

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.D-591-DB of 2010 (O&M)

Date of decision: 29.01.2015

Sugni wife of Ramanand

.... Appellant

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE GURMIT RAM.

Present: Mr. Satinder Kumar Rana, Advocate for the appellant.

Mr. Naveen Kaushik, Addl. A.G. Haryana.

S.S. Saron, J.

The appellant Sugni has filed this appeal against the judgment of her conviction dated 11.05.2010 and the order of sentence dated 13.05.2010 passed by the learned Additional Sessions Judge, Panipat. She has been convicted vide order dated 11.05.2010 for the offence under Section 302 Indian Penal Code ('IPC' – for short) for committing murder by intentionally causing the death of Rajji Devi by sprinkling kerosene oil on her and setting her ablaze and also for the offence under Section 316 IPC for causing death of an unborn child in the womb of aforesaid Rajji Devi. She has vide order passed on 13.05.2010 been sentenced to undergo rigorous imprisonment for life and pay a fine of Rs.5000/- and in default thereof, undergo imprisonment for a period of ten months for the offence under Section 302 IPC; besides, undergo rigorous imprisonment for a period of seven years and pay a fine of

Rs.2000/- and in default thereof, undergo rigorous imprisonment for a period of four months for the offence under Section 316 IPC. Both the substantive sentences of imprisonment have been ordered to run concurrently.

FIR (Ex.PN) in the case has been registered on the statement Ex.PH/4 of Rajji Devi recorded under Section 164 of the Code of Criminal Procedure ('CrPC' – for short) by Ms. Neha Nohria, learned Judicial Magistrate Ist Class, Rohtak (PW-9) on 05.09.2009.

A telephone message was received at Police Station Bapoli, District Panipat from the General Hospital, Panipat that Rajji (deceased in the case) had been brought there with burn injuries and had been referred to the Post Graduate Institute of Medical Sciences ('PGI' - for short), Rohtak. ASI Virender Singh (PW-18) along with Devinder Kumar, Head Constable (PW-13) of Police Station Bapoli on receiving the said message reached PGI, Rohtak. He (PW-18) after seeking opinion of the doctor regarding fitness of the injured Rajji to make a statement submitted an application (Ex.PH) before Ms. Neha Nohria, learned Judicial Magistrate Ist Class, Rohtak for recording the statement of Rajji under Section 164 CrPC. The learned Magistrate reached PGI, Rohtak and sought medical opinion of the doctor regarding fitness of the injured to make a statement. After getting an opinion, statement (Ex.PH/4) of Rajji Devi was recorded.

Rajji Devi alleged that her mother-in-law namely Sugni (appellant) due to her work, daily used to raise a dispute with her. She would find fault in her domestic and agricultural work that she did. In a dispute that occurred between them and in anger, her

mother-in-law Sugni poured kerosene oil on her and set her on fire with a match stick.

ASI Virender Singh (PW-18) on the basis of the said statement sent a 'ruqa' (memo) Ex.PO to the Police Station for registration of a case (FIR). Accordingly, FIR (Ex.PN) was recorded by SI Ram Kumar (PW-14) at Police Station Bapoli, District Panipat for the offence under Section 307 IPC. Investigation in the case was conducted by ASI Virender Singh (PW-18). He (PW-18) proceeded to the spot and photographs were taken by Sushil Kumar, Head Constable (PW-4). ASI Virender Kumar (PW-18) prepared rough site plan (Ex.PQ) of the place of occurrence. A glass bottle in the shape of a lamp containing kerosene, a match box and mud earth with kerosene on it was taken in possession in pursuance of memo Ex.PL. A burnt 'pyjama' and a 'parna' (a piece of cloth tied on the head) of a Ramanand (PW-15), husband of the appellant Sugni, were also taken in possession vide memo Ex.PM.

Sugni (appellant) on the next day i.e. on 06.05.2009 was arrested. She during interrogation made a disclosure statement Ex.PJ/5. In pursuance of the said disclosure statement, she demarcated the place where the incident had occurred. In this regard memo Ex.PK was prepared.

Inspector Ram Kumar on 08.05.2009 went to Ward No.6 of PGI, Rohtak. There a foetus wrapped in polythene was lying on a bed. Inquest report Ex.PB/2 in this regard i.e. with respect of the foetus was prepared. Postmortem examination of the foetus was got conducted; besides, the statement of Subash (PW-16), father of

Rajji (deceased) was recorded. In view of the foetus being recovered, the offence under Section 316 IPC was added to the FIR.

A telephone message was received at Police Station Bapoli from the Police Post at PGI, Rohtak on 11.05.2009 that Rajji had died due to burn injuries. ASI Virender Singh (PW-18) on getting the message reached PGI, Rohtak. He proceeded to the place where the dead body was lying and conducted inquest proceedings (Ex.PA/2). Besides, postmortem examination on the dead body was conducted. In view of the death of Rajji, the case which was registered for the offence under Section 307 IPC was converted to a case under Section 302 IPC. Investigations in the case were conducted and the police report was prepared by Inspector Narinder Singh (PW-11), SHO Police Station Bapoli. The police report was filed in the Court of the learned Chief Judicial Magistrate, Panipat who vide order dated 23.07.2009 in view of the offences under Sections 302 and 316 IPC being alleged which were both triable by the Court of learned Sessions Court, committed the case to the said Court.

The learned Additional Sessions Judge, to whom the case was assigned on 17.08.2009 framed charges against the appellant for the commission of offences punishable under Sections 302 and 316 IPC. The appellant pleaded not guilty to the charged and claimed trial.

The prosecution in order to establish its case examined as many as 19 witnesses, besides, tendered documents in evidence. The statement of the appellant was recorded in terms of Section 313 CrPC and the substance of the evidence appearing against her

was put to her. She pleaded innocence and denied the allegations that were made. It was submitted that she and her husband were residing in their separate room. The husband of Rajji (deceased) namely Anand met with an accident and he was unable to move from the cot. It was stated that Rajji was taking her meal and the electricity went off. She tried to light the kerosene lamp which was on an iron box. She was sitting next to the iron box. In the process of lighting the lamp, the lamp fell on her and she caught fire. In defence the appellant examined Anand, husband of the appellant as DW-1.

The learned Additional Sessions Judge, Panipat after considering the evidence and material on record, convicted the appellant for the offences under Sections 302 and 316 IPC; besides, sentenced her to undergo life imprisonment and imprisonment for seven years as also pay a fine of Rs.5000/- and Rs.2000/- and in default in payment thereof, undergo imprisonment for ten months and four months respectively for the said offences under Sections 302 and 316 IPC. The appellant aggrieved against the same has filed a present appeal.

Learned Counsel for the appellant submits that though the prosecution examined as many as nineteen witnesses but no relationship of the appellant to the alleged incident could be established inasmuch as none of the witnesses could connect the appellant with the said incident. A reference has been made to the deposition of Ramanand (PW-15) and Subash (PW-16) who denied the prosecution case and rather stated that Rajji died due to the kerosene lamp falling on her. Ramanand (PW-16), it is stated, is

the father in law of the deceased and is a material witness of the present case who accompanied Rajji to the hospital; besides, he also extinguished the fire with his 'parna'. The fact of the fire being extinguished by him, it is submitted, is also established from the deposition of Ananad (DW-1), the husband of the deceased. Subash (PW-16), who is the father of the deceased, did not attribute any role to the appellant and rather stated that Rajji Devi died due to burn injuries when she was trying to light the kerosene lamp which fell on her. A reference has also been made to the deposition of Ram Niwas (PW-17) who is also relative of the deceased. It is submitted that the prosecution could not connect the present appellant to the incident that occurred in the present case. Anand (DW-1), the husband of deceased Rajji, was examined and he clearly stated that Rajji Devi died due to burn injuries from the lamp that fell on her which she had lit. He also stated that he could not move about because his leg was broken in an accident that had occurred four-five months earlier to the present incident. Besides, it is submitted that there is no motive for the appellant to commit the murder of her daughter in law especially when she was on the family way.

In any case, it is submitted that the case is not one of murder but is one of culpable homicide not amounting to murder as the incident had happened in the heat of passion and in anger. Besides, there were no intention whatsoever on the part of the appellant to commit the murder. Therefore, the appellant can at the most be held liable for the offence under Section 304 Part-II IPC.

In response, learned counsel for the State has submitted that the learned trial Court has recorded cogent and convincing reasons for convicting and sentencing the appellant and there is no reason to discard the same and upset the well reasoned order passed by the learned trial Court. A strong reliance has been placed on the dying declaration of Rajji made before the Ms. Neha Nohria, Judicial Magistrate Ist Class, Rohtak (PW-9). It is submitted that there is no reason whatsoever to discard the said dying declaration and upset the findings that have been recorded by the learned trial Court. It is also submitted that the case is not one of culpable homicide not amounting to murder but is clearly murder inasmuch as the appellant poured kerosene oil on Rajji Devi (deceased) and set her ablaze. Therefore, according to the learned State counsel the appeal merits dismissal.

We have given our thoughtful consideration to the contentions that have been raised by the learned counsel appearing for the parties and with their assistance gone through the records of the case.

The incident in the present case had occurred on the night of 04.05.2009 in the house of the appellant, when she poured kerosene on Rajji Devi, her daughter in law, and set her ablaze. Rajji Devi was taken to General Hospital, Panipat on 04.05.2009. She was medico-legally examined by Dr. Rahul Diwan (PW-3). He deposed affidavit (Ex.PC) wherein he observed as follows:-

“Smell of kerosene was present. Singeing of hair was present. There were superficial to deep burn present over face, both upper limbs, anterior

aspect of chest wall, abdominal wall, back, posterior chest wall and patchy involvement of both thighs. Burn area was about 75% - 80%."

According to Dr. Rahul Diwan (PW-3), the patient was advised surgeon opinion and was referred to PGI, Rohtak. The medico-legal report (Ex.PC/1) and the 'ruqa' (memo) (Ex.PC/2) sent by him was proved by him.

A telephone message was received at Police Station Bapoli on 05.05.2009 from the General Hospital, Panipat that Rajji had been brought there with burn injuries and she was referred to PGI, Rohtak for treatment. ASI Virender Singh (PW-18) along with Head Constable Davinder Kumar (PW-13) reached PGI, Rohtak. An application Ex.PH was submitted by ASI Virender Singh (PW-18) regarding the fitness of the injured to make a statement.

Dr. Surender (PW-10) in his deposition stated that Rajji Devi was admitted in PGI Rohtak with 75% to 80% burn injuries. On the police application, he gave opinion Ex.PJ at about 10.20 a.m. on 05.05.2009 regarding fitness of the patient (Rajji Devi) to make a statement. The Judicial Magistrate Ist Class, Rohtak (PW-9) visited the ward and before recording the statement of the patient, she passed an order (Ex.PH/2) and again obtained opinion regarding fitness of the patient Rajji Devi to make a statement. The learned Judicial Magistrate (PW-9) then put questions Ex.PH/3 to Rajji Devi and recorded her statement Ex.PH/4. She then again obtained opinion that the patient had remained fit while making her statement. Then she (PW-9) gave a certificate (Ex.PH/5) and passed order (Ex.PH/6).

The dying declaration Ex.PH/4 of Rajji Devi, as has already been noticed above, is to the effect that her mother in law Sugni (appellant) daily used to raise a dispute regarding her working; besides, find fault in her domestic and agriculture work. It is stated that a dispute took place between them and in anger Sugni (appellant) poured kerosene oil on her and set her on fire with a matchstick. While the making the statement on 05.05.2009 Rajji Devi had remained fit which is certified by the doctor.

Rajji Devi then died on 11.05.2009 i.e. after about five days of the incident that had occurred. A telephone message was received from Police Post PGI, Rohtak on 11.05.2009 that Rajji Devi had died on account of burn injuries. ASI Virender Singh (PW-18) on getting the information reached there and prepared inquest proceedings (Ex.PA/2) under Section 174 CrPC. He also submitted an application (Ex.PA/3) for conducting the postmortem examination on the dead body of Rajji Devi.

The postmortem of Rajji Devi was conducted by Dr. Neeraj Ahuja (PW-1) along with Dr. Viney Kumar on 11.05.2009. He deposed an affidavit Ex.PA in which he inter alia states that skin was burnt on the neck. Rigor mortis was present. Besides, there were superficial to deep burns all over the body except parts of thighs, parts of lower limb, below knees and bilateral feet and soles. Greenish slough was present over burn wounds. Line of redness was present between healthy and burnt tissues. Total burnt area was about 80%. According to his opinion, the cause of death was due to burns and its complication. He proved carbon copy of the postmortem report Ex.PA/1, the inquest report Ex.PA/2 and police

request Ex.PA/3. In the circumstances, it is evident that the death of Rajji Devi was on account of burn injuries that she suffered on the night of 04.05.2009.

The incident that had occurred was not witnessed by anyone. In other words, there is no eye witness account of the incident and the prosecution case is based primarily on the dying declaration of Rajji recorded under Section 164 CrPC by Ms. Neha Nohria, learned Judicial Magistrate Ist Class, Panipat (PW-9), besides, circumstantial evidence. The dying declaration in order to sustain the conviction has to be read with care and caution.

A Constitution Bench of Hon'ble the Supreme Court in Laxman v. State of Maharashtra, (2002) 6 SCC 710 considered the juristic theory regarding acceptability of the dying declaration. It was observed as follows:-

"The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the

deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement.”

A reference was also made in Laxman’s case (*supra*) to an earlier decision in Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562 wherein it was held that the ultimate test is whether the dying declaration can be held to be truthful and voluntarily given. Besides, it was said that before recording the declaration, the officer concerned must find that the declarant was in a fit condition to make the statement in question.

The said decisions were considered by the Supreme Court in Sukanti Moharana v. State of Orissa, (2009) 9 SCC 163. It was said that in a decision of the Supreme Court in Vikas v. State of Maharashtra, (2008) 2 SCC 516 all the earlier relevant decisions on the point had been indexed, referred to and relied upon. The decision in Vikas’s case (*supra*), it was said, specifically reiterated the principle governing the dying declaration which was stated in Paniben v. State of Gujarat, (1992) 2 SCC 474. In Vikas’s case (*supra*) the position was summed up as follows:-

“45. The Court, referring to earlier case law, summed up principles governing dying declaration as under: (*Paniben case (supra)* SCC pp. 480-81, para 18)

‘18. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally, the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration looks up to the

medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. ...' "

A further reference was made to the decision of the Supreme Court in Khushal Rao v. State of Bombay, AIR 1958 SC 22 and the principle formulated earlier was reiterated that where a dying declaration is recorded by a competent Magistrate, it would stand on a much higher footing inasmuch as a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in absence of circumstances showing anything to the contrary, he should not be disbelieved by the court.

Applying the tests as have been enunciated to the present case, it is to be noticed that the dying declaration has been recorded by Ms. Neha Noharia, Judicial Magistrate Ist Class, Panipat (PW-9). She reached ward No.6 at PGI, Rohtak on 05.05.2009. Before that on the police application Ex.PH/1 regarding fitness of the patient (Rajji Devi) to make a statement, Dr. Surinder (PW-10) had given an opinion at 10.20 am that the patient was fit to make a statement. The learned Magistrate on her visit to the hospital for recording the statement of Rajji obtained opinion after passing the order (Ex.PH/2). Dr. Surinder (PW-10) gave his opinion Ex.PJ/1 regarding fitness of the patient at 12.25 pm on 05.05.2009. The

learned Magistrate then put questions Ex.PH/3 to Rajji Devi and recorded her statement Ex.PH/4. She again obtained opinion regarding fitness of the patient to make a statement. The doctor gave opinion Ex.PJ/2 that the patient had remained fit during her statement. The learned Magistrate (PW-9) at the end of the statement gave a certificate Ex.PH/5 that the statement was made by the Rajji Devi (deceased) voluntarily.

Therefore, it is established on record that the patient Rajji Devi had remained fit to make a statement on 05.05.2009 before the learned Magistrate (PW-9); besides, she survived thereafter till 11.05.2009 when she died. This gives an added assurance that when the statement was made by Rajji Devi (deceased) before the learned Magistrate (PW-9), she was in a fit state of mind to make a statement.

There is in fact, as already noticed, considerable gap between the statement made by Rajji Devi under Section 164 CrPC before the learned Judicial Magistrate Ist Class, Panipat (PW-9) on 05.05.2009 and her death on 11.05.2009. The learned trial Court observed that the dying declaration of the deceased was recorded at the earliest possible. Besides, she survived for more than five days and she succumbed to her injuries on 11.05.2009. She, therefore, had sufficient time to ponder over the matter and had she made a false statement against her mother in law, her conscience would have pricked her and knowing that she was about to die, she would have made a subsequent statement/dying declaration giving out the truth.

This indeed has not been done by Rajji Devi (deceased) before she died. Therefore, the dying declaration that she gave is quite natural, besides, had been made voluntarily as regards the manner in which the incident had occurred. In the circumstances, from the dying declaration it is quite evident that Rajji Devi died due to burn injuries which were caused by the appellant Sugni by pouring kerosene oil on her and lighting the matchstick. The defence set up by the appellant that Rajji Devi suffered burn injury as the kerosene oil lamp fell on her while she was trying to light the kerosene oil lamp when the light had gone off, in the facts and circumstances, does not seem to be probable and in fact is an afterthought to cover up the crime that had been committed.

In the circumstances, the depositions of the father in law of Rajji Devi namely Ramanand (PW-15), who had tried to save her and had suffered burn injuries, and that of Subhash (PW-16), father of the deceased Rajji Devi, who denied the prosecution version and stated that Rajji died due to the lamp falling on her, do not inspire confidence as regards the manner in which the incident had occurred. The fact of suffering burn injury on account of the lamp falling on Rajji Devi does not also appear to represent the actual picture in view of the extent of burn injuries that the appellant suffered. The burn area of which has mentioned to be 75% to 80%.

It is to be noticed that Ramanand (PW-15) who is the father in law of the deceased Rajji Devi had extinguished the fire. He first took her to Hyderabad Hospital, Panipat. She was given first aid and referred to General Hospital, Panipat. After her

medical examination at the General Hospital, Panipat, she was referred to PGI, Rohtak. After a week, Rajji Devi succumbed to her burn injuries. The hands, legs, trousers and 'parna' of Ramanand (PW-15) had got burnt while trying to extinguish the fire of Rajji Devi. His trousers and 'parna' were taken in possession by the police in pursuance of memo Ex.PM. The Police also in pursuance of memo Ex.PL took in possession a quarter (bottle), lamp, earth smeared with kerosene and a match box. He (PW-15) was medically examined at General Hospital, Panipat regarding the injury. He stated that the fire was not lit by anybody but the kerosene lamp fell on Rajji Devi.

Dr. Harpreet (PW-19) medico-legally examined Ramanand (PW-15) at the Community Health Centre, Samalkha on 26.05.2009. The following injuries were observed by him:-

- "1. Healed scar was present involving finger (middle, ring and little) of left hand measuring area approximately .5 cm x 4 cm.
2. Healed scar was present on palm of right hand.
3. Healed scar was present on left knee.
4. Healed scar was present approximately .2 cm above left knee."

The medico-legal report (Ex.PR) in respect of Ramanand (PW-15) was proved by Dr. Harpreet (PW-19). Therefore, it is evident that Ramanand did try to help his daughter in law Rajji Devi in putting of the fire. However, Rajji Devi does not attribute anything to her father in law Ramanand (PW-15) or for that matter

even her husband Anand (DW-1). She has only stated against her mother in law Sugni (appellant) with whom she had daily quarrels.

A close perusal of the dying declaration would, however, show that Rajji Devi (deceased) had stated before Ms. Neha Nohria, Judicial Magistrate Ist Class, Panipat (PW-9) that a dispute had taken place between them, and in anger her mother in law Sugni poured kerosene on her and set her on fire with a matchstick. Therefore, an element of anger leading to the skirmish of pouring kerosene oil by the appellant has been deposed by Rajji Devi (deceased) in her statement recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate Ist Class, Panipat (PW-9).

The incident leading to the demise of Rajji Devi, therefore, had occurred in a fit of rage. Besides, an effort was made by the father in law of Rajji Devi (deceased) to put off the fire in which he (PW-15) also suffered burn injuries, as has been noticed above. From this it can safely be inferred that there was no intention to cause the death of Rajji Devi although by the act of pouring kerosene and thereafter lighting a match stick by setting Rajji Devi on fire was such an act of causing bodily injury which was likely to cause her death.

Therefore, it would require consideration as to whether the act of the appellant which resulted in the death of Rajji Devi was one of the kinds which would amount to culpable homicide not amounting to murder.

Section 299 IPC relates to 'culpable homicide'. It envisages that whoever causes death by doing an act with the intention of causing death, or with the knowledge that he is likely

by such act to cause death, commits the offence of 'culpable homicide'. Section 300 IPC, however, envisages that except in the cases excepted therein, 'culpable homicide' is 'murder'. Therefore, a case of 'culpable homicide' unless it comes within one of the exceptions to Section 300 IPC would be murder and in case it comes within the exceptions to Section 300 IPC, it would be culpable homicide not amounting to murder. Exception 4 of Section 300 IPC, the applicability of which would be in issue in the present case, may be noticed. The same reads as follows:-

"Exception 4 – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. – It is immaterial in such cases which party offers the provocation or commits the first assault"

In view of the said exception to Section 300 IPC, and its 'explanation', culpable homicide would not amount to murder when an act is committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel and the offender had not taken undue advantage or acted in a cruel or unusual manner.

In Samuthram alias Samundra Rajan v. State of Tamil Nadu, (1997) 2 Crimes 185 (Mad) it was said that to invoke Exception 4 to Section 300 IPC, four requirements must be satisfied, namely, it is to be satisfied that there was a sudden fight, there was no premeditation, the act was done in a heat of passion

and the assailant did not take any undue advantage and neither acted in a cruel manner. The number of wounds during the occurrence it was said was not a decisive factor, but what was important was that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. It was said that where, 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, he would be entitled to the benefit of this exception provided he had not acted cruelly.

In Kalu Ram v. State of Rajasthan (2000) 10 SCC 324, the appellant in the said case during the subsistence of his first marriage, solemnized marriage with one Vimla. The said appellant and Vimla lived together in a house different from the house where the first wife was residing. The incident in the said case happened without any premeditation when Vimla was set ablaze on the evening of 23.03.1993. The appellant had asked Vimla to spare her ornaments presumably for raising some more money for buying liquor. He was then also drunk. Vimla refused to part her with ornaments, which infuriated the appellant. He then doused her with kerosene and wanted her to die and supplied a box of match stick to her. As she failed to ignite the match stick, he collected the match box and lit a match stick and set her ablaze. When the flames were up, he brought water in a frantic effort to save her from death. She was later removed to the hospital. Her statement was recorded by the police which became the basis for the FIR.

Subsequently, the Munsif Magistrate recorded her dying declaration. Later, she succumbed to her burn injuries.

The trial Court and the High Court relied on the two dying declarations and concluded that the appellant in the said case who had set Vimla ablaze, had caused her death. He was convicted for the offence under Section 302 IPC. Hon'ble the Supreme Court found no good reason to discard the two dying declarations given by the deceased regarding the actual occurrence. It was held that the Courts below had rightly acted on such dying declarations.

The further question, however, that was considered was regarding the nature of offence proved against the appellant therein. It was taken as an admitted case that the appellant was in a highly inebriated state when he approached the deceased and made a demand for sparing her ornaments. When she refused to oblige, he poured kerosene on her and wanted her to light the match stick. When she failed to do so, he collected the match box and ignited a match stick but when the flames were up, he suddenly and frantically poured water to save her from the tongues of flame. This conduct, it was said, could not be seen divorced from the totality of the circumstances. Very probably, he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die, he would not have alerted his senses to bring water in an effort to rescue her. Their Lordships of the Supreme Court in the circumstances were inclined to think that all that the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to

the fatal extent. It was said that he would not have intended to inflict the injuries which he sustained on account of his act. Therefore, Hon'ble the Supreme Court was persuaded to bring down the offence from the first degree murder to culpable homicide not amounting to murder. The conviction of the appellant was accordingly altered from Section 302 IPC to Section 304 Part II IPC and a sentence of rigorous imprisonment for seven years was imposed on him.

In the present case, as already noticed, an element of anger is there on the part of the appellant in pouring kerosene oil on her daughter in law Rajji Devi. This in fact is said by Rajji Devi herself. She said that there were daily quarrels between her and her mother in law Sugni (appellant) with regard to her working and in anger her mother in law poured kerosene oil and set her ablaze with a matchstick. The incident, therefore, it can be said had occurred between them in a fit of rage. The possibility of Rajji Devi under playing her own role in the dispute with her mother in law cannot be ruled out. There were daily quarrels between the Rajji Devi (deceased) and her mother in law Sugni (appellant). The possibility of Rajji Devi retorting back when her mother in law was highlighting her work deficiencies cannot entirely be ruled out. This in fact may have impelled the appellant Sugni to act in a fit of rage and pour kerosene oil on Rajji Devi and set her ablaze by igniting a match stick. However, there is evidently no premeditation and the incident occurred in the heat of passion and upon a sudden quarrel. The appellant in a fit of rage and anger was unable to comprehend that her act would result in the death of Rajji Devi. As in Kalu

Ram's case (supra), the appellant Sugni probably would not have anticipated that the act done by her would have escalated to such a proportion that Rajji Devi might die. However, it can be said that the act committed by Sugni (appellant) was such that she had the knowledge that the pouring of kerosene on her daughter in law Rajji Devi and setting her on fire may result in her death but then this was in a fit of rage.

Therefore, we are satisfied that the four elements of Exception 4 to Section 300 IPC are there and have been met in the present case. The learned counsel for the appellant though has contended that the case would fall under Section 304 Part-II IPC; however, we are of the view that this would fall under Section 304 Part-I IPC. This is so for the reason that the appellant Sugni did not make any effort to save her daughter in law Rajji Devi but an effort to save her was made by Ramanand (PW-15), her father in law. The act of the appellant was one of causing such bodily injury on the person of Rajji Devi which was likely to cause death. Section 304 Part I IPC provides for punishment if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. In the circumstances, there was an intention on the part of the appellant to cause bodily injury to Rajji Devi, which was likely to cause her death. The conviction, therefore, of the appellant is liable to be altered from that under Section 302 IPC to that under Section 304 Part I IPC.

As regards the offence under Section 316 IPC, it is to be noticed that Rajji Devi (deceased) at the time when she was set ablaze by her mother-in-law Sugni (appellant), was pregnant. Dr.

Manju Mehra (PW-2) from PGI, Rohtak conducted post-mortem examination on the foetus with respect to the baby of Rajji Devi on 08.05.2009. She deposed an affidavit Ex.PB in this regard. She stated that the length of foetus was 14 centimetres, weight 50 grams and of non viable age about 3½ months. The scalp bone collapsed. The organs were not developed. It was stated that the dead body of foetus was three-four months interline life. As such the foetus was non visible and sex identification was not possible. The copy of the post-mortem report Ex.PB/1, the inquest report Ex.PB/2 and the police application Ex.PB/3 were proved by her.

Section 316 IPC relates to causing death of quick unborn child by act amounting to culpable homicide. It is provided that whoever does any act under such circumstances, that if he thereby causes death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. The act of causing culpable homicide of Rajji Devi by the appellant Sugni has been held to be established. Rajji Devi was pregnant and carrying a foetus, which due to Rajji Devi being set on fire also resulted in the demise of the foetus. Therefore, the appellant by her act caused the death of a quick unborn child and this meets the requirement of Section 316 IPC.

Learned counsel for the appellant has not been able to dislodge the findings of the learned Additional Sessions Judge, Panipat in this regard. The learned Additional Sessions Judge, Panipat inter alia observed that the prosecution has been able to

prove that as a result of setting Rajji Devi ablaze, the appellant thereby also caused the death of an unborn child in her womb. The appellant, therefore, was also held liable for the offence under Section 316 IPC and for the said offence she has been sentenced to undergo imprisonment for a period of seven years; besides, pay a fine of Rs.2000/- and in default thereof undergo rigorous imprisonment for four months. The said order of conviction and sentence for the offence under Section 316 IPC is liable to be maintained and upheld.

Accordingly, the appeal is partly allowed. The judgment and order of sentence dated 11.05.2010 and 13.05.2010 respectively passed by the learned Additional Sessions Judge, Panipat are modified to the extent that the appellant is acquitted of the offence under Section 302 IPC and instead she is convicted for the offence punishable under Section 304 Part I IPC for which she is sentenced to undergo 10 years imprisonment. However, her conviction for the offence under Section 316 IPC and sentence of seven years imprisonment, besides, pay a fine of Rs.2000/- and in default thereof to further undergo four months imprisonment are maintained as they are. Both the substantive sentences of imprisonment shall, however, run concurrently.

(S.S. Saron)
Judge

(Gurmit Ram)
Judge

29.01.2015
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