

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.120 OF 2016

Kedar Lalkha Tadvi
Age: 43 years, Occu.: Agri.,
R/o. Bidgaon, Tal. Chopda,
Dist. Jalgaon.

.. Appellant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Chaitanya C. Deshpande, Advocate for the appellant (Appointed).
Mr. A. V. Deshmukh, APP for the respondent – State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

RESERVED ON : 26th June, 2023

PRONOUNCED ON : 4th July, 2023

JUDGMENT :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed by the original accused challenging his conviction for the offence punishable under Section 307 of Indian Penal Code by learned Additional Sessions Judge, Amalner, Dist. Jalgaon in Sessions Case No.29 of 2013.

2. The prosecution story in short is that injured Mahemuda is the wife of appellant – accused. Informant got married to accused about 17 to 18

years prior to FIR dated 12.03.2013. They have daughter aged 16 and two sons aged 14 and 12 respectively. All the children used to stay with the mother of Mahemuda since their childhood for education. Mahemuda used to go to her parent's house to meet children and sometimes she used to be in the matrimonial home along with husband at Bidgaon, Tq. Chopda, Dist. Jalgaon. Since about 4 to 5 months prior to the FIR, she was at Bidgaon. Accused was not doing any work to earn, rather he used to abuse the informant under the influence of liquor and used to say that she should go somewhere and not to reside with him. It is the further prosecution story that around 4.30 p.m. on 11.03.2013, informant was washing *Dhoti*, which she had used for drying papad. She was washing the same in bathroom in her house, at that time, accused went near her and told that she should give him something to eat. She accordingly gave Udit Dal and Sabji and again went to bathroom to wash the cloth. She was sitting while washing the cloth, at that time, accused took out a glass bottle from his pocket and poured it on her person. She got the smell of kerosene and asked husband as to why he has poured kerosene, at that time, the husband ignited matchstick and threw it on her. Her saree caught fire and she sustained burn injuries to left hand, waist, stomach, backside, thighs. She started shouting and poured the water, which was in the bucket, on herself. The fire got extinguished and prior to that after throwing the burning matchstick on her person, the accused had ran away. The neighbouring

persons gathered and the ladies gave her clothes to change. She went to police station in a rickshaw. She was then referred to Government Hospital, Adawad, where she was given primary treatment. She called her father there and then along with him, she went to the hospital of Dr. Warke, where she has taken the treatment. While she was admitted with Dr. Warke's Hospital, her statement was recorded. On the basis of the said statement, FIR came to be registered.

3. During the course of investigation, statements of witnesses were recorded. Accused came to be arrested. Panchanama of the clothes and seizure of clothes was executed. The seized articles were sent for chemical analysis. After collecting the medical evidence and completing the investigation; charge-sheet was filed.

4. After the committal of the case, charge was framed against the accused and trial was conducted. Prosecution has examined in all six witnesses and after hearing both sides and perusing the evidence, the learned Trial Judge has held the accused guilty of committing offence punishable under Section 307 of Indian Penal Code and sentenced him to suffer imprisonment for life. He has been acquitted of the offence punishable under Sections 324, 504, 506(II) of Indian Penal Code.

5. It will not be out of place to mention here that the appeal was

preferred through Advocate Mr. Nagori, however, this Court had received letter of the accused on 02.10.2017 from jail stating that he is unable to pay the fees of the Advocate and, therefore, the Advocate should be changed and he be given legal aid. It appears that the office had not placed the said letter immediately, but learned Advocate Mr. Nagori was remaining absent and the fact was noted by this Court on 15.02.2023 and it was also informed that learned Advocate Mr. Nagori has stopped practice from Aurangabad. Hence, we appointed learned Advocate Chaitanya C. Deshpande to represent the cause of appellant.

6. We have heard learned Advocate Mr. Chaitanya C. Deshpande for the appellant and learned APP Mr. A. V. Deshmukh for the respondent – State and perused the record.

7. Learned Advocate representing the appellant has vehemently submitted that the informant P.W.2 Mahemuda has supported her FIR Exhibit-14, however, in her examination-in-chief, she has absolutely not stated that why the accused had poured kerosene on her person and set her to fire. Her entire examination-in-chief is silent on the point that there are disputes between herself and accused. It is then hard to believe that any such act would have been done by the accused. Except her, there is no other witness who would support the prosecution story. It appears that her father was working in Nagarpalika and she was used to be comfortable at

village Savda and therefore, insisting the accused to go to the said village and settle there, which was not approved by the accused. The suggestions would also show that informant used to give threats to her husband that she would commit suicide, if accused does not settle at Savda. That appears to be the reason why she might have set herself to fire. She has admitted in the cross-examination that after the incident she is residing in the house of father-in-law, but children are residing with her father, but possibility cannot be ruled out that the incident would have occurred due to heat anger. No doubt the medical evidence supports the testimony of P.W.2 Mahemuda, but the fact remains is that P.W.3 Lalitabai who had gone to the place of incident immediately has turned hostile. P.W.4 Supadu is the father of P.W.2 Mahemuda and he has also not stated as to what was the reason behind the alleged act of the accused on the day of the incident. Mahemuda had received 40% burn injuries. Even if for the sake of arguments it is accepted as it is, the fact cannot be ruled out that it was the reaction out of the dispute between the husband and wife and, therefore, it cannot be said that accused had intention to kill P.W.2 Mahemuda. The accused is in custody since 13.05.2013 and, therefore, the conviction can be reduced to already undergone.

8. Learned Advocate appearing for the appellant has further pointed out that the accused has given a letter from jail on 08.05.2017 stating that

his wife is residing in his house and now there is settlement between them. His financial condition is poor and the children are suffering. The wife meets him in the jail and, therefore, his case be considered sympathetically. He has also attached photocopy of the application given by his wife to the Superintendent of Jail on 08.01.2017 seeking permission to take signature of the accused on the Vakalatnama, thereby it indicates that the wife wants to cohabit with the accused and, therefore, the sentence needs to be reduced to already undergone. He places reliance on the decision in *Rajendra Harakchand Bhandari and others Vs. State of Maharashtra and another, Criminal Appeal No.902 of 2011 (arising out of SLP (Criminal) No.3068 of 2010)*, decided by the Hon'ble Supreme Court on 08.04.2011. In this case also the offence was under Section 307 of Indian Penal Code, for which it was considered that since it is non compoundable, but when there is reconciliation amongst parties and the appellants have already undergone the sentence of more than two and half years, the ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone.

9. Per contra, the learned APP strongly opposed the appeal and submitted that the reasons given by the learned Trial Judge are perfectly correct and legal. The informant has proved her FIR. In the FIR as well as in the substantive evidence, it is specifically stated that the informant was

washing the cloth at about 4.00 p.m. on 11.03.2013 and she was sitting in the bathroom for washing cloth, at that time, accused had poured kerosene on her person from one glass bottle and thrown burning matchstick on her person. It has caused 40% burn injuries to the informant. When the accused had knowledge that his such act would cause death if treatment is not given immediately, then it will have to be held that he had intention to kill his wife. P.W.4 Supadu has categorically stated that accused was not doing anything and was not allowing his wife to do work. On that count, there used to be dispute between them and this fact has not been challenged in his cross-examination. Therefore, cumulative effect is that the motive behind the act done by the accused has been proved by the prosecution beyond reasonable doubt. The spot panchanama has been proved from where the articles were seized. Those articles were sent for chemical analysis and the report is supporting the prosecution. Though P.W.3 Lalitabai has turned hostile, it is to be noted that she had come to the spot after the incident. P.W.5 Dr. Warke has deposed that Mahemuda was admitted in his hospital on 11.03.2013 after receiving 40% burn injuries. He had given treatment to her for about 13 days and then issued certificate Exhibit-22. Except denial, there is nothing. The conviction of the accused is therefore perfectly correct and legal. It requires no interference.

10. As aforesaid, the testimony of P.W.2 Mahemuda would show that she

has proved her FIR Exhibit-14. She has categorically stated that though she has three children, they used to be with her father in different village. This fact is not challenged in the cross-examination, therefore, except the informant and the accused, there was nobody else in the house. No doubt, in the examination-in-chief, the informant has not stated that there used to be quarrel between herself and accused and why the accused had acted in that manner. In other words, what was the reason to set her to fire has not been explained by her, but that does not carry much importance when the said fact has come on record through other evidence. The suggestions to informant would show that the accused wanted to show that there used to be quarrels between himself and the informant. As per his defence, the reason for quarrel was that she was insisting that accused should shift to Savda where her family members were residing. That suggestion has been denied by her. Further, in her cross-examination, it has been extracted from her and she has answered that while she was residing with her husband, he used to assault her under the influence of liquor and he was not doing any work and, therefore, she was residing with her parents. Thus, the gap which was left by the prosecution has been rather filled by the accused in the cross. There is no reason to disbelieve P.W.2 Mahemuda. Her testimony is supported by P.W.4 Supadu and P.W.5 Dr. Warke. The percentage of burns is 40% and fortunately, may be she acted swiftly by pouring water on her person and extinguishing the fire, she could save her

life, but the fact remains is that when the accused poured kerosene on her person and set her to fire by throwing burning matchstick, it can be inferred that he had knowledge about the consequences of his own acts. The accused has not taken defence that as he was under the influence of liquor, he was incapacitated from thinking. Therefore, the evidence adduced by the prosecution was sufficient to hold that there was intention on the part of the accused to kill his wife i.e. intention to commit her murder. We agree to the finding given by the learned Trial Judge that the offence punishable under Section 307 of Indian Penal Code has been proved beyond reasonable doubt as against the appellant.

11. Now, coming to the alternate prayer of the learned Advocate representing the appellant regarding reduction of the sentence is concerned, the first fact we want to place it on record that as per the learned Advocate appointed to represent the appellant, he had tried to contact the wife of accused, but she told that she is at different place and may come on the date for the Court, but ultimately on 26.06.2023, it was informed that further contact was not established. Therefore, the facts before this Court are slightly different than the facts in ***Rajendra Harakchand Bhandari and others (Supra)***. We cannot place on record that now the dispute between the husband and wife is settled and, therefore, we can consider in any way provisions of Section 320(9) of the Code of

Criminal Procedure, however, independently of that what we can see here, in this case, is that P.W.2 Mahemuda had received 40% burn injuries and the appellant is in custody since 23.05.2013, which comes to 10 years 01 month and 12 days as on 04.07.2023. Section 307 of Indian Penal Code is reproduced here for the sake of convenience, which reads thus :-

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; **and if hurt is caused to any person by such act, the offender shall be liable either to 1 [imprisonment for life], or to such punishment as is hereinbefore mentioned.**

Attempts by life-convicts.— 1 [When any person offending under this section is under sentence of [imprisonment for life], he may, if hurt is caused, be punished with death.]

12. When 40% burn injuries have been caused, it would cover in the second limb of Section 307 of Indian Penal Code, but the punishment “such punishment as is herein mentioned” would give discretion to the Court to impose lesser sentence, than imprisonment for life. We have not received any other communication from the jail authorities stating that the behaviour of the appellant in jail was anyway not up to the mark or he has committed any other offence while in jail. Therefore, we take this case as a

case where we can exercise our discretion to reduce the sentence to already undergone.

13. For the aforesaid reasons, following order is passed :-

ORDER

I) The appeal stands partly allowed.

II) The conviction awarded to the appellant – **Kadar Lalkha Tadv**i by learned Additional Sessions Judge, Amalner, Dist. Jalgaon in Sessions Case No.29 of 2013 on 05.10.2015 after holding him guilty for committing offence punishable under Section 307 of Indian Penal Code is hereby maintained, however, the sentence imposed by the learned Trial Judge is reduced to already undergone.

III) He be set at liberty if not required in any other case.

IV) We clarify that there is no change in the order of disposal of muddemal passed by the learned Trial Judge.

V) Fees of learned Advocate, who is appointed to represent the cause of appellant, is quantified at Rs.10,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm