



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

CRIMINAL APPEAL NO. 367 OF 2005

Bhausahab S/o Ganpat Pardhi
Age: 36 years, Occu.: Labour
R/o. Jambut Khurd, Tq.Sangamner,
Dist.Ahmednagar.

....Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra
Through Sangamner Taluka
Police Station Sangamner,
District Sangamner.

.....Respondent

.....
Advocate for Appellant : Mr. Patel Shaikh Ashpak Taher
APP for Respondent : Mrs.Ashlesha S.Deshmukh

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 OCTOBER, 2024

PRONOUNCED ON : 14 OCTOBER, 2024

JUDGMENT :-

1. Judgment and order of conviction dated 11-05-2005 passed by Adhoc Additional District and Sessions Judge at Sangamner in Sessions Case No.28 of 2002 recording guilt of appellant for offence under Section 324 of the Indian Penal Code (IPC) is the subject matter of instant appeal.

2. In nutshell prosecution version is that, victim PW3 Naseem rendered labour work. That accused was a labour contractor, who engaged labours for loading and unloading of sand from the Truck. That on 28-05-2002, PW3 victim did not report to work as she had household work. That at around 02:30 p.m. appellant visited her house to question her. Thereafter, he poured kerosene from a lamp and ignited her. That she managed to reach the house of one Genu Pardhi. That said person informed her husband and she was taken to hospital at Sangamner. That said person informed her husband and she was taken to hospital at Sangamner where her statement was recorded and on its basis, crime was registered and finally investigated by PW12 Jadhav (PSI), who after arresting accused, carried out investigation and chargesheeted accused for commission of offence under Sections 307, 504 and 506 of the IPC.

After appreciating oral and documentary evidence, learned trial Judge accepted prosecution version and convicted appellant but only for offence under Section 324 of the IPC and sentenced him to suffer rigorous imprisonment for two years and to pay fine and he came to be acquitted from rest of the charges for which he was charged. Said judgment rendered in Sessions Case No.28 of 2002 dated 11-05-2005 is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant, in support of the prayers, took this Court through the evidence of PW3 victim, PW7 Sayyad, father of victim and PW8 Mariyambi, mother of victim and would submit that there is apparently false implication. That there is no direct evidence that accused incinerated victim. He pointed out that medical experts admitted that burns could be accidental. That there is no evidence showing visit of appellant to the house of victim and to connect him to the burns. He submitted that parents have hearsay information. That admittedly there were quarrels between PW3 victim and her husband PW4. According to him, at the first count, there is no evidence to show that accused had engaged victim for labour work. He further submitted that even otherwise burns suffered by victim are not on vital parts and even learned trial Court has recorded such findings. He would strenuously submitted that here infact appellant himself suffered burns. That there is no denial of this by prosecution. Lastly, he submitted that appellant has already undergone 13 months incarceration and having been sentenced for two years, he be set at liberty by awarding sentence for the period already undergone.

On behalf of State :

4. Countering the above submissions, learned APP submitted that PW3 victim's statement is inspiring confidence. That merely for not reporting to work, appellant poured kerosene and incinerated her. That her dying declarations were recorded wherein she had reported role of appellant. That medical experts, who examined victim, treated her and certified burns, are also examined. Therefore, considering the nature of burns, learned trial Court has brought down the offence from Section 307 of the IPC to Section 324 of the IPC and so learned APP also strongly opposes reduction of sentence or letting him at liberty for the period already undergone, as according to him, appellant has inflicted burns deliberately by pouring kerosene.

EVIDENCE BEFORE TRIAL COURT

5. In support of its case, prosecution has examined as many as twelve witnesses. Their status and role is as under :

PW1 Dhondiba Dada Shermale is pancha to panchanama of arrest of accused and about burns suffered by accused.

PW2 Bharat Ananda Raut is pancha to seizure of clothes of victim
exh.35.

PW3 Naseem Shabir Pathan is victim, who deposed about accused visiting her house at 02:30 p.m., questioning her for not attending work and then pouring kerosene and setting her on fire.

PW4 Shabbir Yusuf Pathan, husband of victim stated that after learning about his wife, he went to house of Genu Pardhi where she told him that accused set her on fire and he shifted her to hospital of burns.

PW5 Nilesh Damodhar Sahane is the Doctor, who gave endorsement of fitness to give dying declarations to Tahsildar and Police, who approached for recording dying declaration.

PW6 Prakash Bhaskar Pande is Police Head Constable, who recorded dying declaration exh.39 and registered Crime bearing no.78 of 2002 against appellant.

PW7 Sayyad Abbas Patel and **PW8** Mariyambi Abbas Patel, parents of victim at exh.47 and exh.48 testified about hearing quarrel between accused and Naseem and about accused pouring kerosene and setting her on fire and she being taken to hospital where she was treated for 12 days.

PW9 Shashikant Baburao Dalvi is Naib Tahsildar / Executive

Magistrate, who recorded dying declaration of victim exh.53.

PW10 Dr.Punam Sandip Kacheriya is the Medical Officer, who examined victim on 28-05-2002 and certified about 20% burns suffered by her vide exh.57.

PW11 Sandip Sitaram Kacheriya is another Medical Officer, who examined accused, who reportedly suffered burns to fingers, cheek and ear.

PW12 Shirish Trimbak Jadhav is the Investigating Officer, who carried out investigation and chargesheeted accused.

ANALYSIS

6. Though as many as twelve witnesses are examined by prosecution, crucial evidence is of PW3 victim herself coupled with testimonies of her parents PW7 father and PW8 mother.

PW6 Police Head Constable and PW9 Naib Tahsildar, who recorded dying declarations exh.39 and exh.53 respectively and PW5 Doctor, who certified the fitness are also examined, but as victim survived, dying declarations get eclipsed.

7. **PW3** Naseem, victim in her evidence at exh.38 stated that she

had three children. That she knew accused, who was having a gang of labours for loading sand in the Truck and she used to go for said work since 8 days prior to the incident. That on the day of incident, because of household work, she could not go inspite of message being sent by accused. According to her, at 02:30 p.m. accused visited her house and asked her why she did not attend the work to which she replied. That he said to her not to attend the work in future and he would not allow her to work. That he demanded water for drinking, but she asked him to take on his own that she had no time. That time she deposed that there was a lamp and a match box on wall of her house. He poured kerosene from the lamp on her person and set her on fire. That she embressed him. That accused pushed and ran away. That she managed to reach house of Rashid Pathan and then came to house of Genu Pardhi. That Genu reported to her husband. That her parents came, she narrated them the incident and she was taken to the hospital of Dr.Ithape at Sangamner.

8. That next day Police and Tahsildar have recorded her statement. In paragraph 4, she deposed that because of fire, she sustained burns on chest, neck and stomach and was admitted in the hospital for 12 days. That her parents handed over clothes on her

person at the time of incident to the Police.

9. Victim is subjected to extensive **cross-examination** initially on the point of number of labours and she answered that she was knowing accused since 8 days prior to incident and previous to it, she did not knew him.

Omission is brought about after receiving message, victim went to Mula River. She denied stating Police that when she went to the river, accused questioned her for coming late and asked her not to work from that day.

In paragraph 6, there is cross-examination on the point of her husband previously working with Bashir and accused not being given land for cultivation. She answered that they were not having any dispute with accused prior to the incident. She denied attempting to commit suicide by consuming poison. Rest all suggestions are denied including suggestion that false case is filed.

In paragraph 7, she answered that after drinking water, accused immediately poured kerosene on her person and while she was running behind accused, she was in burning condition. That her cloths and hair got burned.

10. Her husband **PW4** Shabbir at exh.40 testified that while he was attending marriage alongwith his children at around 01:15 p.m. he learnt about the incident and went to house of Genu, where his wife told about she being set on fire by accused and she being taken to the hospital.

While under **cross-examination**, he denied that accused was cultivating their land. He deposed that Police did not record his statement and that he did not state anything except that he was at marriage. Rest all suggestions are denied.

11. **PW7** Sayyad, father of victim and **PW8** Mariyambi, mother of victim, both deposed that on 28-05-2002, they learnt about quarrel between their daughter and appellant and appellant setting her on fire and their daughter being admitted in hospital and her statement being recorded by Police Officer and Tahsildar.

PW8 deposed that she handed over cloths of her daughter to Police. Apparently both parents have hearsay information.

12. Therefore, here it is emerging that while **PW3** victim was alone in the house, as she did not report for work, accused visited her house and she claims that he, after questioning her for not reporting for work, set her ablaze after pouring kerosene from a lamp.

PW6 Pande (PHC), after recording dying declaration and registering crime, claims to have visited spot and has drawn panchanama (exh.46) of the house of victim and thereby seizing a match box and a lamp of glass bottle.

PW11 Sandip Sitaram Kacheriya, a Medical Officer, in his evidence at exh.60, deposed that on 01-06-2002 appellant was brought to Cottage Hospital, Sangamner by Police and he noticed following injuries :

- (1) Burn mark with vesicle formation at left hand, 3rd and 4th finger, base at dorsum.
- (2) Heal burn mark over left cheek 3x3 cm.
- (3) Inflicted burn mark below left ear lobe, line of redness present.
- (4) Inflicted burn mark at left ear pinna line of redness present.

This Doctor has placed on record original case papers exh.62.

13. Learned APP specifically pointed out that, after the occurrence, accused fled and was arrested after 2-3 days. PW1 Dhondiba, independent pancha, deposed about noticing burns on the person of accused himself. PW11 Dr.Sandip, whose testimony is dealt above also deposed about examining and noting burn injuries. Victim in examination-in-chief itself stated that after being set to fire, she

embressed accused. Therefore, the sequence of events show that both accused and victim have suffered burns. There is no distinct stand of accused on the point of burn suffered by him. He has not offered satisfactory explanation except in answering in statement under Section 313 of the Code of Criminal Procedure that there were quarrels between husband and wife and episode of burn was outcome of the same. However, victim has specifically defined the role of appellant. He has not denied that he did not hire her for labour work. There is no material from his side to probabalize his defence that husband was responsible for the burns on victim's person. Infact husband has shifted victim to the hospital. Therefore, defence is apparently false. PW3 Victim's evidence has not been rendered doubtful inspite of extensive cross-examination.

14. Though there was charge for offence under Section 307 of the IPC, learned trial Judge has held appellant guilty for offence under Section 324 of the IPC i.e. for causing simple hurt.

15. In the alternative, learned Counsel for the appellant prayed for letting of accused appellant for sentence already undergone. He pointed out that almost for a period fo 13 months, appellant was behind bars. Therefore, out of two years, merely 7 months have

remained and hence, the above prayers are pressed into service.

CONCLUSION

16. It seems that learned trial Judge has inflicted sentence of two years and to pay fine.

The episode seems to have taken place in 2002. Apparently guilt is recorded in 2005 and now almost after two decades i.e. in 2024, appeal is heard by this Court. Hurt is reported to be simple. He has already undergone rigorous imprisonment for 13 months. Considering the background of incidence and when victim has admitted in cross-examination that there was no previous enmity, sentence already suffered would be appropriate and would serve the purpose of justice. Accordingly, I proceed to pass following order :

ORDER

I. The **conviction** awarded to the appellant Bhausahab S/o Ganpat Pardhi, by the Adhoc Additional District and Sessions Judge, Sangamner in Sessions Case No.28 of 2002 for offence punishable under Section 324 of the Indian Penal Code on 11-05-2005 **is hereby maintained and kept intact**. However, the sentence awarded to the appellant to suffer rigorous imprisonment for two years is hereby modified as under :

“The appellant - Bhausahab S/o Ganpat Pardhi is sentenced to suffer rigorous imprisonment for the period already undergone by him”

- II. There is no change in the fine amount.
- III. Bail Bond of appellant stands cancelled.
- IV. It is clarified that rest of the operative order passed by the trial Court is maintained.
- V. The appeal is disposed of in the above terms.

**(ABHAY S. WAGHWASE)
JUDGE**