

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

CRIMINAL APPEAL NO.1126 OF 2012

Ravindra Narayan Gore
Age-29 years, Occu-Nil,
R/o-Chikkalhol, Tq-Khanapur,
Dist- Sangali.
(At present in Yerawada Jail)

...APPELLANT

VERSUS

The State of Maharashtra,
(Through Hinjawadi Police Station)

...RESPONDENT

...

Mr.Swapnil Ovalekar, Advocate for Appellant
(appointed).

Mr.J.P. Yognik, A.P.P. for Respondent-State.

...

**CORAM: S.S. SHINDE AND
A.S. GADKARI, JJ.**

DATED : 31ST OCTOBER, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the Judgment and order dated 26th April, 2012, passed by the Additional Sessions Judge, Pune in Sessions Case No.64 of 2009, thereby convicting

Appellant/Accused No.2 – Ravindra Narayan Gore for the offence punishable under Section 498-A of the Indian Penal Code (for short "IPC") and sentencing him to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, and in default of payment of fine, to suffer rigorous imprisonment for three months. The trial Court also convicted the accused for the offence punishable under Section 302 of the IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.2,000/-, and in default of payment of fine, to suffer rigorous imprisonment for six months. Both the sentences were directed to be run concurrently.

2. Before the Trial Court, there were in all three accused i.e. Accused No.1 – Narayan Dhaku Gore (father-in-law of Manisha), Accused No.2 – Ravindra Narayan Gore (husband of Manisha) and Accused No.3 – Manisha Subhash Kale (sister-in-law of deceased Manisha). After considering the

evidence on record, the Trial Court has acquitted Accused No.1 Narayan and Accused No.3 Manisha from all the offences with which they were charged and convicted and sentenced Accused No.2 Ravindra for the offence punishable under Sections 498-A and 302 of the Indian Penal Code. Hence the present appeal is filed by Appellant/Accused No.2 challenging his conviction and sentence.

3. The prosecution case, in nut-shell, is as under:-

A) The marriage of the victim deceased Manisha was solemnized with accused Ravindra somewhere in the year 2004. After marriage, Manisha started performing her marital obligations at Chikalhol, Tahsil Khanapur, District Sangli. Initially, for two years Manisha was treated well. During that period, the couple was blessed by a female child. However thereafter, her father-in-law Accused No.1 Narayan, her mother-in-law Sou

Taibai and sister-in-law Accused No.3 Manisha Kale, married sister of accused Ravindra, were harassing deceased Manisha and picking up quarrel with her on the ground that she was not working on wages outside and she was being ill treated and made to starve. During her visit to parental house, Manisha used to make complaint regarding the same. But all the while her parents used to pacify her.

B) Prior to three months of incident dated 18th August, 2009, Accused Ravindra, husband of Manisha had taken her to Pune. It appears that, thereafter accused Ravindra and victim Manisha had shifted to Koyte Vasti Punavale, Wakad, District Pune. Prior to one month of the incident as the father of victim Manisha was ailing, Manisha went to see her father at Wathar, Tahsil Koregaon District Satara to her parental house prior to panchimi festival. At the relevant time, Manisha had reiterated her grievance regarding ill

treatment to her. After the said panchimi festival, she was taken to her marital home at Koyte vasti Punavale, Pune, by her brother-in-law Ganesh Shikare.

C) On 19th August, 2008 at about 1.00 a.m. during night, Accused Ravindra knocked the door of the house of his father-in-law at Wathar station. His mother-in-law informant Smt Indubai Shamrao Kamble opened the door. The accused told that the victim Manisha was burnt and what was to be done, whereupon the informant Smt Indubai asked him as to where her daughter Manisha was? Accused Ravindra informed her that Manisha is in the vehicle brought by him. The informant Indubai noticed that one white coloured vehicle was standing in front of her house. The Informant rushed to the said car and noticed that victim Manisha was inside the said vehicle wrapped in one blanket. Manisha was then lifted by Ravindra and three more companions. Manisha was brought inside

the house and was kept on bed. Accused Ravindra and his companions left the place.

D) Thereafter, the informant Smt Indubai asked her daughter victim Manisha as to what had happened, whereupon Manisha disclosed that her husband accused Ravindra was having illicit relations with one lady, and as she was not on talking terms with said lady, Ravindra used to beat and ill treat Manisha. On the day of the incident also as Manisha did not talk with the said lady, due to which Accused Ravindra got annoyed and poured kerosene on her person at about 6.00 p.m. An Informant thereafter removed the blanket and noticed in the light of torch that the victim Manisha had sustained burn injuries all over the body. Ultimately, the victim unfortunately succumbed to the said injuries.

E) The matter was initially reported by Shri Santosh Shamrao Kamble - brother of the victim, to

Wathar Police Station regarding the death of his sister. As a result of which initially A.D. No.20 of 2008 under section 174 of Criminal Procedure Code, 1973 was registered. Then API Shri Kale attached to Police Station Wathar visited the house of Shri Shamrao Kamble - the father of the victim along with panch witnesses Shri. Shankar Bandu Kamble and Sou. Sulabai Mahadev Mane, both inhabitant of Wathar Station. The inquest panchanama in respect of the dead body of Manisha was prepared on 19th August, 2008 during 8.35 a.m. to 9.15 a.m. The dead body of victim Manisha was referred to General Hospital Satara for postmortem examination. The then Medical Officer Dr.Shri Chakke conducted postmortem examination on the dead body of the victim deceased on 19th August, 2008 during 12.00 p.m. to 12.45 p.m. The Medical Officer noticed 95% superficial to deep burns and opined that the cause of death is due to 95% superficial to deep burns. Shri Santosh Kamble - the brother of the victim, produced the burnt sari

pieces as well burnt petty coat and burnt underwear of the deceased victim Manisha before API Shri Kale in presence of panch witnesses Shri. Jagannath Shinde and Shri.Majid Pathan. The said clothes were seized and panchanama to that effect was prepared by API Shri.Kale in presence of panch witnesses during 9.30 a.m. to 10.45 a.m. He further recorded statements of Shri.Santosh Kamble, Sou.Rekha Ganesh Shikare, the married sister of the deceased and in view of the report lodged by informant Sou.Indubai, the Crime No. 0 of 2008 came to be registered under sections 302 and 498-A read with section 34 of IPC. Pursuant to thereof Accused No.1- Narayan, Accused No.2 - Ravaindra and Accused No.3 - Manisha Kale came to be arrested by API Shri Kale. Accused were referred to Rural Hospital Pimpode (Bk) on the very day and were examined by the concerned Medical Officer attached to Rural Hospital Pimpode (Bk). After completing these initial formalities as the offence had taken place within the

territorial jurisdiction of Hinjawadi Police Station, API Shri.P.K. Kale forwarded all the relevant documents in connection with the said crime along with his report to Police Inspector Hinjawadi Police Station on 19th August, 2008 itself. Consequently C.R. No.189 of 2008 was registered with Hinjawadi Police Station on 20th August, 2008 at about 4.00 a.m. Thereafter, all the three accused were arrested in connection with the said crime in presence of panch witnesses Shri Narayan Pol and Smt Ranjana Todkar on 20th August, 2008 at about 6.00 a.m.

F) The investigation of the Crime was assigned to P.S.I. Shri. R.T. Pawar who visited the place of occurrence on 20th August, 2008 where accused Ravindra was residing with victim Manisha, and in presence of panch witnesses Shri.Sakharam Tukaram Bokephode and Shri.Vasant Krishna Raut seized one plastic can, one match box and burnt pieces of clothes and prepared panchanama to that

effect. Thereafter, P.S.I. Pawar recorded the statements of the witnesses. Accordingly, after collecting the necessary evidence and papers, investigating officer sent charge-sheet against the accused before the Judicial Magistrate, First Class Court No.7, Pune.

H) As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, hence the Judicial Magistrate First Class Court No.7, Pune committed the case to the Court of Sessions.

G) The charge for the offence punishable under Sections 302, 498-A of the IPC was framed against the accused. The contents of the charge were read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and false implication.

4. After recording the evidence and conducting full fledged trial, the trial Court convicted accused No.2 i.e. Appellant for the offence punishable under Sections 498-A, 302 of the IPC and sentenced him to suffer imprisonment as afore-stated and to pay fine, and in default of payment of fine, to suffer further imprisonment as afore-stated. Hence the present Appeal is filed by the Appellant – original Accused No.2 – Ravindra Narayan Gore challenging his conviction and sentence. For the sake of brevity, henceforth we will refer the Appellant – original Accused No.2 – Ravinda as “the Accused”.

5. Learned counsel appearing for the Appellant submitted that no complaint whatsoever was earlier reported to the Police by the parents of Manisha with respect to the alleged demand, and non-satisfaction of that demand, and that the deceased was subjected to harassment by the accused persons. The Trial Court has merely on the

basis of oral dying declaration alleged to have been given by the victim to her mother i.e. informant, who had sustained more than 95% burns, has convicted the present appellant. If really the appellant has committed the said offence, then he would not have informed to the real brother of the victim immediately about the said incident. After the incident, it is at the instance of the accused, deceased Manisha was brought to Wathar i.e. the parental house of deceased. Learned counsel further submits that the said incident occurred due to busting of the stove and Manisha received burn injuries, and the appellant is no way concerned with the said occurrence, and he has been falsely implicated in the said incident.

6. Learned counsel further submits that the prosecution has examined only interested witnesses and no independent witness has been examined. It is further submitted that the prosecution has not led any concrete evidence on the point of cruelty.

The findings recorded by the trial Court are perverse as the prosecution failed to prove the case beyond reasonable doubt. Learned counsel therefore submits that the Appeal may be allowed.

7. On the other hand, learned A.P.P. appearing for the State referring to the evidence of informant PW-2, mother of deceased Manisha, submitted that at the time of incident only Accused and Manisha were present in the house. The incident took place within four years of the marriage. Manisha received 95% burn injuries. The prosecution has proved that deceased Manisha has given oral dying declaration to the informant stating that the Accused poured kerosene on her person and set her on fire. There was no reason for Manisha to falsely implicate her husband in the incident. Learned A.P.P. further submits that the conduct of the Accused/Appellant after the incident was not normal, as instead of admitting deceased Manisha in the nearby hospital at Pune,

Accused had taken Manisha to her parental house at Wathar Station, Satara which was about 150 Kms away from the spot of incident. Learned A.P.P. further submits that the prosecution has proved motive by bringing the evidence on record showing that, the Accused was having illicit relations with one another lady, and on that count there used to be quarrels between the couple. Learned A.P.P. further submits that the findings recorded by the Trial Court are in consonance with the evidence brought on record and therefore the Appeal deserves to be dismissed.

8. We have heard learned counsel appearing for the Appellant and learned A.P.P. appearing for the State at length, with their able assistance perused the grounds taken in the Appeal memo, annexures thereto and also the entire evidence so as to find out the correctness of the findings recorded by the trial Court.

9. Firstly we will refer to the Medical evidence brought on record by the prosecution. PW-5 Dr. Sagar Madhukar Chakke is the Medical Officer who has conducted post mortem on the dead body of Manisha. The evidence of Medical Officer shows that, on external examination, he noticed the following superficial deep burn injuries on the person of deceased Manisha, reddish in colour, the percentage of which is as under:-

1) Head, Neck and face	:-	5%
2) Right Upper limb	:-	9%
3) Left upper limb	:-	9%
4) Chest and abdomen	:-	18%
5) Back	:-	18%
6) Right lower limb	:-	18%
7) Left lower limb	:-	18%
8) Perinium	:-	0%

10. The evidence of PW-5 shows that the total percentage of the burn injuries sustained by

Manisha was 95% and all the injuries were ante mortem. He opined that the cause of death of Manisha was "Due to 95% burns superficial to deep". Thus through the evidence of PW-5 Dr. Sagar, the prosecution has proved that Manisha received 95% burn injuries and she died due to 95% burns superficial to deep.

11. Now we will discuss the evidence of PW-1 and PW-2, who are the star witnesses of the prosecution. Santosh Shamrao Kamble (PW-1) is brother and Indubai Shamrao Kamble (PW-2) is mother of Manisha. The evidence of Santosh (PW-1) shows that marriage of Manisha was solemnized with Accused about four years prior to the incident. His evidence further shows that during her visits to parental house, Manisha used to make complaints against the accused persons that they used to harass her and on the count of their insistence to go for agricultural work in the field, accused used to beat her, and also were not providing

meals to her. His evidence further shows that few months after the marriage, the couple shifted to Hinjawadi area at Pune, but there also Manisha was not treated well by the Accused. His evidence further shows that, soon thereafter Manisha made telephone call to him complaining that Accused regularly used to beat her.

12. In regard to incident on 18th August, 2008, the evidence of PW-1 Santosh shows that Accused had informed him on telephone that Manisha had attempted to set herself on fire, but she sustained the minor injuries. The evidence of PW-1 Santosh further discloses that, he had advised Accused to take Manisha to hospital. Accused again made telephone call to him at about 10.30 p.m. in the said night. His evidence further shows that, on 19th August, 2008 during night hours at about 1.00 a.m., Accused informed him on telephone that Accused along with Manisha had been to parental house of Manisha. The evidence of PW-1 shows that,

he was residing separately from his parents and during the said night he had been to the residence of his parents. The evidence of PW-1 further shows that Accused dropped Manisha at her parental house and left the said place. His evidence further shows that in the next morning at about 6.00 a.m., he took one Dr.Anil Sawant to the residence of his parents for medical treatment of Manisha, but upon examination doctor informed that Manisha was no more.

13. The evidence of PW-2 Indubai, who is informant in this case, shows that Accused used to harass and beat Manisha on trifle grounds. Regarding the incident, the evidence of informant shows that three years prior to the incident Accused had been to her house during night at about 1.00 a.m. along with Manisha who was wrapped in one blanket in the vehicle in which Accused had been to her house. The evidence of informant further shows that Accused and three other persons

who were accompanying Accused, had lifted her daughter Manisha and brought her inside the house. Her evidence further shows that soon thereafter Accused left her residence along with his three companions, saying that he had some work therefore he was going back and his parents would come later. The evidence of informant further shows that thereafter she had removed blanket and noticed that her daughter Manisha had received extensive burn injuries. The evidence of informant shows that when asked, Manisha stated that Accused had illicit relations with one lady and as Manisha was neither visiting the residential place of that lady nor talking with said lady, and on that count Accused used to beat her frequently. The evidence of informant further discloses that Manisha told her that on the day of incident Accused even did not allow Manisha to take food and in the evening at about 6.00 p.m., Accused poured kerosene on the person of Manisha and set her on fire, due to which Manisha sustained burn injuries. On the

next day morning Manisha succumbed to the said burn injuries.

14. The defence Counsel has extensively cross examined PW-1 and PW-2, but nothing useful to the defence elicited from the said cross examination, Thus, the evidence of both these prosecution witnesses is trustworthy, reliable and consistent with each other. Learned counsel has challenged the evidence of PW-1 and PW-2 on the ground that, the prosecution has examined only interested witnesses and no independent witness has been examined. However in this respect it is pertinent to note that, when the incident took place only Manisha and Accused were present in the house and therefore there was no occasion to anybody to witness the incident.

15. Upon careful perusal of evidence of PW-1 and PW-2, it emerges on record that the Accused was having illicit relations with one lady, and on

that count he used to frequently beat Manisha. On the day of incident when Manisha received burn injuries, the Accused instead of taking her in the nearby hospital at Pune, travelled more than two hours distance, and went to Wathar Station, Koregaon, Dist. Satara and dropped Manisha in her parental house in burnt condition and soon thereafter left the parental house of Manisha. Thus this conduct of the Accused soon after the incident was not at all natural. Any prudent person in such a situation, where his wife has received such extensive burn injuries, would immediately try to take the patient in the nearby hospital for treatment, and would not travel such long distance and leave his wife to her parental house in 95% burn condition. At this stage, it would be useful to refer to the provisions of Section 8 of the Indian Evidence Act, 1872, which reads as under :-

"Section 8 : Motive, preparation and previous or subsequent conduct.- that any

fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to such suit or proceedings, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

16. As observed earlier, in the present case the subsequent conduct of the Accused/Appellant after the incident is not at all natural, in as much as, soon after the incident Accused did not try to take his wife in the nearby hospital, but taken wife Manisha to her parental house by travelling the distance of more than two hours.

17. PW-4 Sakharam Tukaram Bokephode is the panch to the spot panchanama (Exhibit - P-54). The

evidence of PW-4 shows that in his presence spot panchanama was prepared at the spot of incident, situate at Malwadi, Punawale, Tq. Mulshi, Dist. Pune owned by one Vithal Dagadu Dhawale. His evidence further shows that one plastic can, one match box and pieces of burnt clothes were seized from the spot. Thus, this witness has proved the spot panchanama. When match box - Article P-2 and burnt pieces of clothes - Article P-3 were shown to him, he identified the same. Thus the evidence of PW-4 shows that from the spot of incident Police seized one plastic can, one match box and pieces of burnt clothes and thus the evidence of PW-4 lends support to the prosecution case and shows that the prosecution has proved that the incident of pouring kerosene on the person of deceased Manisha and setting her on fire took place at the residential house of Accused.

18. PW-3 Jagannath Laxman Shinde is the panch to seizure panchanama (Exhibit - P-52) regarding

seizure of burnt clothes of deceased smelling of kerosene. PW-6 Ramesh Tukaram Pawar, API Thane City Police Station was the Investigating Officer and he deposed about the manner in which he has carried out the investigation of the crime.

19. In support of its case, the defence has examined DW-1 Shri Vithal Dagadu Dhavale, who was land lord of Accused at the relevant time. His evidence shows that at the relevant time accused and Manisha were residing as his tenants. His evidence shows that on 18th August, 2008 at about 8.00 p.m. he had been to the house of Accused to demand rent from him at which time Accused was not at the resident and his wife Manisha told that, Accused would return at about 9.00 p.m. and the land lord should come after 9.00 p.m. to claim rent and therefore he returned back. His evidence further shows that after 9.00 p.m. to 9.30 p.m., he received phone call from the neighbour of Accused that smoke was coming from the residential

room of Accused. His evidence further shows that after some time he had been to the said room of Accused and at the said place Manisha, wife of Accused was seen in burnt condition. His evidence further shows that Accused Ravindra was present there and he asked Accused as to what had happened, and Accused told that there was nothing serious and Manisha had minor burns and that Accused was taking her to hospital for treatment. During the course of cross examination, when asked DW-1 Vithal has specifically stated that when he had been to the said room of Accused at about 9.00 p.m. to 9.30 p.m., on receipt of phone call from his neighbour the said room was closed from inside.

20. Thus upon careful perusal of the evidence of DW-1 Vithal, it is crystal clear that through the evidence of this defence witness, nothing has been brought on record to disprove the prosecution case. On the contrary evidence of DW-1 – Vithal

supports the prosecution case, as this witness has specifically stated that when he had been to the house of the Accused at that time, Manisha was seen in burnt condition and Accused Ravindra was very well present there. Thus evidence on record convincingly shows that at the time of incident only Manisha and Accused Ravindra were present in the house. Manisha being the wife of Ravindra, was in his custody and the fact that how she received burn injuries, was exclusively within the knowledge of Accused Ravindra. Therefore, it was obligatory on the part of the accused husband to explain how his wife Manisha received such extensive burn injuries. But the accused has not given any explanation how Manisha sustained burn injuries except he stated to Santosh Kamble (P@-1) that, Manisha attempted to set herself on fire.

21. We have discussed the entire evidence brought on record by the prosecution. As observed earlier, the evidence of PW-1 Santosh and PW-2

Indubai shows that, Accused was ill-treating and harassing Manisha. The evidence on record shows that, Accused had illicit relations with one another lady and on the said count also he was harassing and beating his wife Manisha. The evidence on record shows that marriage between the couple took place in the year 2004 and the incident had taken place in the year 2008, and thus within four years of the marriage, Manisha succumbed to the burn injuries. Thus the prosecution has proved that the Accused has committed an offence punishable under Section 498-A of IPC.

22. As observed earlier, the evidence on record shows that, at the time of incident Accused was very well present in the house and Manisha has given oral dying declaration to her mother and specifically stated that, Accused was having illicit relations with another lady and on that count he always used to beat Manisha and in the

night of incident quarrel took place between the couple on the said count, and Accused poured kerosene on the person of Manisha and set her on fire. Thus the prosecution has proved that the Accused/Appellant has committed an offence punishable under Section 302 of the IPC.

23. Therefore, upon considering the evidence in its entirety, we are of the opinion that the findings recorded by the Trial Court are in consonance with the evidence brought on record and hence we do not think it necessary to cause interference in the findings recorded by the Trial Court.

24. We do not find that there is any substance in the Appeal. Accordingly the Criminal Appeal stands dismissed.

25. We appreciate the sincere efforts taken by learned counsel Mr. Swapnil Ovalekar in

extending able assistance to this Court during the course of hearing of the Appeal so as to reach to the proper conclusion. Since Mr. Swapnil Ovalekar, learned counsel is appointed to prosecute the cause of the appellant, his fees and expenses are quantified at Rs.10,000/- (Rs. Ten Thousand only). We direct the High Court Legal Services Committee, Mumbai to pay the aforesaid fees and expenses to the learned appointed counsel within four weeks from receipt of copy of the judgment.

[A.S. GADKARI, J.]

[S.S. SHINDE, J.]