

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 807 OF 2010**

Somnath Laxman Dhule,
Age: 35 Years, Occu: Fisherman,
R/o.: Bhose Vasti, Vitthalwadi,
Tal : Shirur, Dist: Pune
(Central Jail Yerwada at Pune)

...Appellant
(Ori. Accused)

Versus

The State of Maharashtra,
Through Shikrapur Police Station,
(At the instance of
Gumpha Somnath Dhule, Deceased)

...Respondent

Mr. Raviraj R. Shinde I/b Mr. Vishwajeet Mohite and Mr. Sandip Babar for
the Appellants

Mr. S. V. Gavand, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 9th APRIL 2019

ORAL JUDGMENT :

1 By this appeal, the appellant has impugned the judgment
and order dated 26th July 2010 passed by the learned Additional
Sessions Judge, Pune in Sessions Case No. 306/2007, convicting and
sentencing him as under :

- for the offence punishable u/s 304 Part II of the Indian Penal Code ('IPC'), to suffer RI for 10 years and to pay a fine in the sum of Rs. 2,000/-, in default, to undergo further RI for 2 months;
- the appellant was, however, acquitted of the offence punishable under Section 302 of the IPC.

2 The prosecution case in brief is as under :

On 9th January 2007, the appellant came home in a drunken state at about 11:00 a.m. The appellant's wife-Gumpha asked him as to why he does not work and was drinking liquor, pursuant to which, the appellant assaulted her and thereafter poured kerosene and set her ablaze. The appellant, thereafter, extinguished the fire by pouring water on Gumpha, after which, he left the house.

PW 1 -Komal Dhule, daughter of the appellant and PW 3-Sangeeta Male (sister of deceased Gumpha) are the eye-witnesses to

the said incident. The mother and sister of the deceased admitted Gumpha initially to the PNC Talegaon and thereafter to the Sassoon Hospital. On 13th January 2007, Gumpha succumbed to the injuries. The statement of Gumpha, recorded by PW 4-Anand Thongare, Duty Officer was treated as an FIR (Exhibit 24), pursuant to which, investigation commenced, statements of witnesses were recorded, spot panchanama was prepared, appellant was arrested and thereafter charge-sheet was filed as against the appellant for the offence punishable under Section 302 of the IPC, in the Court of the Judicial Magistrate First Class, Shirur.

Since the offence under Section 302 was exclusively triable by the Court of Sessions, the said case was committed to the Court of Sessions. Charge was framed as against the appellant for the offence punishable under Section 302 of the IPC, to which the appellant pleaded not guilty and claimed to be tried.

The prosecution, in support of its case, examined 7 witnesses i.e. PW 1-Komal (daughter of the appellant and deceased

Gumpha), PW 2-Bhausahab Salunkhe (panch to the spot panchanama); PW 3-Sangeeta Male (sister of Gumpha and eye-witness to the incident); PW 4-Anand Thongare (Duty Officer, who recorded the statement of Gumpha, which was treated as a dying declaration); PW 5-Dr. Suhail Kazi (doctor who was present in the Sassoon Hospital, to whom the patient had given history of homicidal burns and the doctor in whose presence, the statement (Exhibit 24) was recorded); PW 6-Dr. Shantilal Kamate, PHC Talegaon, who conducted the post-mortem and PW 7-Ashok Kshirsagar, PI attached to Shikrapur Police Station, who conducted the investigation.

The defence of the appellant was that of denial and false implication. According to the defence, the appellant sustained burn injuries when she was cooking on a *chul*.

After considering the evidence on record, the learned Judge acquitted the appellant of the offence punishable under Section 302 of the IPC and convicted him for the offence punishable under Section 304 Part II of the IPC.

3 Learned counsel for the appellant assailed the impugned judgment and order on several counts; that the appellant has been falsely implicated in the said case; that deceased Gumpha died due to accidental burn injuries, which she sustained while cooking on a *chul*; that the appellant's daughter Komal (PW 1) had falsely deposed at the instance of her grand-parents and maternal aunt; that there is discrepancy with regard to the percentage of burns sustained by Gumpha; that the deceased was discharged against medical advise, as a result of which, she succumbed to the burn injuries; and that the statement of Gumpha was not recorded by a Magistrate.

4 Learned A.P.P supported the judgment and order of conviction and sentence and submitted that no interference was warranted.

5 Perused the papers with the assistance of the learned counsel for the parties. A perusal of the evidence of PW 1-Komal, daughter of the appellant and Gumpha (deceased), shows that she was

studying in Standard 5th and was about 13 years of age at the relevant time. PW 1-Komal has stated that one day prior to the incident, her maternal grand-parents and maternal aunt-Sangeeta (PW 3) had come to visit them; that they had visited their house to advise the appellant, as he was assaulting her mother; and that they stayed overnight. She has further stated that on 9th January 2007, the appellant left the house in the morning for consuming liquor and as she was helping her mother and was late to school, she did not go to school that day. She has stated that her father came back in a drunken condition; that her maternal grand-parents and maternal aunt were also present in the house; that when her mother questioned the appellant about his drinking habit and started murmuring, the appellant started assaulting her mother and pushed her out of the house; that when her mother refused to go out and when the grand-parents intervened, the appellant pushed them out of the house and when she intervened, the appellant also pushed her out of the house. She has stated that at that time, the appellant poured kerosene on her mother, pursuant to which, she started shouting; and thereafter, he set her mother ablaze by throwing a lightened matchstick on her; that , her grand-parents and aunt took

her mother to Talegaon Damdere Hospital and that on 13th January 2007, her mother expired.

The tenor of the cross-examination of this witness is to discredit her testimony by showing that she was not present at the spot at the time of the incident and that she was falsely deposing at the instance of her grand-parents and maternal aunt.

No doubt, there are some minor discrepancies in the evidence of PW 1 but one would have to consider PW 1's tender age and her trauma of witnessing her mother being set ablaze, whilst considering her evidence. Infact, the discrepancies are not such that would affect the credibility of PW 1-Komal's testimony.

6 The evidence of PW 1-Komal is duly corroborated by Sangeeta (PW 3-sister of Gumphra (deceased)). Thus, the evidence of PW 1, a child witness finds corroboration and support from the evidence of PW 3-Sangeeta. PW 3-Sangeeta has, on all material points with respect to the assault by the appellant on the deceased on

the day of incident; pouring of kerosene and setting Gumpha ablaze, has corroborated the evidence of PW 1-Komal. PW 3-Sangeeta has stated that the appellant, after pouring kerosene on her sister-Gumpha, when she started shouting, poured water and extinguished the fire, as a result of which, the appellant also sustained burn injuries.

7 The ocular evidence is corroborated by the evidence of Dr. Kazi (PW 5). Dr. Kazi was attached to the Sassoon Hospital as a resident doctor, at the relevant time. He has stated that on 9th January, 2007, one patient Gumpha was admitted in the Hospital. He has stated that he took history from the patient and noted the same down in the case-papers and that as per the history given by the patient, she had disclosed that she had sustained homicidal burns, as her husband-Somnath had poured kerosene on her person on 9th January 2007 at 12:00 p.m. Gumpha's statement was recorded by PW 4 -Anand Thongare, Duty Officer at Sassoon Police Chowky on 9th January 2007 in the presence of Dr. Kazi. Dr. Kazi has stated that when Gumpha's statement was recorded in his presence, he found Gumpha to be conscious and well-oriented.

8 PW 4-Anand Thongare was also examined to prove the statement recorded by him i.e Exhibit 24, pursuant to which, FIR was registered. The said statement was treated as a dying declaration.

9 A perusal of Exhibit 24-dying declaration shows that on 9th January 2007 at 12:00 noon, the appellant came home in a drunken state and when Gumpha questioned him about his drinking habit, and of not doing any work, the appellant started assaulting Gumpha and tried to throw her out of the house. Gumpha has further stated that when she refused to go out of the house, the appellant poured kerosene on her person and set her ablaze. Gumpha has also disclosed that the appellant himself extinguished the flames by pouring water on her person.

10 The aforesaid evidence is further duly supported by the Chemical Analyser's (CA) report. The CA report shows finding of kerosene residues at the spot.

11 Considering the evidence on record and considering the percentage of injuries sustained by Gumphra as well as by the appellant, the learned Sessions Judge has acquitted the appellant of the offence punishable under Section 302 of the IPC and convicted him for a lesser offence I.e. one under Section 304 Part II. No infirmity can be found in the said judgment and order. The appeal is accordingly dismissed.

REVATI MOHITE DERE, J.