

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.280 OF 2015

1. Sangram s/o. Tanaji Warkhinde,
Age : 22 years, Occ. Agri.,
2. Tanaji s/o. Tukaram Warkhinde,
Age : 46 years, Occ. Agri.,
3. Shobhabai w/o. Tanaji Warkhinde,
Age : 43 years, Occ. Household,

All r/o. Gavandgaon, Tq.Degloor,
Dist. Nanded

..Appellants

Vs.

State of Maharashtra

..Respondents

Mr.A.M.Gaikwad, Advocate for appellants
Mr.R.V.Dasalkar, APP for respondent

**CORAM : R.G.AVACHAT AND
R.M.JOSHI, JJ.**

DATE : DECEMBER 08, 2022

JUDGMENT (*Per R.G.Avachat, J.*) :-

The challenge in this appeal is to the order of conviction and sentence dated 12.02.2015 passed by the Court of Addl. Sessions Judge, Biloli, in Sessions Case No.23 of 2014. Vide the impugned judgment and order, the appellants were convicted for the offences punishable under Sections 302 and 498-A read with Section 34 of Indian Penal Code (I.P.C.) and therefore, sentenced to suffer

imprisonment for life and to suffer rigorous imprisonment for three years, respectively. They have been directed to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for six months for offence under Section 498-A of I.P.C.

2. The facts giving rise to the present appeal are as follows:-

Shamal (deceased) had married Sangram (appellant no.1) in early 2013. The appellants - Shobhabai and Tanaji are parents of Sangram. On marriage, Shamal started residing at her matrimonial home along with the appellants and her brother-in-law, Tukaram (juvenile in conflict with law). The appellants and Tukaram illtreated Shamal with a view to coerce her to fetch clothes, gold ring and dowry amount from her brother. All of them would also illtreat her physically and mentally as well over her inability to do the household work.

The appellants - Shobhabai and Tanaji picked up a quarrel with Shamal. Both of them instigated Sangram and Tukaram to beat her. It so happened in the evening of 12.12.2013. In the early morning on the next day, i.e. on 13.12.2013, the appellants caught hold of Shamal and Tukaram set her ablaze after pouring

kerosene on her person. Tukaram cried wolf. He shouted "Shamal set herself ablaze". Shamal extinguished the fire. Having seen the neighbors to have started arriving, the appellants – Shobhabai and Tanaji pretended to extinguish the fire. Shamal was rushed to the hospital at Degloor. She was then shifted to the Civil Hospital, Nanded.

3. She was discharged from the hospital on 05.02.2014. She, however, died on 26.03.2014. When she was rushed to the hospital, a Police Constable recorded her statement-cum-dying declaration. A crime, vide C.R. No.233 of 2013, therefore, came to be registered first for the offences punishable under Sections 307, 323, 498-A, 504 and 506 read with Section 34 of I.P.C. and on her demise, Section 302 of I.P.C. came to be invoked in place of Section 307 of I.P.C. The appellants and Tukaram came to be arrested. The seen of offence panchnama (Exh.42) was drawn. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, the appellants came to be proceeded against by filing charge sheet. Since Tukaram was a juvenile in conflict with law, an independent proceedings came to be initiated against him before the Juvenile Justice Board.

4. On committal of the case, learned Addl. Sessions Judge framed Charge (Exh.7). The appellants pleaded not guilty. Twelve witnesses were examined besides production in evidence of certain documents. Learned Addl. Sessions Judge, on appreciation of evidence before him, convicted and sentenced the appellants, as stated above.

5. Learned counsel for the appellants would submit that the deceased set herself ablaze. There are glaring inconsistencies between the two dying declarations. The deceased was discharged from the hospital as she was completely recovered. She died after 3 months and 13 days of the incident. The Medical Officer, who conducted post mortem examination, gave cause of death as "*most probably septicemia due to 54% burn*". The prosecution is, as such, not certain as to death being the result of the appellants to have set Shamal (deceased) ablaze. According to learned counsel, the appellants have been behind the bars for little over eight years. It may be an offence under Section 304 of Indian Penal Code. He, therefore, first urged for acquittal of the appellants and in the alternative, submitted for release of the appellants with the sentence already undergone.

6. Learned APP would, on the other hand, submit that the deceased died within ten months of her marriage. In her both dying declarations, the appellants have been attributed with an active role in setting her ablaze. Both the dying declarations are consistent in material particulars. It is nothing short of an offence under Section 302 of I.P.C. The cause of death reinforces the same. Learned APP, therefore, urged for dismissal of the appeal.

7. We have considered the submissions advanced. Perused the evidence relied on.

8. The deceased – Shamal died within ten months of her marriage. Both the dying declarations have been duly proved. The first one was made to a police official. Another one has been recorded by the Executive Magistrate. The Doctor had examined Shamal before her both the statements were recorded. He had certified her to be fit and conscious oriented to make the statement/s.

9. In the first dying declaration, the deceased stated that all the appellants and her brother-in-law would abuse and beat her over her inability to do the household work. When she had left her

matrimonial home for her parental house for first Diwali, the appellants asked her to bring them clothes and a gold ring. Since Shamal did not have parents and her brother, Hanumant, was financially unsound, she returned to her matrimonial home without bringing any article. The appellants – Shobhabai and Tanaji picked up a quarrel with her on the evening of 12.12.2013. They instigated the appellant – Sangram and brother-in-law – Tukaram to beat her. They did beat. On the next morning, i.e. on 13.12.2013, the appellants caught hold of her and Tukaram set her ablaze after pouring kerosene on her person.

In the second dying declaration recorded by the Executive Magistrate, she stated that she had some wrangle with the mother-in-law – Shobhabai over domestic work. All the appellants caught hold of her and Tukaram set her ablaze.

In both the dying declarations, she stated that the appellants pretended to extinguish the fire, since the neighbors had arrived at their house.

10. On appreciation of the evidence in the case, we do find both the dying declarations to have been made by the deceased – Shamal, while she was fit and conscious oriented to make the same.

There is nothing to suggest both the dying declarations to have been the product of imagination or tutoring. We, therefore, reached the conclusion that the appellants actively participated in setting Shamal ablaze. The same suggests the appellants to have had intended to kill Shamal. It is an offence punishable under Section 307 of I.P.C.

11. Admittedly, Shamal was rushed to the hospital at Degloor first. She was then shifted to the Civil Hospital, Nanded. She was discharged from the hospital on 05.02.2014 on medical advice. The same suggests that she had completely been recovered or at least, there was no danger to her life. She had suffered 54% of burns. She died on 26.03.2014, i.e. 103 days after the incident.

12. Dr.Ravikumar (PW 10) had conducted autopsy on the dead body of Shamal. His evidence suggests that the deceased was brought for post mortem examination on 26.03.2014. He noticed bandage on the chest, stomach, back and both hands of the deceased - Shamal. According to him, the cause of death of Shamal was *"most probably septicemia due to 54% burn"*. Viscera was preserved and even, sent for chemical analysis.

13. The Medical Officer admitted in his cross-examination that in case of burn injuries, hygienic care is required to be taken to avoid infection. After discharge of a patient from the hospital, if hygienic care is not taken, there may be possibility of septicemia. The Medical Officer was not hundred percent sure about the cause of death of Shamal and therefore, he used the words "most probably".

14. As such, the Medical Officer himself was not certain about the exact cause of death of Shamal. A benefit of doubt thereof has, therefore, to be extended to the appellants. It, therefore, cannot be conclusively observed that the deceased died due to septicemia resulted on account of the appellants to have set her ablaze. The link between the cause of death and the appellants setting her ablaze, is not conclusively established. We are, therefore, of the view that it is an offence of attempt to commit murder.

15. In view of the above, the appeal deserves to be allowed partly. The appellants have been behind the bars for little over eight years. We propose to impose sentence of imprisonment for the period they have already undergone.

16. In the result, the following order:-
- (i) The appeal is partly allowed.
 - (ii) The impugned order dated 12.02.2015 passed by learned Addl. Sessions Judge, Biloli, in Sessions Case No.23 of 2014, convicting the appellants for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and therefore, sentencing them to life imprisonment, is hereby set aside.
 - (iii) The appellants are acquitted of the offence punishable under Section 302 of Indian Penal Code.
 - (iv) Instead, the appellants are convicted for the offence punishable under Section 307 read with Section 34 of Indian Penal Code and therefore, sentenced to suffer imprisonment for the period they have already undergone so far, with a fine of Rs.1,000/- each, in default, they shall undergo rigorous imprisonment for fifteen days.
 - (v) Rest of the terms of the impugned order of conviction, to stand unaltered.

[R.M. JOSHI, J.]

[R.G. AVACHAT, J.]

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