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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 1130/2017

JEETU

..... Appellant

Through: Mr. Ajay Verma with Ms. Sudha Reddy
and Ms. Katyayini, Advocates.

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State.
SI Ranvir Singh PS Fatehpur Beri.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER

13.02.2018

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1. This appeal is directed against the impugned judgment dated 22nd September 2017 passed by the learned Additional Sessions Judge -03, South District, Saket Courts, New Delhi ('ASJ') in Sessions Case No. 7505 (Old No. 54/15) arising out of FIR No. 16 of 2012 registered at Police Station (PS) Fatehpur Beri convicting the Appellant, Jeetu, for the offence punishable under Section 302 of Indian Penal Code (IPC) and the order on sentence dated 10th October 2017 whereby he was sentenced to imprisonment for life and a fine of Rs. 20,000 and in default of payment of fine, to undergo simple imprisonment (SI) for six months.

2. The case against the Appellant is that he poured kerosene oil on his own wife, Reena, (the deceased) on 19th January 2012 at F-21, Sanjay Colony,

Bhati Mines, New Delhi and set her on fire. Subsequently, on 28th May 2012 she succumbed to her burn injuries during treatment. The Appellant was charged with the offence punishable under Section 302 IPC.

3. A call was made to the Police Control Room (PCR) at 8.15 pm on 19th January 2012 by Mukesh Kumar (PW-2), the brother of the deceased, stating: "*meri sister ko uske pati ne jala diya hai*". On receipt of the information Head Constable (HC) Ram Phal and HC Rishi Pal Singh (PW-14) attached to PS Fatehpuri Beri, Delhi reached F-21 Alu More, Sanjay Colony, Bhati Mines. By that time the deceased had already been taken to the Safdarjung hospital by her mother Smt. Devi (PW-3) and her brother (PW-2). The police found one empty oil plastic can, one half empty bottle lying beneath the cot, some matchsticks and smell of kerosene oil at the spot.

4. Sub Inspector (SI) Kuldeep (PW-20) reached there subsequently and called for the crime team. He also informed the concerned Sub Divisional Magistrate (SDM). Thereafter he reached burns ward of Safdarjung Hospital where the SDM Rajeev Shukla (PW-8) had already reached.

5. The MLC of Safdarjung Hospital noted that she was brought at 9.30 pm on 19th January 2012 with alleged history of "accidental thermal blows when patient's husband poured kerosene oil over her & ablazed." It was noted in the MLC that she has 35% deep thermal and lower facial burn. She had grievous burn injuries and was in a critical condition.

6. At the instance of SDM, PW-20 made an application requesting the Chief Medical Officer (CMO), Burns Ward, Safdarjung Hospital to record the statement of patient/injured. The doctor gave that permission. Thereafter the SDM recorded the statements of the deceased, PW-2 and PW-3. The statement made by the deceased was (Ex.PW-8/A) to the effect that she married the Appellant, Jeetu, two years ago. In the evening of the incident he came home in drunken condition with his friend. *Inter alia* in the said statement, she stated that the Appellant taunted her that she would run away and had later poured kerosene oil on her and set her afire.

7. Initially on the basis of the above statement, *rukka* was prepared and sent for registration of FIR under Section 307 IPC. The victim received the treatment from Dr. Kirpa Shanker Mishra (PW-1). He also prepared discharge summary of patient and discharged her three days later on 22nd January 2012. He stated that at that time, her condition was satisfactory. The injured victim came back to the Out Patient Department (OPD) after discharge on 25th and 28th January 2012 but not thereafter.

8. Meanwhile, the Appellant went absconding. On 21st January 2012 PW-20 received secret information on the basis of which he assembled a raiding team. They apprehended the Appellant from the Manesar bus stand.

9. After completing the investigation, PW-20 filed a charge sheet on the basis of which initially by an order dated 20th April 2012 the charge was framed against the Appellant for the offence punishable under Section 307 IPC. Subsequently, the injured victim succumbed to her burns on 28th May 2012. She was then brought to the All India Institute of Medical Sciences

(AIIMS) at around 6.45 pm where she was seen by Dr. Kedar (PW-6). The post-mortem was performed on the next date by Dr. Asit Kumar Sikary (PW-7) who found on examination “superficial and deep burns were present over neck, trunk, and both upper arms, genitalia. and front aspect ,of both the thighs constituting about 45% body surface area with margins showing vital reactions. Pressure sores were present over both scapular regions and over sacral regions.” The time since death was stated to be one day and cause of death was “shock due to septicemia, which could be a complication of ante-mortem burn.” Thereafter the charge was altered under Section 302 IPC by an order dated 11th September 2012.

10. 22 witnesses were examined by the prosecution. In his statement under Section 313 CrPC, the Appellant claimed to have been falsely implicated. He admitted that he did not do any work, was a drunkard and his wife and in-laws were not happy with him. However, he stated that in order to teach him a lesson, PWs 2 and 3 falsely implicated him.

11. Apart from the statement made to the SDM, the earliest point in which the victim disclosed the commission of crime by the Appellant was at 7.30 pm on 19th January 2012 which she was heard crying by PW-2 that she had been burnt. PW-3, her mother whose house she came running noticed the victim crying. The victim told both PW-2 (her brother) and her mother (PW-3) that it was the Appellant who poured kerosene oil on her and set her afire.

12. The trial Court found the above evidence of PWs 2 and 3 statement to be believable and fully corroborated by the medical evidence. The very first

message to the PCR van given by PW-2 categorically stated that his sister has been set on fire by her husband. The fact that the Appellant's absconding was further circumstance that comprehensive proved his guilt as far as the crime was concerned.

13. This Court has heard the submissions of Mr. Ajay Verma, learned counsel for the Appellant and Ms. Kusum Dhalla, learned APP for the State.

14. Mr. Verma was unable to persuade the Court regarding the culpability of the Appellant as far as pouring kerosene oil and setting her on fire was concerned. However, he urged that the victim had suffered 35% burns and died subsequently four months after the occurrence. He pointedly referred to the deposition of Dr. Kirpal Shanker Mishra (PW-1) who discharged on 22nd January 2012 stating that her condition was satisfactory. Mr. Verma accordingly urged that the offence was punishable under Section 304 Part II IPC since although the Appellant could be attributed the knowledge of the likelihood of his act resulting in the death of his wife, he could be attributed the intention to do so.

15. The Court finds that PW-1 has in his deposition stated that at the time of the discharge of the victim on 22nd January 2012 her condition was satisfactory. She came back to the OPD on 25th and 28th January 2012 for her treatment. Inspector Ved Prakash (PW-22) to whom the investigation was entrusted after the offence was changed to one punishable under Section 302 IPC, did not make any further investigation as regards the condition of the deceased between her initial discharge on 22nd January 2011 and her

ultimate death on 28th May 2012. During this period the accused is already in custody. PW-2 stated that after her last visit to the Safdarjung hospital three or four days after her initial discharge, the deceased was taking treatment from a private doctor. However, the documents of such treatment have not been produced.

16. The Court is of the considered view that in the present case with the extent of burns at 35% to begin with and later the time of death to be detected at 45% and death having occurred in May 2012 four months after the victim was initially discharged on 22nd January 2012, it cannot be said that the Appellant acted with the intention of causing the death of his wife. Admittedly he was drunk and not in control of himself. In the circumstances, the Court is of the view that the offence in the present case should be viewed not as murder but as culpable homicide punishable under Section 304 Part II IPC. The conviction of the Appellant is altered accordingly and the impugned judgement of the trial Court is modified to that extent.

17. As regards the sentence, the nominal roll of the Appellant shows that he has completed six years of imprisonment and that his jail conduct has been satisfactory. There is no pending criminal case against the Appellant. In the circumstances, the order on sentence passed by the trial Court is modified by sentencing the Appellant to the period already undergone for the offence under Section 304 Part II IPC. The said period will be treated as including the default sentence for non-payment of fine. The Appellant thus having completed his sentence is directed to be released forthwith unless wanted in some other case.

18. The appeal is disposed of in the above terms.

19. The trial court record be returned together with a certified copy of this order.

S. MURALIDHAR, J

I.S. MEHTA, J

FEBRUARY 13, 2018

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