

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 593 OF 2014**

Shantilal @ Lakhan Purandar Kamble	]
Age 21 years, residing at	]
Sanjay Gandhi Zopadpatti,	]
Timber Area, Sangli	]
At present at Kolhapur Central Prison	]
Convict No. C-5339, Circle No. 7	]
Dist. Kolhapur Kalamba, Maharashtra	]
416007	] ..Appellant
	[Ori. Accused]
Vs.	
The State of Maharashtra	] ..Respondent

....

Ms. Sarojini Upadhyay Advocate appointed for the Appellant
Mr. H.J. Dedia A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : MARCH 07, 2016

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

1 This appeal is preferred by the appellant-original
accused against the judgment and order dated 29.3.2012

passed by the learned Sessions Judge, Sangli in Sessions Case No. 90 of 2011. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 302 and 498-A of IPC. For the offence under Section 302 of IPC, the appellant has been sentenced to life imprisonment and fine of Rs. 50,000/- i/d R.I. for six months and for the offence under Section 498-A of IPC, the appellant has been sentenced to R.I. for two years and fine of Rs. 1000/- i/d R.I. for 10 days. The learned Sessions Judge directed that substantive sentences shall run concurrently. The learned Sessions Judge also directed that on payment of fine amount as directed above, an amount of Rs.30,000/- be given to the mother of deceased Priyanka.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Priyanka was the wife of the appellant. The marriage of the appellant and Priyanka took place on 22.11.2009. After marriage, the appellant and Priyanka were residing in Sanjay Gandhi Zopadpatti at Sangli. The appellant was doing labour work. The appellant was addicted to liquor. The appellant used to quarrel with his wife Priyanka on the

ground that she was not cooking food properly. About two months prior to the incident, the appellant was intoxicated and assaulted Priyanka on the ground that she did not prepare food properly. Hence, Priyanka went to her maternal home. There she informed her parents that her husband used to quarrel with her after coming home in an intoxicated state. Thereafter the appellant came to the maternal house of Priyanka to take her back. The appellant assured parents of Priyanka that henceforth he will not assault Priyanka and thus, parents of Priyanka allowed the appellant to take Priyanka to matrimonial home.

(ii) The incident occurred on 22.1.2011. Priyanka prepared dinner. The appellant came home at about 11 p.m. in an intoxicated state. He told Priyanka to serve him dinner. Priyanka served him dinner. Then the appellant told Priyanka to also have dinner with him. Priyanka refused to have dinner with him. Then the appellant started quarreling with Priyanka by abusing and assaulting her. The appellant told Priyanka that they should both die and he poured kerosene on himself and Priyanka. Thereafter, he set Priyanka on fire. On seeing Priyanka on fire, the appellant poured water on Priyanka to

extinguish the fire. Then the appellant opened the door of the house and both the appellant and Priyanka came out of the house. The appellant then admitted Priyanka in the Civil hospital at Sangli. In the hospital, the dying declaration (Exh. 27) of Priyanka came to be recorded. This dying declaration was treated as F.I.R. Thereafter investigation commenced. Initially the offence came to be registered under Sections 307 and 498-A of IPC. Priyanka expired on 5.2.2011 on account of shock due to 61% mixed infective burns. Thereupon Section 307 of IPC was converted to Section 302 of IPC. After completion of investigation, the 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 sections 302 and 498-A of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant poured kerosene on his wife Priyanka and set her on fire which led to her death.

5 The main evidence against the appellant is that of dying declaration (Exh. 27) of Priyanka. After the appellant set Priyanka on fire, he extinguished the fire and took her to the hospital. In the hospital, PW 2 Special Executive Magistrate Ms. Malap recorded the dying declaration of Priyanka. This dying declaration is at Exh. 27. The S.E.M. Malap has stated that on 23.1.2011 at about 3.15 a.m. she received phone call from the police chowky informing her that one newly married lady is admitted in the Civil hospital, Sangli with burn injuries and her statement was to be recorded. Thereafter Ms. Malap reached the Civil hospital at Sangli. She made enquiry with Doctor whether the patient was in a position to give a statement.

Doctor examined the patient and said that the patient was in a position to give a statement. The Doctor gave his opinion in writing. This endorsement is at Exh. 17. Thereafter Ms. Malap put questions to the patient and recorded her statement. Priyanka told the S.E.M. that her marriage with the appellant took place one year two months prior to the incident. Her husband used to drink liquor and used to beat her. Her husband used to tell that she cannot cook food properly. Priyanka further stated to S.E.M. that some days prior to the incident, she was beaten by her husband, hence, she went to the house of her parents. Thereafter her parents pacified her and her husband who had come to take her, hence, she went along with her husband back to her matrimonial house. Priyanka has further stated that on the day of the incident at about 11 p.m. her husband came home. Her husband asked her to serve dinner. She then served dinner to her husband. Her husband also asked to take dinner with him but she refused. Because of this, a quarrel took place between her and her husband. Then her husband said that he will also not take dinner and both of them will die. Saying this, her husband poured kerosene on her and on his own person. Then her

husband set her on fire with match-stick.

6 PW 2 S.E.M. Malap has stated that when she reached Civil hospital, she enquired with the Doctor whether the patient was in a position to give a statement. The Doctor examined the patient and stated that the patient was in a position to give a statement. This opinion was given in writing which is at Exh. 17. PW 1 Dr. Dhanke is the Doctor who had examined Priyanka and gave the endorsement which is at Exh. 17. Dr. Dhanke has stated that on 23.1.2011 at about 6.00 a.m. Special Executive Magistrate came to the hospital. She requested him to examine the patient and to tell about the condition of the patient. Accordingly, he examined the patient and opined that the patient Priyanka is conscious, oriented and able to give a statement. He gave this opinion in writing. Dr. Dhanke identified this writing which is at Exh. 17. Dr. Dhanke further stated that thereafter the S.E.M. recorded the statement of Priyanka. He was present when the S.E.M. recorded the statement of Priyanka. Dr. Dhanke has stated that after completion of recording statement, he again examined the patient and found that the patient was still conscious, oriented

and cooperative during the entire process of recording the statement.

7 In addition to the dying declaration which is at Exh. 27, Priyanka made a dying declaration to Dr. Dhanke. Dr. Dhanke has stated that on 23.1.2011 at about 1.15 a.m. Priyanka was admitted in the burn ward. He was working as Resident Doctor in the burn ward. He recorded the history given by the patient i.e. Priyanka. The patient told him about a quarrel with her husband and that her husband poured kerosene on her and set her on fire. He recorded this history in the case papers. The said case history is at Exh. 16.

8 In addition to the above evidence, the prosecution is relying on the evidence of PW 3 Rahul who was the brother of Priyanka, to show that an oral dying declaration implicating the appellant was made by Priyanka to Rahul. Rahul has stated that Priyanka was his sister. The marriage of his sister with the appellant took place on 22.11.2009. Initially they were happily cohabiting. After sometime, as the appellant was addicted to liquor, he started illtreating his sister. His sister used to inform

him on phone from time to time about the illtreatment by the appellant to her. Three months prior to the incident, his sister came to his house. She told that she was not ready to cohabit with her husband as her husband after consuming liquor, used to beat and illtreat her. After four days, the appellant, his mother and one Corporator came to their house. The mother of the appellant and Corporator explained to the appellant as well as Priyanka and pacified them. The appellant apologized and stated that he will not drink liquor any more hence, Priyanka agreed and went with the appellant.

9 Rahul has further stated that on 30.12.2010 his sister came to house on occasion of his marriage. At that time, his sister told him about illtreatment and beating to her at the hands of her husband. Priyanka was not willing to go back to the house of the appellant. Then the appellant talked with the elder sister of Priyanka and promised her that he will not drink liquor and he will not give illtreatment to Priyanka. On this promise about 15 days prior to the incident, Priyanka went to cohabit with the appellant. On 23.1.2011, Rahul was informed that that the appellant had poured kerosene on Priyanka and

set her on fire, hence, he went to civil hospital at Sangli to meet Priyanka. He met her on 24.1.2011 at about 1 a.m. On enquiry, Priyanka told him that the appellant came to the house after consuming liquor and quarrelled with her on account of taking dinner. Priyanka then told him that the appellant poured kerosene on her and set her on fire.

10 It is the prosecution case that the appellant poured kerosene on his wife Priyanka and set her on fire. The prosecution case is also supported by the post-mortem notes which show that Priyanka had sustained 61% burns. It is further supported by C.A. report Exh. 37 which shows that the maxi worn by Priyanka and baniyan worn by the appellant tested positive for kerosene residues.

11 Thus, all the evidence taken together shows that the appellant poured kerosene on his wife Priyanka and set her on fire.

12 Mrs. Upadhyay submitted that the present case would not fall under Section 302 of IPC but it would, at the most, fall

under Section 304 Part-II of IPC. She submitted that the appellant had no intention to cause death of his wife Priyanka. In support of this contention, she placed reliance on the dying declaration (Exh. 27) recorded by PW 2 S.E.M. Ms. Malap. In the dying declaration, Priyanka has stated that after her husband set her on fire, he extinguished the fire and in the process, her husband also sustained burn injuries. Thereafter her husband admitted her in the Civil hospital. Ms. Upadhyay submitted that the fact that the appellant extinguished the fire and admitted Priyanka in the hospital, shows that he had no intention to kill his wife Priyanka.

13 No doubt, the evidence on record shows that it was the appellant who set Priyanka on fire, however, the pivotal question which arises in the facts and circumstances of this case is, what is the nature of the offence proved against the appellant ? It is an admitted fact that the appellant set Priyanka on fire. However, after Priyanka caught fire, the appellant poured water on fire and extinguished the fire. Thereafter the appellant admitted Priyanka in the Civil hospital. This conduct cannot be seen divorced from the totality of the

circumstances. Very probably the appellant 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 Priyanka to die, he would not have poured water on Priyanka in an effort to save her. In view of the evidence on record, we are inclined to think that all that the appellant thought of was to inflict burns on her and to frighten her but unfortunately the situation slipped out of his control and it went to a fatal extent. We stand fortified in taking this view by observations of the Supreme Court in the case of **Kalu Ram Vs. State of Rajasthan**¹. In the said case also similar facts arose and the Supreme Court held that the case would not be covered by Section 302 of IPC but it would be covered by Section 304-II of IPC. In the facts of this case, it is obvious that the appellant realized his folly and was filled with remorse and therefore, he extinguished the fire.

14 In view of the above facts and circumstances, the conviction and sentence under Section 498-A of IPC is maintained, however, we alter the conviction of the appellant

1 (2000) 10 S.C.C. 324

from Section 302 of IPC to Section 304-II of IPC. In our opinion, sentence of imprisonment of eight years with fine as imposed by the trial Court in default R.I. for three months, meets the ends of justice. The substantive sentences of imprisonment shall run concurrently. The conviction and sentence imposed by the learned Sessions Judge by judgment and order dated 29.3.2012 in Sessions Case No. 90 of 2011, is accordingly modified.

15 Appeal partly allowed to the aforesaid extent.

16 Office to communicate this order to the appellant through the concerned Superintendent of Prison.

17 We quantify legal fees to be paid by the High Court Legal Services Committee to appointed advocate Ms. Sarojini Upadhyay at Rs.5000/-.

[SMT. ANUJA PRABHUDESSAI, J.]

[SMT.V.K.TAHILRAMANI, J.]