

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 764 OF 2014

Devendra Ramesh Dhakras	]
Age 22 years, Occ: Nil	]
C/6904, Nasik Road Central Prison,	]
Nasik	]..Appellant
	[Ori.Accused No.1]

Vs.

The State of Maharashtra	]..Respondent
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Mr. Prosper D'Souza Advocate appointed for the Appellant
Mr. Arfan Sait A.P.P. for the State
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**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATED : SEPTEMBER 01 / 06, 2017

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

1 This appeal is preferred by the appellant-original
accused no.1 against the judgment and order dated 2.4.2008
passed by the learned Sessions Judge, Raigad-Alibag in

Sessions Case No. 170 of 2006. 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.15,000/- i/d R.I. for four years. For the offence under Section 498-A of IPC, the appellant has been sentenced to R.I. for three years and fine of Rs.15,000/- i/d R.I. for one year.

2 The prosecution case briefly stated, is as under:

(i) The appellant was married to Sarika on 1.10.2004. It was a love marriage. After the marriage, Sarika went to reside in her matrimonial home at Vavoshi Fata, Khalapur, Dist. Raigad. She was residing in the matrimonial house along with her mother-in-law, father-in-law, unmarried sister-in-law Pravina & the appellant. PW 4 Shamkant was the brother of Sarika. He was residing at village Vadhav. The father of Sarika was residing in Dubai since 12 years prior to the incident. After the marriage, the appellant started demanding money & there was illtreatment & harassment to Sarika by the appellant.

(ii) The incident occurred on 28.8.2005 at about 6.45 p.m. in the matrimonial house. It is the prosecution case that the appellant poured kerosene on Sarika and set her on fire. Sarika was taken to the hospital. In the hospital, two dying declarations of Sarika were recorded. First dying declaration is at Exh. 20 and the second dying declaration is at Exh. 42. Exh. 20 was recorded by PW 1 ASI Warge and dying declaration Exh. 42 was recorded by PW 8 Special Executive Magistrate Walanj. In both the dying declarations, Sarika stated that her husband had set her on fire. Both the dying declarations were recorded on 29.8.2005. Dying declaration Exh. 20 was recorded between 10.00 a.m. to 10.30 a.m. and the same was treated as F.I.R. Thereafter investigation commenced. Sarika expired on 3.9.2005. PW 9 Dr. Jyoti Dake conducted the post-mortem on the dead body of Sarika. According to Dr. Jyoti Dake, probable cause of death was "Septicemia due to 90% deep burn injuries". After completion of investigation, charge-sheet came to be filed.

3 Charge came to be framed against the appellant under Sections 302 and 498-A read with Section 34 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 Sarika and set her on fire.

5 The conviction is mainly based on two dying declarations Exh. 20 and Exh. 42. Dying declaration Exh. 20 was recorded by PW 1 ASI Warge and dying declaration Exh. 42 was recorded by PW 8 Special Executive Magistrate Walanj.

6 PW 1 ASI Warge has stated that on 29.8.2005 he was

posted on duty in the civil hospital. At about 10 a.m. he was called by the Medical Officer as one patient with burn injuries was admitted in the hospital and her statement was to be recorded. ASI Warge requested the Medical Officer to confirm whether the patient was in a fit condition to give her statement. ASI Warge also noticed that the patient was able to talk. Medical Officer allowed ASI Warge to record the statement of the patient. ASI Warge requested the Medical Officer to remain present while recording the statement of the patient. Accordingly, the Medical Officer remained present. After recording the statement, Medical Officer again examined the patient. ASI Warge has stated that Sarika Dhakras informed him that her husband poured kerosene on her person and set her on fire. He read over the statement recorded to her. The contents of the statement were admitted by her to be true and correct. Thereafter he obtained thumb impression of the patient.

7 PW 8 Shri. Walanj has stated that he was working as Naib Tahsildar since November, 2004. He has stated that he received requisition to record the dying declaration of one

patient. Pursuant thereto, he went to civil hospital Alibag on 29.8.2005 at about 10 a.m. He contacted the medical officer on duty. On enquiry by Shri. Walanj, the medical officer on duty gave in writing that the patient is in a condition to give her dying declaration. Thereafter Shri. Walanj recorded the dying declaration of Sarika. The said dying declaration is at Exh. 42. In the dying declaration, Sarika has stated that her husband poured kerosene on her and set her on fire. Thus, both the dying declarations Exhs. 20 and 42 show that the appellant poured kerosene on his wife Sarika and set her on fire.

8 In addition to two dying declarations Exh. 20 and Exh. 42, the prosecution is relying on oral dying declarations which were given by Sarika to PW 3 Devta Patil and PW 4 Shamkant Mhatre. PW 3 Devta Patil has stated that he was the paternal uncle of Sarika. He has stated that Sarika was married with appellant Devendra on 1.10.2004. He has stated that Sarika used to telephone her father about the illtreatment caused to her. The room where Sarika was residing with Devendra was at a distance of 5 minutes from the room of Devta Patil. He has stated that after 7 to 8 days of the marriage, Devendra started

harassing Sarika by telling her to bring money from her father as he wants to start a business. Devendra started beating Sarika. Devta Patil has stated that he met Sarika on 28.8.2005 at about 12 noon. She was able to talk. On enquiry, Sarika told him that her husband poured kerosene on her and set her on fire. PW 4 Shamkant was the brother of Sarika. He has stated that Sarika's husband Devendra was unemployed. Shamkant has stated about harassment by the appellant to Sarika. Shamkant has further stated that he received a telephone call that Sarika had sustained burn injuries and was admitted in the hospital, hence, he went to the hospital. On enquiry with Sarika, she informed him that she was set on fire by her husband.

9 That Sarika died a homicidal death is proved through the evidence of PW 9 Dr. Dake and the other evidence on record. Dr. Dake has stated that she performed post-mortem on the dead body of Sarika on 3.9.2005. According to Doctor, the probable cause of death was "septicemia due to 90% deep burn injuries". In addition, all the dying declarations also show that the appellant had set his wife Sarika on fire.

10 Mr. D'Souza submitted that even assuming that the act of the appellant caused the death of Sarika, the case would not fall under Section 302 of IPC but it would fall under Section 304 part-II of IPC. He submitted that the appellant had not intended to cause the death of his wife Sarika. He submitted that as soon as Sarika caught fire, the appellant tried to extinguish the fire and thereafter he had rushed Sarika to the hospital in an effort to save her. To support his contention that the appellant tried to save Sarika when she caught fire and in the process, the appellant also sustained burn injuries, he has placed reliance on Exh. 57 which is the injury certificate of the appellant issued by the Primary Health Centre, Khalapur. This shows that the appellant had sustained extensive burn injuries. They are as under:

- “ 1. Burn Marks 6 x 3 cm. Rt. thumb planter and dorsal;
2. Burn Marks 5 x 4 cm. Rt. Middle finger dorsal;
3. Burn Marks 5 x 3 cm. Rt. Ring finger and little finger;
4. Burn Marks 10 x 2 cm. Rt. Ant. Cervical region;
5. Burn Marks 6 x 5 cm. sternum and Rt. Lat. Side of sternum
6. Burn Marks 3 x 2 cm. tip of Nose;
7. Burn Marks 5 x 4 cm. Mentum;
8. Burn Marks 5 x 3 cm. Both upper eye lids.”

11 In addition, Mr. D'Souza drew our attention to the dying declaration Exh. 42 wherein Sarika has stated that she was brought to the hospital by her husband.

12 No doubt, the evidence on record shows that it was the appellant who set his wife Sarika 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 after Sarika caught fire, the appellant had taken Sarika to the hospital. The medical certificate Exh. 57 also shows that extensive injuries were sustained by the appellant. This supports the contention of Mr. D'Souza that as soon as Sarika caught fire, the appellant made efforts to extinguish the fire and in the process, he sustained extensive burn injuries. This conduct of the appellant of extinguishing the fire and immediately taking Sarika to the hospital, 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

her to die, he would not have immediately extinguished the fire and rushed her to the hospital in an effort to rescue her.

13 In view of the evidence on record, we are inclined to think that all that the appellant thought of, was to frighten her by inflicting few burn injuries and not kill her. But unfortunately situation slipped out of his control and it went to a fatal extent. Similar facts arose before the Supreme Court in the case of ***Kalu Ram Vs. State of Rajasthan*** reported in **2010 SCC 324**. In the said case, the Supreme Court held that the case would be covered by Section 304 Part-II of IPC.

14 In view of the above facts and circumstances, the conviction and sentence of the appellant under Section 498-A of IPC is maintained, however, in default sentence is reduced to S.I. for one month instead of R.I. for one year. We alter the conviction of the appellant from Section 302 of IPC to Section 304 part-II of IPC. Both sides agreed that the appellant has been in custody for more than nine years, hence, we reduce the period of imprisonment under Section 304 Part-II of IPC to nine years and fine of Rs.15,000/- in default S.I. for one month. If

fine amount is paid, out of it, Rs.25,000/- to be paid to brother or father of Sarika as directed by the trial Court.

15 The conviction and sentence of the appellant is modified to the extent indicated above. If the appellant has undergone the sentence, he be released forthwith. Appeal is partly allowed in above terms.

16 Office to communicate this order to the appellant who is in Nasik Road Central Prison, Nasik.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT.V.K.TAHILRAMANI,J.]