

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 546 OF 2018

Sunny Arjun Sonavane,
Age : 30 years; Occ: Nil,
Residing at Room No. 1454,
Near Ekta Vidyalay, Bhimnagar,
Rabale Navi Mumbai (In Taloja Jail)

... Appellant
(Original Accused)

Versus

The State of Maharashtra,
(Through Rabale MIDC Police Station),
Navi Mumbai, Dist. Thane

... Respondent

Ms. Ashwini Jadhav, Appointed Advocate for the Appellant

Mr. K. V. Saste, Addl. P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.**
TUESDAY, 23rd APRIL 2024

ORAL JUDGMENT (Per Revati Mohite Dere, J.) :

1 By this appeal, the appellant has impugned the judgment and order dated 2nd January 2018 passed by the learned Additional Sessions Judge, Thane, in Sessions Case No.388/2013, by which the learned Judge was pleased to convict the appellant

for the offence punishable under Section 302 of the Indian Penal Code (`IPC') and sentenced him to suffer imprisonment for life for the said offence and to pay a fine of Rs. 10,000/-, in default, to suffer RI for 3 months. The learned Judge directed that on payment of fine, the same to be paid to the nearest relative of the victim as compensation under Section 357(i) of the Code of Criminal Procedure.

2 According to the prosecution, an incident took place on 4th May 2013 at around 9:00/9:30 pm during the Haldi programme of one Naresh Akhade, which was held in front of Ekta Vidyalaya. In the said incident, a quarrel took place between the appellant and Rakesh @ Rocky (PW4), in which Ganesh (deceased) intervened and stopped the quarrel. The said quarrel was settled due to his intervention, pursuant to which, both i.e. the appellant and Rakesh @ Rocky, left the spot. It is further the prosecution case, that thereafter, at around 11:30 pm, the appellant came with a plastic bucket containing petrol,

questioned Ganesh as to why he had intervened in the quarrel and thereafter poured petrol on his person and lit a matchstick and threw it on Ganesh. Ganesh was taken to a hospital at Airoli and thereafter, to the Municipal Hospital at Vashi and again thereafter to the Burns Hospital at Airoli. Ganesh succumbed to his injuries on 7th May 2013 at about 6:00 / 6:30 pm. The cause of death is stated to be 'septicemic shock due to burns'. FIR was lodged in the said case by PW1-Tilak Kotal (brother of the deceased-Ganesh). The said FIR is exhibited, as Exhibit 13.

3 During the course of investigation, the police recorded the statements of witnesses and prepared the spot panchnama and carried out other investigation. After investigation, the police filed charge-sheet in the said case in the Court of the learned Judicial Magistrate, First Class, Vashi.

4 Since the appellant was charge-sheeted under Section 302 of the IPC and Section 302 being triable by the Court of

Sessions, the case was committed to the Court of Sessions for trial.

5 Charge was framed as against the appellant, to which, the appellant pleaded not guilty and claimed to be tried. The defence of the appellant was that of total denial and false implication.

6 The prosecution, in support of its case, examined as many as 11 witnesses i.e. PW1-Tilak Kotal (first informant and an eye witness to the incident - brother of the deceased); PW2-Shivram Ganpise (panch to the recovery panchnama i.e. recovery of bucket); PW3-Vijay Singh (panch to the spot panchnama); PW4-Rakesh @ Rocky Ekkalki, to whom an oral dying declaration was made; PW5-Vijay Kalal (an eye-witness to the incident and the person who took Ganesh in his car to the hospital); PW6-Chatrasing Kotal (an eye-witness to the incident); PW7-Narbhadur Dhansingh (also an eye-witness to the

incident); PW8-Dr. Bhushan Jain, the doctor who conducted the post mortem on the deceased; PW9-Milind Sejule, Police Constable who visited the spot at 9:40 pm, on receiving information of the quarrel; PW10-Ramkisan Chavan, Special Executive Magistrate, who recorded the dying declaration of the deceased (Exhibit 60) on 6th May 2013 and PW11-Rajendra Pawar, the Investigating Officer. Thereafter, the statement of the appellant was recorded under Section 313 Cr.P.C. The appellant did not examine any witness in his defence.

7 After hearing learned counsel for the respective parties, the learned Judge convicted and sentenced the appellant as stated in para 1 herein-above.

8 Learned counsel for the appellant submitted that the evidence of the eye-witnesses does not inspire confidence and as such, the learned Judge ought not to have relied on their evidence. She submitted that it was doubtful from the evidence,

that has come on record, as to whether PW1-Tilak Kotal was present at the spot, when the incident took place i.e. pouring of petrol on Ganesh (deceased). She further submitted that even the dying declaration recorded by PW10-Ramkisan Chavan, Special Executive Magistrate, cannot be relied upon, since the doctor who declared Ganesh to be medically fit, was not examined by the prosecution. She further submitted that the evidence of witnesses would reveal that there was no motive for the appellant to cause the death of Ganesh inasmuch as, the quarrel was not of such a nature, that the appellant would want to kill Ganesh. Thus, according to the learned counsel for the appellant, the impugned judgment of conviction and sentence cannot be sustained and as such, the appellant be acquitted of the offence for which he is convicted.

9 Mr. Saste, learned Additional Public Prosecutor supported the judgment and order of conviction and sentence and submitted that no interference is warranted.

10 We have perused the evidence with the assistance of the learned counsel for the appellant and the learned Addl. PP for the State.

11 At the outset, we may note that the death of Ganesh has not been seriously disputed i.e. that the deceased died due to `septicemic shock due to burns'. Infact, PW8-Dr. Bhushan Jain, who conducted the post mortem has opined the probable cause of death as `due to septicemic shock due to burns'. There is no serious challenge to the same. Thus, the prosecution has proved that Ganesh died due to burn injuries. The question that arises for consideration is, whether the appellant is the author of the same.

12 In this connection, in order to prove that the appellant was responsible for the death of Ganesh, the prosecution examined PW1-Tilak Kotal, PW4-Rakesh @ Rocky

Ekkalki, PW5-Vijay Kalal; PW6-Chatrasing Kotal and PW7-Narbhadur Dhansingh.

13 A perusal of the evidence of PW1-Tilak Kotal shows that Ganesh (deceased) was his elder brother and the incident had taken place on 4th May 2013. PW1 has deposed that on 4th May 2013, there was a Haldi ceremony in the house of Pintya Akhade and that he and his brother-Ganesh were invited for the same; that he and his brother went for the said ceremony at 9:00 pm, in front of Ekta Vidyalaya, Bhim Nagar; that around 25 to 30 persons were present for the ceremony; that he, his brother-Ganesh, his friends and one Sunny Sonawane (appellant) were dancing during the said ceremony; that PW4-Rakesh @ Rocky dashed against the appellant and that before he could quarrel, his brother-Ganesh (deceased) intervened; that at about 11:30 pm, some of the invitees were sitting on an Ota of the house of Rupesh Patil and the others were dancing and some were having their dinner; that his brother was also having dinner and that he

was at a distance of about 12 feet away from Ganesh. PW1-Tilak Kotal has further deposed that the appellant came near his brother-Ganesh alongwith a plastic bucket containing petrol and asked him why he had intervened in the quarrel and poured petrol on his person and set him ablaze with a matchstick; and that after setting Ganesh ablaze, the appellant fled from the spot. PW1 has further deposed that he and others extinguished the fire with water and soil, after which they shifted Ganesh to the Burns Hospital at Airoli in a jeep brought by PW5-Vijay Kalal. PW1 has stated that as there was no room available in the said hospital for treatment, his brother was shifted to the Municipal Hospital at Vashi. According to PW1, the police were informed, pursuant to which, they arrived and recorded his complaint/FIR (Exhibit 13). According to PW1, on the next day, his brother was again shifted to the Burns Hospital at Airoli for treatment, however, his brother succumbed to the injuries on 7th May 2013 at about 6:00 / 6:30 pm.

In the cross-examination, PW1 has stated that there was no rivalry between himself and Ganesh (deceased) on the one end and Sunny Sonawane (appellant), on the other, in the past. It is pertinent to note that nothing substantial which would discredit the testimony of PW1 has come on record. Infact, there is no challenge to what is deposed to by PW1 i.e. of appellant coming near Ganesh with a plastic bucket containing petrol and that the appellant questioning him as to why he had intervened in the quarrel and pouring petrol on Ganesh and setting him ablaze. The said evidence has gone unchallenged. It is also pertinent to note that the FIR was lodged immediately, soon after the incident and as such, there was no room for fabrication or to falsely implicate the appellant.

14 Apart from the evidence of PW1-Tilak Kotal, PW5-Vijay Kalal has also deposed to with respect to the incident that took place at the Haldi programme on 4th May 2023, in front of Ekta Vidyalaya; and the quarrel that took place between PW4-

Rocky and the appellant. PW5-Vijay Kalal has stated that after the said quarrel, he saw Ganesh (deceased) running towards the center of the school in a burning condition. He has further stated that he heard Ganesh saying that Sunny (appellant) had set him on fire. According to PW 5, he and other persons extinguished the fire and since the ambulance did not come, they shifted Ganesh in a vehicle to the Burns Hospital, Airoli where he was given initial first aid and thereafter, Ganesh was shifted to the Municipal Hospital.

A perusal of the cross-examination of this witness would show that there was no challenge to what was heard i.e. Ganesh saying that Sunny (appellant) has set him on fire.

15 The said evidence of PW5-Vijay Kalal is consistent with the evidence of PW1-Tilak Kotal, with respect to when the incident took place; the quarrel that took place between the appellant and Rakesh @ Rocky (PW4) and the complicity of the appellant in setting Ganesh ablaze.

16 The evidence of PW6-Chatrasing Kotal and PW7-Narbhahadur Dansingh, again, both eye-witnesses, is also consistent with the evidence of PW 5-Vijay Kalal and PW1-Tilak Kotal. Both these witnesses i.e. PW6 and PW7 have deposed with respect to the incident that took place at the Haldi ceremony in front of Ekta Vidyalaya and the quarrel between Rocky (PW4) and the appellant, pursuant to which, deceased-Ganesh intervened between them, gave them an understanding and asked them to leave the spot. The evidence of PW6 and PW7 is also consistent with respect to what happened thereafter i.e. of appellant pouring petrol on Ganesh and setting him ablaze. Both these witnesses have stated that they saw the appellant with a bucket in his hand and pouring the contents therein on Ganesh. They have stated that when they went close to Ganesh, they realized that what was poured on Ganesh, was petrol. Both the witnesses have deposed that they saw the appellant setting Ganesh ablaze with a matchstick, after which the appellant fled from the spot. Both the witnesses have stated that thereafter

Ganesh was taken to the hospital in PW5's vehicle since the ambulance did not arrive and that subsequently on 7th May 2013, Ganesh succumbed to his injuries.

There is nothing in the cross-examination of either of these witnesses, to disbelieve what has been deposed to by them in their examination-in-chief. The evidence of all the aforesaid witnesses is consistent, inspires confidence and clearly points to the complicity of the appellant in the crime.

17 Infact, PW 4-Rakesh @ Rocky has also deposed with respect to the incident that took place in the Haldi ceremony at 9:30 pm. He has stated that during the dance at the Haldi ceremony, he dashed into the appellant, pursuant to which, the appellant held his collar and scolded him. PW 4-Rakesh @ Rocky has further stated that due to the intervention of others, including Ganesh (deceased), further quarrel did not take place and that he and the appellant left the spot. PW4 has further

deposed that at around 11:30 pm, when he again went near Ekta Vidyalaya, he noticed that a person was burning and that others were trying to extinguish the fire with the help of water, soil and gunny bags. He has stated that after the fire was extinguished, he noted that the person was Ganesh. PW4 has stated that on query with Ganesh, he disclosed that the appellant had poured petrol on his person and set him ablaze. The said witness has also deposed with respect to Ganesh being taken in PW5's vehicle to a hospital.

18 Thus, from the aforesaid evidence, it is clear that each of the witness has corroborated the two incidents that took place on 4th May 2013 i.e. first incident at 9:30 pm of quarrel and the second at 11:30 pm of the appellant setting Ganesh ablaze after pouring petrol on him. The evidence of all these witnesses inspires confidence and there is nothing in their testimony to disbelieve their presence and what has been disclosed by them. Thus, it is a case of direct evidence, which is credible. Thus, in

the facts, it is not necessary to consider the dying declaration of Ganesh made to PW10-Ramkisan Chavan, the Special Executive Magistrate, although the same supports the the prosecution case, since, the dying declaration was recorded on 6th May 2013; keeping in mind the percentage of burn injuries sustained by the deceased; and since the doctor who examined Ganesh, was not examined, with respect to the mental condition of Ganesh. Thus, even if the said dying declaration is excluded, there is ample evidence on record i.e. direct evidence which unerringly points to the complicity of the appellant in the crime.

19 Considering the aforesaid, the impugned judgment and order of conviction stands confirmed. Appeal is dismissed and disposed of accordingly.

20 We would like to record a word of appreciation for the able assistance provided and the efforts taken by Ms. Ashwini

Jadhav, as an appointed advocate, in conducting the appeal. High Court Legal Services Committee to award fees of the learned Appointed Advocate, as per Rules.

MANJUSHA DESHPANDE, J. **REVATI MOHITE DERE, J.**