



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

CRIMINAL APPEAL NO.855 OF 2023

Mahadeo s/o. Uttam Ukhande,
Age:38 years, Occ. Prisoner,
r/o. Doundwadi,
Tq. Parali Vaijnath, Dist. Beed

..Appellant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Parali Vaijnath (Rural),
Police Station Taluka Parali, Dist. Beed

..Respondent

Mr.A.D.Raut, Advocate for appellant
Mr.S.J.Salgare, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : NOVEMBER 29, 2024**

JUDGMENT (PER R.G.AVACHAT, J.) :-

The appellant was convicted for committing murder of his wife and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-, with default stipulation, vide judgment and order dated 24.10.2016, passed by learned Addl. Sessions Judge, Ambajogai, Dist. Beed, in Sessions Case No.83 of 2014. He is, therefore, before us in this appeal.

2. The long and short of the prosecution case was that Shashikala had Married the appellant about 7-8 years before June, 2014. The couple was blessed with two children. The appellant was addicted to alcohol. On 16.06.2014, by 03.00 p.m, the appellant came home and asked his wife (deceased Shashikala) for money for purchase of booze. She refused to pay him. He, therefore, started beating her up with fist and kick blows. The appellant then poured kerosene on her person and set her ablaze. She ran away out of the house. The appellant followed her and extinguished the fire. The neighbours and family members took Shashikala to hospital. Unfortunately, he breathed her last on 24.06.2014.

3. In the hospital, statement of Shashikala was recorded by the Police Officer. It was treated as First Information Report (FIR) (Exh.18). Based on the same, crime being C.R. No.81 of 2014 was registered against the appellant for the offences punishable under Sections 307 and 323 of Indian Penal Code. The Executive Magistrate too recorded her dying declaration twice. The crime scene panchnama (Exh.32) was drawn. Some articles were seized. Statement of the persons acquainted with the facts and circumstances of the case were recorded. On demise of Shashikala, inquest and autopsy were conducted on her mortal remains. The

trial court framed charge. The appellant pleaded not guilty. His defence was of false implication. To bring home the charge, the prosecution examined nine witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence in the case, convicted and consequently, sentenced the appellant, as stated above.

4. Heard learned counsel for the parties. Learned counsel for the appellant would submit that most of the witnesses did not stand by the prosecution. The so called dying declarations are got up documents. The deceased committed suicide. He, therefore, urged for acquittal of the appellant.

In the alternative, he would submit that since the appellant extinguished the fire, it would indicate that the appellant had no intention to do away with his wife. At the most, knowledge can be attributed to him of the consequences of his act of setting her wife ablaze. He, therefore, urged for converting the conviction of the appellant into offence under Section 304 Part II of Indian Penal Code.

5. Learned APP would, on the other hand, submit that although the witnesses turned hostile, there are three dying declarations (Exhs.18, 19, 20). The dying declarations are consistent

with each other. The dying declaration, if found to be true and reliable, can be the basis of conviction. He, therefore, urged for dismissal of the appeal.

6. Considered the submissions advanced. Perused the evidence on record.

7. Admittedly, Shashikala had married the appellant about eight years before June, 2014. The couple was blessed with two children. On 16.06.2014, she suffered 68% burns at her residence. She was, therefore, rushed to hospital. Unfortunately, she breathed her last on 24.06.2014. The post mortem report (Exh.38) indicates that she died of "*septicemia due to burns*". The post mortem report has been duly proved by the evidence of PW 7 - Dr. Vishwajeet.

8. PW 2 - Dr. Rajendra was Medical Officer on duty. He examined Shashikala on 17.06.2014 and certified in writing her to be fit to make a statement. Thereafter, her statement-cum-dying declaration (Exh.18) was recorded by a police official, P.H.C. - Thorat (PW 4). The dying declaration recorded by PW 4 - Thorat reads thus:-

“ दिनांक १६.०६.२०१४ रोजी दुपारी तीन वाजता मी माझे घरी दौडवाडी येथे असताना माझा नवरा महादेव उत्तम उखंडे हा घरी आला व मला म्हणाला कि मला दारू पिण्यास पैसे दे मी त्याला पैसे दिले नाही म्हणून त्याने मला लाथा बुक्क्याने मारहाण केली व तू मर असे म्हणून घरात ठेवलेला रॉकेलचे कॅन मधील रॉकेल माझे अंगावर टाकले व काडी पेटवून माझे अंगावर टाकली त्या मध्ये माझी छाती, दोन्ही हात, पोट, दोन्ही पाय गंभीर भाजले आहे. मी मोठ्याने ओरडले असता व बाहेर पळाले तेव्हा गावातील बारकाबाई उखंडे हिने व माझा नवरा महादेव यांनी मिळून मला विझवले व तो पर्यंत माझी सासू राजाबाई व सासरे उत्तम यांनी मला एका खाजगी गाडी मध्ये विलाजासाठी सरकारी दवाखाना अंबाजोगाई येथे आणून वार्ड क्रमांक १४ मध्ये शरिक केले आहे. सध्या माझेवर विलाज चालू आहे. मी शुद्धीवर असून जवाब देण्याचे स्थितीत आहे. माझी नवरा महादेव उत्तम उखंडे याचे विरुद्ध तक्रार आहे. हा जवाब दिला तो मला वाचून दाखविला तो बरोबर व खरा आहे.”

It bears endorsement of the Medical Officer that the deceased was conscious oriented to make the statement.

9. Then, we have dying declaration (Exh.19) recorded by the Executive Magistrate. Same too bears endorsement of the Doctor about fitness of Shashikala (deceased). It reads :-

“..... मी राहत्या घरी घरकाम करीत असताना माझे पती हे मला दारू पिण्यासाठी पैसे मागितले. मी त्यास पैसे देण्यास नकार केला असता त्याने मला मारहाण केली. नंतर माझे पती यांनी घरातील रॉकेल माझे अंगावर टाकले व पेटवून दिले. त्यावेळी माझे घरात मी व माझे पती दोघेच होते. माझे पती मजुरी करतात. माझे लग्न होऊन ३-४ वर्ष झाली आहेत. मला दोन मुले आहेत. माझे पतीनेच माझी आग वीजवली आहे. नंतर मला

दवाखान्यात माझे सासू / सासरे व पटीने आणले आहे. मला ऑटोमध्ये आणले आहे. माझे सासू / सासरे विभक्त राहतात. माझे पती दारूसाठी पैसे देण्या बाबत नेहमी मारहाण करीत असत. सदर घटनेबाबत मला माझे पतीवर संशय आहे. त्यांनी मला मुद्दाम पेटवून दिले आहे. तसेच सादर घटनेस माझे पती जबाबदार आहेत.....

10. There was third dying-declaration, which is consistent with the other two dying-declarations, although the same was discarded by the trial court as it did not bear endorsement of the Doctor about fitness of the patient.

11. Since the deceased had suffered 68% of burns and the Medical Officer had certified her to be fit to make a statement, we do not find any reason to disbelieve her both dying declarations. Those dying-declarations, undoubtedly, make out the case of the appellant to have doused her with kerosene and set her ablaze. The question is, whether the appellant has committed the offence of murder. We, therefore, need to refer to Section 300 of Indian Penal Code, which reads thus:-

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 —

2ndly.— 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—

3rdly.— 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—

4thly.— 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.

12. The wording of Section 300 of Indian Penal Code would indicate that “intention” is the main ingredient of the offence of murder. Admittedly, it was the appellant, who extinguished the fire. Same indicates that he did not intend his wife to pass away. Had he entertained the intention other way round, he had no reason to extinguish the fire. As one of the material ingredients of the offence of murder is lacking in this case, the appellant’s conviction for offence under Section 302 of Indian Penal Code is liable to be set aside. The appellant, however, could be attributed with the knowledge that, by such act, his wife may die. She, in fact, unfortunately, died. The death took place eight days after the incident. The cause is said to be “*septicemia due to burns*”. Since the act of the appellant falls within the definition of the offence of culpable homicide not amounting to murder, punishable under Section 304 Part II of Indian Penal Code, we propose to deal him with in terms of the following order:-

- (i) The appeal is partly allowed;
- (ii) The conviction of the appellant for the offence punishable under Section 302 of Indian Penal Code and the consequential sentence to suffer imprisonment for life and to pay fine of Rs.5,000/-, with default stipulation, imposed vide order dated 24.10.2016, passed by learned Addl. Sessions Judge, Ambajogai, Dist. Beed, in Sessions Case No.83 of 2014, is hereby set aside.

Instead, the appellant hereby stands convicted for the offence punishable under Section 304 Part II of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for ten years and pay fine of Rs.500/-, in default, to undergo S.I. for two months.

- (iii) It appears that the appellant is behind the bars for about 10 years and 6 months. If he has served out the sentenced imposed vide this order, he be released forthwith, if not required in any other case.

- (iv) Learned Registrar (Judicial) of this Court shall ensure that this order is executed immediately.

[NEERAJ P. DHOTE, J.]

KBP

[R.G. AVACHAT, J.]