

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 224 OF 2014

Kiran Vasant Koli

Age-32 years, Occupation – Driver,
R/o- Sahajpur, Tal- Daund, Dist-Pune,
V/s.

.. Appellant

State of Maharashtra

.. Respondent

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- Ms. Apurva Thipsay i/by Mr. Jaydeep Mane for Appellant.
 - Mrs. M.M.Deshmukh, APP for Respondent No.1-State.
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**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

RESERVED ON : 17th July 2023

PRONOUNCED ON : 11th August 2023

JUDGMENT (Per : Shivkumar Dige, J.) :-

1. Appellant (original accused) impugnes Judgment and Order passed by the Additional Sessions Judge, Baramati, District – Pune, whereby he is convicted for the offence punishable under Section 302 of Indian Penal Code, 1860 (for short “IPC”). Appellant is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default, to suffer further rigorous

imprisonment for one month. Appellant is acquitted for the offence punishable under Section 498-A of IPC.

2. It is the prosecution's case that, on 26.08.2012 at about 10:00 p.m., a quarrel took place between Appellant and his wife-Rani on account of domestic reasons. Rani got annoyed due to quarrel and poured kerosene on her person from a plastic can. Then Appellant ignited a match stick from match box and threw it on her person. As a result of which, her clothes caught fire. Appellant extinguished the fire and shifted her by an ambulance to Sassoon General Hospital, Pune and admitted there. In hospital, Police recorded her dying declaration. While undergoing treatment, Rani died on 27.08.2012. PW-1 Amol P. Ankushrao, cousin brother of deceased Rani, lodged complaint against Appellant. On the basis of complaint, Police registered FIR. After completion of investigation, chargesheet was filed against Appellant. Case was committed to Additional Sessions Court, Baramati. Charges were framed against Appellant under above referred offences. Appellant denied charges and claimed to be tried. After completion of the prosecution's evidence, the statement of Appellant under Section 313 of the Code of Criminal Procedure, 1973 (for short "Cr.PC.") was recorded. The defence of Appellant was of total denial.

3. Considering the evidence on record and submissions made on behalf of both the parties, learned trial Court by a Judgment and Order convicted Appellant as referred above.

4. We have heard submissions of both the learned Counsels. Perused record and Judgment and Order passed by the learned trial Court.

5. It is the contention of learned counsel for Appellant that, prosecution's case is based on dying declaration but the said dying declaration is suspicious as victim had received 100% burn injuries and therefore it was not possible for her to give dying declaration due to it. The allegations against Appellant are suspicious. Learned counsel further submitted that, Exhibit-31 which is information given to Police prior to filing of FIR by PW-1 Amol Ankushrao (first informant) recorded that, the victim had burnt herself in fit of anger. Learned Counsel further submitted that, there were no allegations against Appellant under Section 498-A of IPC before the incident. Appellant and deceased were staying happily. The version of prosecution witnesses only establishes the presence of Appellant in the house at the time of incident but it cannot prove the guilt of Appellant. Appellant tried to extinguish the fire and took his wife (Rani) to hospital. Learned Counsel further submitted that, if

this Court comes to conclusion about guilt of Appellant, then also the act of Appellant does not fall under Section 302 but it falls under Section 304(II) of IPC. She relied on the Judgement of Hon'ble Supreme Court in the case of *State of Rajasthan Vs. Santosh Savita*¹.

6. It is contention of Mrs. M. M. Deshmukh, learned APP that, deceased has given a dying declaration about her burn injuries which is recorded by a Police constable. There was no reason for her to depose against the Appellant. The said dying declaration is endorsed by the doctor. It has come in the evidence of Dr. Anirudha Mohite, PW-4 that, at the time of giving dying declaration, deceased was well oriented and in conscious state of mind. Deceased has stated the actual fact that, when she had poured kerosene on herself, Appellant had set her on fire. If she had intention to implicate Appellant in a false case, she would have stated that, Appellant had poured kerosene on her and set her on fire. There is no reason to disbelieve the dying declaration given by the deceased. Apart from written dying declaration, oral dying declaration was also given by deceased to PW-1 while going to the hospital. In the said oral dying declaration also, deceased had

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stated that, Appellant set her on fire. The Judgement and Order passed by the learned trial Court is legal and valid and therefore the Appeal may be dismissed.

7. Admittedly, prosecution's case revolves around dying declaration which is recorded by PW-3. Dilip H. Phadtare, Police Head Constable and PW-4 Dr.Anirudha Mohite, doctor who endorsed on said dying declaration. Apart from written dying declaration, the prosecution relied on oral dying declaration given to PW-1 Amol Ankushrao, who accompanied deceased Rani and Appellant in the ambulance to the hospital. We will now consider the evidence led by prosecution in respect of dying declarations.

PW-1 Mr.Amol Ankushrao at Exhibit-25 has stated that, deceased Rani was the daughter of his maternal aunt. Rani was married with Appellant in the year 2002. After marriage, Appellant treated Rani well for initially for a period of two years. Appellant was not doing any work, he was not giving any money to deceased Rani for household expenses. Deceased Rani was giving money to Appellant by doing labour work. On 26.08.2012 at about 11:45 p.m., Appellant came to his house by ambulance. He told this witness that, Rani had sustained serious burn injuries. This witness boarded the said ambulance and asked Rani what happened. Rani

disclosed him that, dispute arose between her and Appellant on account of domestic reasons, therefore due to anger, she herself poured kerosene oil on her person and Appellant threw burning matchstick on her person. Therefore she sustained burn injuries. Rani was admitted in Sassoon Hospital, Pune. He informed mother of Rani about the incident. On 27.08.2012, at about 3.45 a.m. Rani died. He lodged complaint against Appellant in Yawat Police Station. It is at Exhibit-26.

In cross examination, this witness admitted that, Appellant used to go for work of construction of Well and Appellant used to do work. This witness denied the suggestion that, he gave information to Police outpost at Sassoon Hospital, which is at Exhibit-31. That, deceased told him, she got herself set on fire due to anger. He denied that, after death of Rani he demanded Rs.1 lakh from father of Appellant for not lodging complaint and when he failed to give the same, he filed false F.I.R. against Appellant. From the evidence of this witness, it reveals that, deceased Rani told him about the cause of her death. It is the case of prosecution that, deceased had given dying declaration when she was admitted in Sassoon Hospital to prove it, the prosecution examined PW-3 Shri. Dilip Phadtare (Exhibit-29) who recorded dying declaration of

deceased Rani. He has stated that, on 26th and 27.08.2012, he was on duty at Police outpost Sassoon Hospital. On 27.08.2012 at about 12:45 a.m. Police Naik, Patil of Bund Garden Police Station informed on his mobile that, Rani sustained 100% burn injuries and she was admitted in Ward No. 25 of Sassoon Hospital. This witness immediately went to Ward No. 25. Rani was admitted in that ward. This witness asked Dr. Anirudha Mohite, in-charge doctor to give his opinion whether Rani was in a fit state of mind to give her statement. Dr. Anirudha Mohite examined Rani in presence of this witness and opined that, she was in fit state of mind to give her statement. This witness recorded dying declaration of Rani as per her say in the presence of doctor. Doctor made endorsement on dying declaration that, patient is in a condition to give her statement and put his signature below the statement. This witness read over the contents of dying declaration to Rani. She admitted that, the contents are correct and true. This witness obtained left hand thumb impression of Rani on the dying declaration. This witness signed on it. Dying declaration is at Exhibit-30. Rani told this witness while recording her statement that, on 26.08.2012, at about 10 p.m., quarrel took place between her husband (Appellant) and herself on account of domestic reasons. Due to anger, she poured kerosene on

her person from plastic can which was kept in the house. She further told this witness that, her husband saw her while pouring kerosene oil, he ignited matchstick and threw burning matchstick on her person, therefore, her clothes caught fire. She shouted loudly. Appellant extinguished fire by putting quilt on her person. Her cousin brother and Appellant shifted her to Sassoon Hospital by ambulance.

In cross examination, this witness admitted that, the doctor had already given injections and saline to Rani. He further admitted that, he did not issue letter to doctor for obtaining opinion of fitness of Rani. He did not record her dying declaration in question and answer form. From the evidence of this witness it reveals that, he recorded dying declaration of the Rani as per her say.

To corroborate the evidence of this witness, prosecution examined PW-4 Dr. Anirudha Mohite at Exhibit-34. He has stated that, on 27.08.2012 he was in-charge of Burn Ward of Sassoon Hospital. On that day, (at about 00.43 hours), Rani was admitted in Burn Ward, at about 1:30 a.m. Police Officer – Shri. Dilip Phadtare came to the ward for recording her dying declaration. He asked this witness to give information, whether patient Rani was fit to give her

statement. This witness examined patient Rani and found that, she was concious and oriented. Shri. Phadtare recorded statement of Rani in the presence of this witness. This witness made endorsment on dying declaration that, patient was in a condition to give oral statement and put signature below the endorsement. This witness proved dying declaration at Exhibit-30.

In cross examination, PW-4 admitted that, patient Rani had sustained 100% burned injuries. After admission, saline, antibiotic and pain killers were given to the patient. Police Officer, Dilip Phadtare did not give in writing for giving opinion about the fitness of the patient. He did not mention the pulse rate and BP on the dying declaration. He did not note down the time of examination as 1:00 a.m. on dying declaration. The word 'concious' and 'oriented' are not mentioned in the endorsement. He denied the suggestion that, Rani had sustained 100% burn injuries, therefore she was not in a fit state of mind to give statement.

8. From the evidence of PW-3 and PW-5 it reveals that, deceased Rani had sustained burn injuries due to pouring kerosene on herself and Appellant threw burning matchstick on her person. Thereafter Appellant tried to extingish fire by putting quilt. Appellant has come with two fold defence. While cross examining

PW-1, Appellant has come with the defence that, Rani died due to explosion of stove while cooking food. But the evidence produced on record does not corroborate the defence of Appellant. The spot panchanama is at Exhibit-33. This panchanama does not mention about the bursting of stove. From the incident spot, Police seized one 5 liter plastic can with kerosene and pieces of saree, petticoat, blouse and one matchstick box.

9. Considering the evidence on record and dying declaration, it proves that, Appellant ignited the matchstick and threw it on the person of deceased when Rani poured kerosene oil on her person. It is the contention of learned Counsel for Appellant that, the act of Appellant falls under Section 304(II) of IPC, as the said act happened due to sudden quarrel and accused had no intention to kill but he had knowledge of it. It is contention of learned APP that, when deceased had poured kerosene on herself, Appellant threw burning matchstick on her and set her on fire. It shows that, Appellant knowingly and willfully set on fire deceased Rani.

10. In our view, as per the dying declaration of deceased Rani, it reveals that, the incident happened due to quarrel out of domestic reasons. It happened at the spur of moment.

The question remains whether the act of Appellant falls under Section 302 or 304(II) of I.P.C. Considering evidence on record, in our view, present case falls under exception 4 of Section 300 of I.P.C. which reads as under :

“Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

11. From the evidence on record, it proves that, the incident happened due to quarrel out of domestic reasons and it happened suddenly. Appellant threw ignited matchstick on deceased when she had poured kerosene on herself, it was without premeditation. It is difficult to believe that, Appellant had any intention to cause death of deceased Rani. The death has been caused by a reckless act of Appellant with the knowledge that, it is likely to cause death and for this act, Appellant is guilty of culpable homicide not amounting to murder under Section 304 (II) IPC.

The Hon’ble Apex Court in the case of *State of Rajasthan Vs. Santosh Savita*¹ has held that:

“22. The only other question which remains to be decided in this case is whether the respondent should be held guilty of the offence under Section 302, IPC, or Section 304 IPC. A person could be held to be guilty of the offence under Section 302, IPC, if he commits murder. The

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relevant portion of Section 300, IPC, which defines "murder" is extracted hereunder:

"300. Murder.-- Except in the cases hereinafter excepted, culpable homicide is murder; if the act by which the death is caused is done with the intention of causing death, or-

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly,- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Under the first clause, if the act by which the death is caused is done with the intention of causing death, the act amounts to murder. Under the second clause, if the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, the act amounts to murder. Under the third clause, if the act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, the act amounts to murder. In each of the three clauses, intention to cause death or to cause the bodily injury is an essential ingredient of the offence of murder. Under the fourth clause, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid, he is said to have committed murder. Hence, under the fourth clause, knowledge of the act committed by the accused that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, is a necessary ingredient for the offence of murder.

23. In the facts of the present case, PW-2, PW-3 and PW-8 have not seen what exactly happened inside the room (khaprail) in which the incident took place. The deceased has, however, stated in the two dying declarations (Ext.P-4 and Ext.P-10) that the respondent poured

kerosene on the deceased and ignited fire on the saree of the deceased. The two dying declarations (Ext.P-4 and Ext.P-10) are very sketchy and do not narrate the details as to how the incident took place except stating that there was a quarrel between the deceased and the respondent. From the two dying declarations (Ext.P-4 and Ext.P-10), therefore, it is difficult to record a finding that the respondent had any intention to cause death of the deceased or had any intention to cause any bodily injury. From the two dying declarations (Ext.P-4 and Ext.P-10), it is also difficult to come to a finding that the respondent committed the act knowing that it is so imminently dangerous that it must, in all probability, cause death of the deceased.

24. As found by the High Court, there was some delicate relationship between the respondent and the deceased and it is difficult to believe that the respondent had any intent to cause death or bodily injury to the deceased. Rather, it appears to us that the death of the deceased has been caused by a reckless act of the respondent with the knowledge that it is likely to cause death and for this act the respondent is guilty of culpable homicide not amounting to murder under Section 304, Part-II, IPC. The respondent has undergone imprisonment of approximately six years and the incident is of the year 1997. In the peculiar facts and circumstances of the case, the period of imprisonment undergone by the respondent-accused and a fine of Rs.2,000/- are sufficient punishments under Section 304 Part-II, IPC.”

In above case, the Hon’ble Apex Court has altered conviction from Section 302 to 304(II) of IPC.

As observed earlier, in the present case, incident happened due to quarrel of domestic reasons and happened suddenly, it was without premeditation.

12. In view of the above, we pass the following Order:

- i. The Appeal is partly allowed.

- ii. The impugned Judgment and Order of the Trial Court is set aside.
- iii. Appellant is convicted for the offence punishable under Section 304(II) of IPC. He shall suffer rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further suffer rigorous imprisonment for two months.
- iv. Appellant shall be released from jail on completion of sentence as directed, unless required in any other case/cases.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)

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