

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

CRIMINAL APPEAL No.411 OF 2013

Suhas Uttam Karande

... Appellant

Vs.

The State of Maharashtra

... Respondent

Mr.Shantanu Phanse for the Appellant

Ms.M.M. Deshmukh, APP, for the Respondent/State

with

CRIMINAL APPEAL No.118 OF 2014

The State of Maharashtra

... Appellant

Vs.

Suhas Uttam Karande

... Respondent

Ms.M.M. Deshmukh, APP, for the Appellant/State

Mr.Shantanu Phanse for the Respondent

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ.**

DATED: SEPTEMBER 12, 2018

ORAL JUDGMENT:

1. These two appeals are directed against the judgment and order dated 27.2.2013 passed by the learned Additional Sessions Judge, Solapur, thereby convicting the appellant/accused for the

offences punishable u/s 304 (II) of the Indian Penal Code thereby sentencing him to suffer R.I. for 7 years and to pay fine. The appellant/accused has filed Appeal No.411 of 2013 against conviction under section 375 of the Criminal Procedure Code and the State has filed Appeal No.118 of 2014 against acquittal from the offence under section 302 of the IPC i.e., under section 378(1) of the CRPC as also for enhancement of the sentence u/s 378(1) (3) of the CRPC.

2. The case of the prosecution in brief is as follows:

The incident of burning of the deceased Sarika took place on 12.11.2010, at village Sasure, Barshi. She was married to the accused approximately 1½ years prior to the incident. The appellant/accused used to earn his livelihood by doing labour work. However, he was addicted to liquor. Sarika used to pursue him not to drink and to go to work regularly. However, it was in vain. On 12.11.2010, Sarika cooked food and the appellant/accused came home drunk for the lunch. So, Sarika questioned him about his drinking. The appellant/accused got wild. He quarrelled with her; poured kerosene on her person and set her on fire. Thereafter, he tried to extinguish the fire and took

her to the hospital. Sarika had sustained 90% burn injuries. She gave dying declaration on 13.11.2010 pursuant to which the offence was registered at C.R. No.197 of 2010 with Vairag police station, Solapur u/s 307 of the IPC. Sarika ultimately succumbed to the injuries on 15.11.2010 and the offence was registered u/s 302 of the IPC. Postmortem was conducted on 16.11.2010. The cause of death, as per the postmortem report, was burn injuries, however, the viscera was sent to Chemical Analyser. The police thereafter recorded the offence u/s 302 of the IPC. PW7 Sunil Rohakale, API, attached to Vairag police station, investigated the said crime i.e., C.R. No.197 of 2010. He prepared the Spot panchanama on 14.11.2010 at village Sasure, Barshi. There he seized a saree, blouse, half burnt matchsticks under panchanama. He recorded the statements of the witnesses. The investigation was conducted on the basis of the dying declaration of the deceased was treated as the FIR. The Investigating Officer collected the relevant documents in respect of the incident. A further dying declaration was recorded on 13.11.2010 (exhibit 41) by PW5 Mohan Masu Bhosale, a Special Executive Magistrate. Sarika, the deceased, told him that she was burnt by her husband. In between, the accused was also sent to Doctor for treatment of

his burn injuries and his medical certificate (exh. 24) was obtained. The Investigating Officer submitted the chargesheet against the accused and the C.A. report was submitted in between the trial. Thereafter the case was committed to the Court of Sessions and the learned Sessions Judge framed charge u/s 302 and 323 of the IPC. He pleaded not guilty.

3. The prosecution examined total 6 witnesses, out of which PW1 Dada Phoke, the father of the victim, did not support the prosecution and on the contrary, he complimented the accused for his good behaviour. PW2 Sunil Aware was the panch of Spot panchanama, who did not support the case of the prosecution. PW3 Ramesh S. Mane was attached to Barshi police station, who made entry in the register about getting information of burning of Sarika from Jagdale Mama hospital i.e., exhibit 30 and exhibit 31. Thereafter, he recorded statement of Sarika, which is marked at exhibit 32 which was treated as the FIR. Thereafter, PW4 Dr.Sanjay Uttamrao Deshmukh, the Medical Officer, from Jagdale Mama hospital, has stated that on 12.11.2010, Sarika was admitted to the hospital for burn injuries and the police arrived there to record her statement on the same day at 8pm. At that

time, he informed the police that she was conscious and in a position to give statement. He made an endorsement on exh. 32 i.e., the statement recorded by PW3 Ramesh. PW5 Mohan, the Special Executive Magistrate, recorded the second dying declaration of Sarika on 13.11.2010 (exh. 41). PW6 Dadarao Arjun Pawar, the Police Naik attached to Vairag police station, carried the sealed articles from Chowky to the office of C.A. at Pune. PW7 Sunil Rohakale, API, the Investigating Officer has deposed about the process of the investigation. The learned Judge after considering the evidence of the prosecution and defence adopted by the accused, reduced the charge from section 302 to section 304 part II and convicted the accused accordingly.

4. At the outset, it is to be made clear that the accused was acquitted from the offence of section 302 of the Indian Penal Code but was punished under section 304(II) of the Indian Penal Code and was sentenced to suffer R.I. for 7 years and to pay a fine of Rs.1,000/- and i/d, to suffer imprisonment for six months. The sentence was given on 27.2.2013. The accused was arrested and was in jail since 29.11.2010. Thus, from the date of his arrest till today, as 7 years are already over, the accused being entitled to

set off under section 428 of the Code of Criminal Procedure, has undergone the entire sentence and is already released.

5. The learned Counsel for the appellant / accused has submitted that the appellant / accused is innocent and has not committed any crime muchless the offence of murder or culpable homicide not amounting to murder. He has submitted that there are discrepancies in the dying declarations (exhibits 32 and 41). He pointed out that the finger print of the deceased appearing in dying declaration is doubtful. He argued that the deceased Sarika was burnt 90% and her fingers were also burnt. Under such circumstances, it is not possible for her to give her fingerprint on the dying declaration. He relied on the evidence of PW5 Mohan Bhosale. He submitted that the witness stated that he obtained thumb impression of the left leg because the hands were completely burnt, however, PW3 deposed about thumb impression of Sarika. Under such circumstances, he submits, the dying declarations are not found truthful and they are to be disbelieved. The learned Counsel has further submitted that, therefore, the conviction is to be set aside.

6. Learned Prosecutor while opposing the appeal of the accused against conviction under section 304 (part II) and arguing for State's appeal for conviction u/s 302 of the Indian Penal Code, has submitted that it is a case of murder. The dying declarations of the deceased are natural and they are true. In both the dying declarations, she has mentioned that her husband i.e., the accused, poured kerosene on her and set her on fire as per PW3 Mane, the police constable, who has stated that he recorded the dying declaration. Similarly, the evidence of PW5, the Special Executive Magistrate, is also reliable as the second dying declaration was recorded by him. She further submitted that there nothing is brought in the cross-examination to disbelieve these witnesses. She submitted that the conviction given under section 304 (part II) is to be enhanced to section 302 of the Indian Penal Code.

7. We have carefully gone through the evidence of all the witnesses, especially the dying declarations at exhibits 32 and 41. There is no discrepancy in the contents of the dying declarations. Sarika has stated in both the dying declarations that she cooked food for her husband and her husband arrived drunk at home and

when she told him not to drink and work, he got angry and poured kerosene on her and set her on fire. On all the material aspects, the dying declarations are consistent. There is no case of tutoring of Sarika. In fact, her father PW1 has turned hostile. The version of Sarika appears voluntary and truthful. Once we accept the dying declarations, the prosecution has established the case of homicidal death. The learned Prosecutor while arguing the case against the acquittal of the accused from the charge under section 302, has submitted that the learned Judge has committed error in not convicting the accused under section 302. However, we have considered the circumstances under which the offence is committed. In the dying declaration itself, Sarika has mentioned that when the accused came home, he was under the influence of liquor. At that time, she advised him not to drink and attend work regularly. This flared up and he lost his balance which led to the commission of the offence. Thus, there was quarrel between the parties prior to the incident. It is not a pre-meditated, planned homicide. Moreover, after setting Sarika on fire, the accused tried to extinguish the fire. This fact is also mentioned in her dying declarations. This corroborates with the evidence of the Doctor (PW4) and medical certificate of the accused, which is at exhibit

24. The medical certificate discloses that he had sustained 20% burn injuries to his hands. Thus, these are the mitigating circumstances, in favour of the accused.

8. We are, therefore, of the view that the charge under section 302 of the Indian Penal Code was rightly reduced to section 304 (part II) of the Indian Penal Code and the sentence of 7 years R.I. with fine is adequate. Hence, no interference is required with the impugned order. Thus, both the Appeals are dismissed.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)