of the incident the Appellant caused burn injury to the hand of

Sitabai by burning her with a cigarette. On the next day P.W.1-Ramchandra and his wife Sitabai went to the police station to lodge a complaint in relation to the Appellant giving burn injuries with cigarette on the hand of Sitabai. However, the police did not record their complaint. At about 5.00 p.m. they were returning home. When they reached the house of P.W.2-Navsha, the Appellant and original accused No.1 caught P.W.1-Ramchandra and his wife Sitabai. Sitabai managed to rescue herself from the Appellant who had caught her and she ran inside her house. At that time the Appellant chased Sitabai and went inside the house. Sitabai then came running out of the house in burning condition. Sitabai was saying that the Appellant had poured kerosene on her and set her on fire. On hearing cries of his wife P.W.1-Ramchandra gave a jerk to the hands of accused No.1 and went towards his wife. He then extinguished the fire by putting quilt on the body of Sitabai. At that time he saw that the Appellant was inside his house. While extinguishing the fire, Ramchandra asked Sitabai as to who set her on fire, thereupon Sitabai replied that the Appellant had set her on fire. Meanwhile the Appellant ran away from the spot.

6. The second eye witness is P.W.2-Navsha. Navsha has stated that on the date of the incident it was Ganpati Visarjan day. On that day at about 5 p.m. he was present in the house. Navsha

has stated that he saw original accused No.1-Sudam assaulting Ramchandra on the head with a stick. At that time Sitabai rescued herself from the accused and she went running inside her house. The Appellant chased Sitabai with a stick in his hand. After some time Sitabai came running out of the house. She was burning. The Appellant came from behind Sitabai. Sitabai fell down in the courtyard of her house. The Appellant then ran away from the spot.

7. In addition to the evidence of these two eye-witnesses the prosecution is relying on two dying declarations made by Sitabai to P.W.3 – SEM Gurav and to P.W.7 – PSI Navle. P.W.3 SEM Gurav recorded dying declaration Exhibit 15/C and P.W.7 PSI Navle recorded dying declaration Exhibit 18/C. Both these witnesses have stated that in the hospital they recorded the dying declaration of Sitabai and Sitabai told them that the Appellant entered into her house and poured kerosene on her and set her on fire.

8. In addition the prosecution is relying on the oral dying declaration made by Sitabai to P.W.1-Ramchandra. Ramchandra has stated that when they saw Sitabai come running out of the house in burning condition, he asked her what had happened whereupon Sitabai told that the Appellant had set her on fire.

No discrepancy, omission or contradiction has been brought on record in the evidence of P.W.1-Ramchandra, P.W.2-Navsha, P.W.3-Gurav and P.W.7-PSI Navle so as to create doubt about the veracity of their evidence. We find that their evidence inspires implicit trust. Hence, we have no hesitation in relying on the same.

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

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

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