

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.167 OF 2017

Balasaheb s/o Ganpat Tidke
Age: 30 years, Occu.: Driver,
R/o. Rajuri Road, Pimpri – Nirmal
Shivar, Tq. Rahata,
District Ahmednagar
Presently Appellant in Jail

.. Appellant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Sopan G. Bobde, Advocate for the appellant.
Mr. A. M. Phule, APP for the respondent – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 20th September, 2023.

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

1. Present appeal has been filed by the original accused challenging his conviction by learned Additional Sessions Judge, Kopargaon, District Ahmednagar on 28.02.2017 in Sessions Case No.2 of 2015 after holding him guilty of committing offence punishable under Sections 302, 498-A of Indian Penal Code.

2. It is not in dispute that the present appellant – original accused got married to Sonali, who was the daughter of informant P.W.1 Dinkar

Narayanrao Aher. They got married on 12.07.2010 on which day in fact the engagement ceremony was decided, but in the engagement ceremony itself, the marriage was performed. Accused and Sonali used to reside separately from the brother, his wife and parents of accused. They used to reside in the neighbourhood. Sonali is having son by name Kartik and on the date of incident i.e. on 03.11.2014, he was aged one and half years old.

3. PW.1 Dinkar Aher lodged FIR on 04.11.2014 with Loni Police Station stating that at the time of marriage, he had given essential domestic utensils, ornaments on the person of Sonali and had honoured her relatives from husband's side. After two years of marriage, accused became addicted to liquor. He started raising suspicion over her character and used to assault Sonali under the influence of liquor. He started demanding amount of Rs.2,00,000/- to be brought by her from her parents for purchasing land. Even on that count, he was assaulting Sonali. Sonali had informed about the said ill treatment to her parents when she had visited her parent's place on two to four occasions. The parents used to convince her and sent her for cohabitation. PW.1 Dinkar had persuaded accused by saying that he has no means to fulfill the demand, but he should not ill treat his daughter. Once he had taken his uncle Govindrao Aher along with him to persuade accused, however, there was no change in the behaviour of the accused. Accused used to beat Sonali almost daily and was not allowing her to eat

and under the influence of liquor, he used to harass. Sonlai had gone alone by taking her son to her parent's house on 25.10.2014 to celebrate Diwali and Bhaubhij. She stayed only for a day and disclose that her husband is demanding money, assaulting her. She has no desire to cohabit with the husband, but her parents persuaded her and sent her for cohabitation on the same day. There was attempt on the part of her relatives to persuade accused. Around 8.00 p.m. on 03.11.2014, Sonali's brother-in-law (brother of appellant) Sanjay gave phone call to the nephew of P.W.1 Dinkar stating that the accused had set Sonali to fire and they should go to the matrimonial home immediately. The nephew disclosed the said fact to Dinkar. Thereupon Dinkar along with his relatives went to the matrimonial home. In the meantime, they have also received phone call from Police stating that Sonali has been taken to P.M.T. hospital. They went there, but it was night time and therefore they could not see the dead body. They saw the dead body in the morning and found that she was literally burnt in Toto. After the inquest panchanama was done, all of them went to the matrimonial home, saw the spot. They found one bottle on cot having smell of petrol. They were confirmed that the accused had poured petrol on Sonali and then set her to fire. They made inquiry with the mother-in-law of Sonali and thereupon came to know that there was quarrel between accused and Sonali around 7.30 p.m. on the earlier day and thereafter she heard the shouts of Sonali and found that she was burning. Thereafter

PW.1 Dinkar went to Police Station and lodged the report.

4. After the report was lodged, investigation was taken up. Prior to that A.D. was registered and inquest panchanama was got executed. Dead body was sent for postmortem. After the FIR was registered, accused came to be arrested and the clothes on his person along with articles therein came to be seized by executing panchanama. Panchanama of the spot was got executed. Statements of witnesses were recorded. The seized articles were sent for chemical analysis. Postmortem report was collected. While in custody, the accused had given memorandum and discovered the petrol pump where he got the petrol tank of his vehicle filled. He showed the vehicle from which the petrol was taken in a bottle. It was a Hero Honda motorcycle kept in the cattle shed in his house. After the completion of the investigation, charge-sheet was filed.

5. After the committal of the case, the prosecution has examined in all seven witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Trial Judge has held the appellant guilty and sentenced him to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine, to suffer rigorous imprisonment for one year for the offence punishable under Section 302 of Indian Penal Code. He has been further sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-, in

default of payment of fine, to suffer rigorous imprisonment for three months for the offence punishable under Section 498-A of Indian Penal Code. This is the conviction which is challenged before this Court.

6. Heard learned Advocate Mr. Sopan G. Bobde for the appellant and learned APP Mr. A. M. Phule for the respondent - State.

7. Learned Advocate appearing for the appellant has vehemently submitted that the learned Trial Judge has not appreciated the evidence properly. Except the statement of P.W.1 Dinkar Aher, there was no evidence to support his allegations regarding subjecting Sonali to cruelty. No other evidence has been led in the form of other relatives, who had allegedly taken part in persuading the accused. Sonali had sustained 100% burns and, therefore, possibility of accidental death or suicidal death ought to have been ruled out. The contents of the spot panchanama Exhibit-22 were not properly and legally proved. It had come on record that one room was occupied by accused and in another room his brother was residing. The best witnesses would have been the brother and parents of the accused, who were residing adjacent. Though the prosecution has examined P.W.6 Bhausahab the neighbour, in his cross-examination, it has come on record that he is not actually the neighbor, but Rajuri road passes in between their houses. Thereby there was distance of about 500 to 600 feet between their houses. Except the bare words of the father, there was no support to the

allegation that the accused is addicted to liquor and used to raise suspicion over Sonali's character. It has been further submitted that the learned Trial Judge has not considered the answer given by the accused in his statement under Section 313 of the Code of Criminal Procedure that Sonali caught fire due to explosion of stove. The accused has been falsely implicated and, therefore, the appeal deserves to be allowed by setting aside the conviction.

8. Supporting the impugned judgment, the learned APP submitted that the testimony of P.W.6 Bhausaheb the neighbour, who had gone to the spot immediately, would sufficiently prove that death of Sonali is homicidal in nature. In fact, Sonali had gone to the house of P.W.6 Bhausaheb around 5.00 to 5.30 p.m. on 03.11.2014, when Bhausaheb had returned from work. Sonali told him that he should give understanding to the accused as he was beating her. He then by changing clothes went to the house of accused and asked him not to beat his wife, but accused told him that since it is his personal matter, he should not interfere. Therefore, Bhausaheb returned back to his house. After half an hour Bhausaheb heard shouts and went to the house of accused, wherein mother of the accused was shouting that her daughter-in-law has been put to fire, to save her and also shouting that her son had set his wife to fire. His said statement is consistent with his statement under Section 161 as well as 164 of the Code of Criminal Procedure. Further, P.W.1 Dinkar – father of deceased Sonali has stated that

there was illegal demand of Rs.2,00,000/- by accused for purchasing land and in spite of making the accused aware that he was not having sufficient finance, still accused was harassing Sonali. Accused used to consume liquor and assault Sonali. Sonali was treated with cruelty. There was no reason to disbelieve PW.1 Dinkar. He has lodged the FIR promptly. The panchanamas have been duly proved. Further, the accused himself has admitted the inquest panchanama Exhibit-17 and the postmortem report Exhibit-18. Thus, accused is not disputing that his wife died due to burn injuries. At a later point of time, when a specific question was asked to him “Whether do you want to give the explanation how death of your wife is caused?”, he has answered “wife is died in my house due to explosion of stove”, however, the said explanation does not find support to the spot panchanama. The seized articles were sent to chemical analysis and petrol residue was found on most of the articles. The petrol bottle was found from the spot, however, testimony of PW.5 Raghuji would make it clear that the said petrol was extracted from the motorcycle and it was shown by the accused to the panchas. Therefore, all the circumstances have been duly proved beyond reasonable doubt by the prosecution and, therefore, there is no merit in the present appeal.

9. Here, the accused has admitted inquest panchanama Exhibit-17 and postmortem report Exhibit-18. Postmortem report shows that Sonali had

received 100% burns and her cause of death is due to those 100% burns superficial to deep. Therefore, when the cause of death is not disputed, it is required to be seen as to whether prosecution has proved its case beyond reasonable doubt. No doubt there is no direct evidence and, therefore, when the case is based on circumstantial evidence, it has to satisfy the golden principles laid down in **Sharad Birdhi Chand Sarda vs State Of Maharashtra, [1984 AIR 1622]**. Each segment of chain of circumstance should prove that accused is the only author of the crime.

10. PW.6 Bhausahab is the neighbour, who had gone to the spot immediately after the incident and even prior to that also the deceased had gone to him with a request to interfere in the quarrel by giving understanding to the accused. That means, she has tried to take help of PW.6 Bhausahab. He says that he had gone to give understanding to the accused, but accused told him that not to interfere and, therefore, he came back to his house. What he heard after he found that people had gathered at the house of accused is important. He has told that mother of the accused was shouting that her daughter has been put to fire and she was asking people to save. She was also shouting that her son has set his wife to fire. A person can be a best witness of what he witnesses i.e. what he see, what he hear or even pursue by senses. Here, this witness has told the said fact what he has heard. No doubt, he has categorically stated that due

to darkness he could not see what had actually happened, but he was certain in saying that wife of accused died. His statement under Section 164 of the Code of Criminal Procedure was also taken by learned Judicial Magistrate First Class, Rahata. His statement under Section 161 as well as 164 of the Code of Criminal Procedure Code are consistent and corroborating his substantial evidence. In the cross-examination, there is absolutely no denial to the fact what he heard. Merely because he gives a distance of 500 to 600 feet between the houses of the accused and himself, we cannot say that he would not be in a position to hear the shouts of the mother of the accused. Only a statement in the cross has been now tried to encash by the accused wherein he admits that there was quarrel between him and accused prior to the incident. This one line admission will not give any advantage to the accused. On what account the said quarrel was and when it had taken place has not come. There has to be a proximity that the said quarrel between them and the incident so as to implicate the accused in the matter. Therefore, the said one line admission will not save the accused.

11. Next in line is the testimony of P.W.1 Dinkar. As we have already covered the contents of the FIR in paragraph No.3, we do not want to reproduce the same, as the examination-in-chief of P.W.1 is nothing but the replica of his FIR in the cross-examination. It has been tried to be brought

on record that the marriage of the accused and Sonali was performed in a hurry on the same day of the engagement and then it is tried to be connected to the suggestion that Sonali was not happy with the marriage, as she was not liking the accused. It is to be noted that the accused doesn't appear to have come with a defence that Sonali has committed suicide. His defence is accidental death, which appears to have been taken at a later point of time because there is no suggestion to that effect even to P.W.6 Bhausahab. Therefore, the said fact about hurry for performing the marriage will not give any advantage to the accused. He has stated that Sonali used to come to his house intermittently. The cross-examination does not destroy his examination-in-chief. His examination-in-chief was sufficient to prove that there was illegal demand of Rs.2,00,000/- for purchase of land by the accused. The accused was addicted to liquor. Under the influence of liquor and also for fulfillment of illegal demand, he used to assault Sonali. The repeated attempts made by P.W.1 Dinkar to give understanding to the accused have not yielded any positive response. There is no reason therefore to disbelieve P.W.1 Dinkar. He has lodged prompt report and has also disclosed that how he received the information regarding Sonali's death.

12. Interesting point to be noted is that P.W.2 Devendra is the panch at the time of arrest of the accused and to the seizure of clothes and articles

on the person of accused at that time. He has proved Exhibit-16 the panchanama and also identified the articles seized from the accused. It includes a match box, shirt and pant. In the cross-examination to this witness, he admitted that the seized pant was in burn condition. There were burn marks to the shirt also. He admits that the accused had also sustained burn injuries to his leg. This shows that accused in a way wanted to admit his presence at the spot. Accused has not taken *plea of alibi* and therefore, when the incident has taken place in the house, he ought to have explained the circumstances in which his wife had sustained burn injuries. His substantial statement under Section 313 of the Code of Criminal Procedure was recorded on 24.01.2017. However, there appears to be further statement recorded under Section 313 of the Code of Criminal Procedure on 22.02.2017. In the order, it has been stated by the learned Trial Judge that since the death of the wife of the accused was caused in his house and some explanation regarding the death from the accused has not come on record, therefore, he felt that the opportunity needs to be given to the accused regarding giving explanation and, therefore, the said additional statement has been recorded. Thereupon the accused says that his wife died due to explosion of stove in the house. Thus, it is to be noted that when he has not taken the *plea of alibi*, rather it is said that he had also sustained burn injuries showing the presence at the spot, Section 106 of the Indian Evidence Act puts burden on his shoulder to explain the

circumstances which were within his knowledge. He himself had not taken that opportunity to explain those circumstances, but then after the opportunity was given, he has explained it. But it has been rightly stated by the learned APP that there was no suggestion to the prosecution witnesses indicating that the circumstances at the spot showed that there was explosion of stove. No such suggestion has been given, especially to P.W.4 Shivaji Kolge, who is the panch to the spot panchanama Exhibit-22. There is no such suggestion even to the investigating officer P.W.7 API Vinod Patil. Another fact which can be put in the same chain is that Exhibit-B2 and Exhibit-B3 are the shirt and pant of the accused and the petrol residue was found on those articles. Even as regards the other articles which are found on the spot, there were petrol residues. Why one person would keep petrol that too in a bottle in his house would be a question. It is not kerosene, but petrol. Pouring of petrol and then setting Sonali to fire can be taken as with an only intention to eliminate her. We may not give importance to the discovery panchanama though it has also been proved by examining P.W.5 Raghuji and at that time in presence of panchas the motorcycle was discovered and it has been stated that by the accused that he had extracted the petrol from the petrol tank of motorcycle.

13. Thus, the scanning of evidence would definitely show that as regards the offence under Section 302 of Indian Penal Code is concerned, the entire

circumstantial evidence has been properly and legally proved. Each segment/component of the chain of circumstance unerringly is pointing out towards the accused as the assailant. The motive or background is the quarrel and illegal demand which is stated by P.W.6 Bhausaheb and P.W.1 Dinkar. Even as regards subjecting Sonali to cruelty, the testimony of P.W.1 Dinkar alone was sufficient. We do not find the impugned judgment to be perverse. The learned Trial Judge has rightly appreciated the evidence and held the accused guilty for committing offence punishable under Section 302 and 498-A of Indian Penal Code. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, the appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm