

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 765 OF 2003

The State of Maharashtra
Through Karan Ramrao Gavare,
Age 29 years, Occu. Labour,
R/o. Sayyad-Hipparga,
Tq. Omerga, Dist. Osmanabad.

**....Appellant.
(Ori. Complainant)**

Versus

Lalita @ Lalubai w/o. Chandrakant
Gavare, Age 35 years, Occu. Agril &
Labour, R/o. Sayyad-Hipparga,
Tq. Omerga, Dist. Osmanabad.

**....Respondents.
(Ori. Accused)**

Mr. S.J. Salgare, APP for appellant/State.

**CORAM : T.V. NALAWADE AND
ARUN M. DHAVAL, JJ.
DATED : October 31, 2017**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against judgment and order of Sessions Case No. 16/2000, which was pending in the Court of 2nd Ad-hoc Additional District Judge, Osmanabad. Respondent is acquitted of the offence punishable under section 307 of Indian Penal Code ('IPC' for short). Heard the learned APP.

2) First informant Karan Gavare and respondent/accused are residents of Sayyad-Hipparga, Tahsil Omerga, District

Osmanabad. It is the case of State that Karan had illicit relations with respondent for few years, but he married about six months prior to the date of incident and due to that distance was developed between Karan and respondent. It is the case of State that respondent was insisting Karan to visit her place and continue the relationship, but Karan was avoiding to do it.

3) The incident in question took place on 17.11.1997. On that day at about 10.30 a.m. when Karan was proceeding towards shop of one Rama Wakade for purchasing tobacco, respondent intercepted him. It is the case of State that respondent said to Karan that they both should finish themselves and then she used kerosene and set fired to herself and also to Karan. It is the case of State that respondent extinguished the fire which was there to her Sari. When Karan raised hue and cry, the persons from neighbourhood including mother of Karan gathered there and they extinguished the fire. Karan sustained burn injuries and he was shifted to private hospital of Dr. More. There, statement of Karan was recorded by police officer. On the basis of said statement, crime at C.R.No. 99/97 came to be registered in Omerga Police Station.

4) During the course of investigation, panchanama of spot, the house of accused was prepared and statements of some

witnesses including Vijaybai, mother of Karan came to be recorded. Medical certificate was collected from the hospital where treatment was given to Karan. The articles like partly burn clothes which included pieces of Sari were sent to C.A. office. Chargesheet came to be filed for aforesaid offence. When the charge was framed, accused pleaded not guilty.

5) To prove the offence, the prosecution examined in all ten witnesses. Accused took the defence of total denial and by way of cross examination, she contended that on that day, Karan had entered her house with bad intention and when she refused to have relations with him, he set fire. The Trial Court has not believed Karan and has considered the other probability and has given acquittal to respondent.

6) From the F.I.R., it can be said that Karan (PW 1) wanted to inform that the incident took place in front of house of accused. However, in the evidence, he has deposed that accused called him to her house and then she poured kerosene on her own person and on person of Karan and by picking up firewood from the place of fire, she set fire to herself and to Karan. He has deposed that when fire started, the accused removed her own Sari and she rushed out of house. He has deposed that when he raised hue and cry loudly, the

villagers gathered there and his mother extinguished the fire. He has given evidence that his uncle Vilas and mother shifted him to hospital where his statement was recorded by police.

7) Vijaybai (PW 2), mother of Karan, has given evidence that on that day accused had visited her house as she wanted to talk with complainant, but complainant refused to go to the house of accused. No such evidence is given by Karan. She has given evidence that at about 10.00 a.m. when she heard from somebody that there was fire in the house of accused, she went to the house of accused. She has deposed that when she reached the house of accused, she noticed that accused was standing at the door of her house and the accused was in good condition. She has deposed that she extinguished the fire as clothes of his son Karan had caught fire.

8) Vilas (PW 3), the maternal uncle of Karan has given evidence that after hearing hue and cry, he rushed to the house of accused. He has deposed that he only saw the complainant in injured condition and he shifted the complainant to hospital of Dr. More. His evidence does not show that accused was present in the house.

9) The evidence of both Vijaybai (PW 2) and Vilas (PW 3)

do not show that Karan (PW 1) disclosed anything about the incident to them. Vilas has not given evidence on the presence of accused on the spot. When Karan has given evidence that accused had set fire to herself, his mother has given evidence that she saw accused standing at the door of her house and she was in good condition. Admittedly, accused did not sustain burn injury in the incident. This circumstance creates doubt about the version given by Karan.

10) Though Karan and aforesaid two witnesses have tried to say that Karan had relations with the accused, the accused has denied it. The tenor of the cross examination of Karan shows that it was suggested to Karan that he entered the house of accused on that day to have relations with the accused and when she refused to allow him to do so, Karan gave threat to set fire to her and when he tried to pour kerosene on the accused, she resisted and some kerosene fell on him and when he was attempting to set fire to the accused, his clothes caught fire accidentally.

11) Rajendra (PW 4), shop owner has given different evidence. He has given evidence that complainant was present at his shop and from there, accused took complainant to her house. He is declared hostile and some contradictions are proved in his evidence by the learned APP by referring police statement of this witness.

12) Panch witness on spot panchanama Ismail (PW 5) is also declared hostile by State. He has admitted his signature appearing on the spot panchanama and this document is given Exh. 26. Another panch witness Baburao (PW 6) is also turned hostile. Ganpati (PW 7), other maternal uncle of complainant has turned hostile.

13) Bansode (PW 10), Investigating Officer is examined and in his evidence the spot panchanama is proved. The spot panchanama shows that incident took place inside of the house of accused. The pair of Chappal, footwear of complainant was lying there. Some pieces of partly burn clothes were found there and piece of firewood which was also partly burn was recovered.

14) It was necessary for the complainant Karan to explain the aforesaid things. When he is married man, it was necessary for him to explain as to why he went to the house of accused, who was widow having one minor issue. There is no such explanation. On the contrary, Karan has tried to say that he wanted to keep distance from the accused as he got married. But, there are aforesaid circumstances against him.

15) The evidence of Dr. More (PW 8) shows that complainant sustained injuries to his head, face, neck, right upper limb, left upper limb, chest, abdomen and back. The extent of burn injuries was 45%. It does not look probable that Karan did not resist when accused was pouring kersene on his person. It is already observed that it is not the case of prosecution that accused sustained burn injury. Nothing is recovered from the accused to show that she was involved in the incident. The neighbours of accused must have rushed to the spot first, but no such independent witness is examined. The names of neighbours are mentioned in the spot panchanama. Even the uncle of Karan has not uttered a word against the accused to show that she was present on the spot when he rushed to the house of accused after hearing hue and cry. All these circumstances have created another probability like attempt of suicide by complainant himself to pressurize the accused. Due to these circumstances, this Court holds that the accused was entitled to benefit of doubt. The Trial Court has also disbelieved Karan and accused is acquitted. This Court sees no reason to interfere in the decision given by the Trial Court. In the result, the appeal stands dismissed.

[ARUN M. DHAVAL, J.]

[T.V. NALAWADE, J.]

ssc/