

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 434 OF 2021****WITH****INTERIM APPLICATION NO. 2646 OF 2025****WITH****INTERIM APPLICATION NO. 2758 OF 2025****WITH****INTERIM APPLICATION NO.3367 OF 2025**

Sandeepkumar Pandharilal Yadav,

Age 28 years, Occupation – Nil,

Residing at Katkaripada,

Bhaudhara, Behind Ankarment School,

Chandansar Road, Virar (East),

District Palghar.

(At present in Amravati Central Prison)

.....Appellant/Applicant

V/s.

The State Of Maharashtra

(Through Virar Police Station)

.....Respondents

Ms. Payoshi Roy a/w Mr. Ulkesh Gangurde a/w Ms. Palak Dubey for the Appellant/Applicant.

Mr. Vinod Chate APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 19th SEPTEMBER, 2025.

JUDGMENT (Per A.S. Gadkari, J.):

1) Appellant is convicted under Section 302 of the Indian Penal Code (for short, “IPC”) for commission of murder of his wife Suman Yadav and is sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default of payment of fine to further suffer imprisonment for one month, by the learned Additional Sessions Judge-1, Vasai, in Sessions Case No.116 of 2014 by its Judgment and Order dated 28th August, 2019. Appellant has impugned the said Judgment and Order by this Appeal under Section 374 of Cr.PC..

2) Heard Ms. Roy, learned Advocate for the Appellant and Mr. Chate, learned APP for the Respondent-State. Perused entire record.

3) The facts giving rise to file this Appeal can briefly be stated as under:-

3.1) The name of deceased is Suman Yadav, the wife of Appellant. The date and time of incident is 18th May, 2014 at about 3.00 p.m. The place of incident is the house of Appellant.

3.2) It is the prosecution case that, on 18th May, 2014 at about 3.00 p.m. Mr. Rahul Jadhav (PW No.4) was chitchatting with his friends near Anganwadi School. One woman came running near them, shouting for help. PW No.4 noticed that, her clothes and body was burnt and emitting smoke. PW No.4 and his friends covered the body of the said woman with a bed-sheet. Mrs. Usha Shelar (PW No.1), Mr. Govind Shelar (PW No.2)

and other persons had followed the said woman. One lady by name Mrs. Kamal Sule, inquired with the woman as to what happened to her. The said woman told them that, she had quarrel with her husband (Appellant) and her husband poured diesel on her person and set her on fire by igniting a match-stick. That, she pushed her husband and came out of her house.

3.3) An Ambulance was called by the persons present there. PW Nos.2 and 3 took the said woman to hospital by the said Ambulance. The name of the said woman was revealed as Suman Yadav. She succumbed to her injuries on 22nd May, 2014 at about 10.14 pm., while undergoing treatment in the Shatabdi Hospital, Mumbai. The inquest punchanama (Exh-31) was conducted by PSI Shri. Sudhir Chavan (PW No.3). He forwarded the dead body of Suman Yadav for conducting postmortem along with his letter (Exh-32).

3.4) Dr. Lochan V. Patil, (PW No.5) conducted autopsy on the dead body of Suman Yadav on 24th May, 2024 between 2.00 p.m. to 3.00 p.m. He noticed superficial to deep burn external injuries on various parts of the body of the said woman. The total burn injuries received by the said woman were 91%. PW No.5 opined that, all the said injuries were antemortem. He gave his opinion to the cause of death as “death due to septicemia due to extensive burns (90 to 95%), unnatural.” He accordingly issued provisional postmortem report (Exh-43) on the same day. PW No. 5

has also issued postmortem report (Exh-44).

3.5) After receipt of necessary reports from the Forensic Laboratory and completion of investigation, police filed charge-sheet in the Court of Judicial Magistrate, First Class, Vasai on 8th December, 2014.

3.6) As the offence punishable under Section 302 of the IPC was exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the said case to the Court of Sessions as contemplated under Section 209 of Cr.PC.

3.7) After committal, the learned Judge of the trial Court framed charge below Exh-5 for the offence punishable under Section 302 of the IPC. The contents of the said charge were read over and explained to the Appellant in vernacular language to which he denied and claimed to be tried.

3.8) The prosecution in support of its case, examined in all 7 witnesses namely, Mrs. Usha Shelar, (PW No.1); Mr. Govind Shelar, (PW No.2); PSI Mr. Sudhir Chavan (PW No.3); Mr. Rahul Jadhav (PW No.4); Dr. Lochan V. Patil (PW No.5), an Autopsy Surgeon; Smt. Vaishali R. Khairmode, (PW No.6), cousin of deceased and API Mr. Arvind Kamble (PW No.7), the Investigating Officer.

3.9) The learned Judge of the trial Court after recording the evidence and hearing the learned Advocates for the respective parties, has

convicted and sentenced the Appellant by its impugned Judgment and Order dated 28th August, 2019.

4) At the outset, it be noted here that, Ms. Roy, learned Advocate appearing for the Appellant has fairly admitted the fact of death of Suman Yadav as homicidal death. She has also fairly admitted all the exhibits on record. From the arguments advanced by Ms. Roy, the question which falls for our consideration is, as to whether under the law the death of Suman Yadav was culpable homicide amounting to murder or not amounting to murder.

4.1) It is not in dispute that, Suman Yadav was admitted in Shatabdi Hospital on 18th May, 2014 after 3.00 p.m. and she passed away on 22nd May, 2014 after 10.40 p.m. while undergoing treatment. It is also an admitted fact on record that, in the spot panchanama (Exh-22), the presence of a Blue coloured plastic can filled with diesel, having approximately 250 ml. of diesel therein was found at the scene of offence. The burnt clothes i.e. the pieces of saree of Suman Yadav were also found at the scene of offence.

4.2) As noted earlier, learned Advocate for the Appellant has not disputed any of the exhibits and has requested this Court to consider the legal aspect of culpable homicide amounting to murder or not amounting to murder, of Suman Yadav. According to the learned Advocate for the

Appellant, the evidence on record if accepted in its proper perspective, would lead to the conclusion that, the act alleged against the Appellant would fall within the purview of Exception 4 of Section 300 and therefore the act/offence committed by him attracts Section 304 (part-II) of the IPC.

4.3) Ms. Roy submitted that, there are improvements in the testimonies of the witnesses namely PW Nos.1, 2, 3 and 4 in the oral dying declarations given by the deceased and therefore taking into consideration the same, it can safely be inferred that, the Appellant had no intention to commit murder of Suman Yadav. She further submitted that, the trial Court has not considered the evidence on record in its proper perspective and has committed an error in convicting the Appellant under Section 302 of the IPC.

5) Mr. Chate, learned APP appearing for the Respondent-State vehemently opposed the Appeal. He took us through the entire evidence of all the witnesses. He submitted that, the basic fact that the Appellant poured diesel on the person of the deceased and set her on fire is consistent in all the dying declarations. That, the act of the Appellant was pre-mediated and therefore the Appellant is not entitled for the benefit of Exception 4 and/or Exception 1 of Section 300 of the IPC. He submitted that, the evidence of witnesses indicates that, there used to be frequent quarrels between the Appellant and Suman Yadav for the reason that, the

Appellant was having extra-marital affair with one neighbouring lady namely Smt. Sushma Saroj. Appellant was enraged due to regular fights with his wife, on the count of the allegations made by her of his having affair with Smt. Sushma Saroj. On the fateful day, after a quarrel, the Appellant poured diesel on the person of the deceased and set her on fire.

5.1) Mr. Chate submitted that, the deceased died due to 90 to 95 percent of burn injuries, which resulted into septicemia. He submitted that, there are no contradictions or omissions in the evidence of the prosecution witnesses. That, the evidence on record clearly indicates that, the Appellant is guilty of an offence punishable under Section 302 of the IPC and none else. He therefore prayed that, the present Appeal may be dismissed.

6) Perusal of evidence on record discloses that, the prosecution case is mainly, perhaps solely based on four dying declarations given by the deceased to PW-4, PW-2, PW-1 and PW-6 respectively. The facts stated in paragraph Nos. 3.1 to 3.4 above are deciphered from the testimonies of PW Nos.1, 2, 4 and 5 and other documents on record and those are admitted facts.

6.1) Mr. Rahul Jadhav (PW No.4) is the first person to whom the deceased gave dying declaration in presence of other two witnesses namely Mrs. Usha Shelar, (PW-1) and Mr. Govid Shelar (PW-2).

6.2) PW No.4 in his testimony has stated that, on 18th May, 2014 at

about 3.00 p.m. when he was chitchatting with his friends near Anganwadi school, he saw one woman came running near the School. He noticed that, her body and clothes were burnt and it was emitting smoke. The persons present there covered the body of said woman with a bed-sheet. PW No.1 and PW No.2 inquired with the said lady as to what had happened. The said woman (deceased) told them that, she had a quarrel with her husband. Her husband, Appellant poured diesel on her person and set her on fire by igniting the match stick. She pushed her husband and came out of the house. PW Nos. 1, 2, 4 and other persons present there took her to a hospital by an ambulance. The evidence of PW No.1 and PW 2 duly corroborates the version of PW No.4 in all aspects.

7) A minute perusal of record indicates that, Mr. Kamble, the Investigating Officer (PW No. 7) in his testimony has admitted the fact that, he had issued instructions in writing to Police Naik Mr. Tambekar to record dying declaration of Suman Yadav (deceased). That, he was not aware as to whether the said Police Naik was dead or alive, on the date of recording of his evidence. He has proved the covering letter issued to Police Naik Mr. Tambekar, allegedly accompanying the statement of Suman Yadav recorded by Mr. Tambekar.

We have perused the original record. The alleged statement recorded by Mr. Tambekar of Suman Yadav is admittedly not on record.

Only the covering letter (Exhibit 52) allegedly signed by Police Naik Mr. Tambekar, is on record.

7.1) PW. No.7 has admitted the fact that, he did not record the statement of concerned Doctor, who firstly attended and examined the deceased in hospital. That, he has also not recorded the statements of neighbours of Suman Yadav and the daughters of the Appellant. He has admitted the fact that, the daughters of Appellant were present at home at the time of incident, however he did not record the statements of daughters of the Appellant.

8) Smt. Vaishali Khairmode, (PW No.6) is the most important witness for both i.e. the prosecution as well as the Appellant. The said witness is the cousin sister of the deceased.

8.1) PW. No.6 has deposed that, Suman Yadav was married with the Appellant about 8 years prior to the date of incident. Deceased had been to her native place six months prior thereto. She came back a month and half prior to the date of incident and started residing at Katkaripada, Virar. PW. No.6 had been to the house of Suman Yadav and had resided there for four days. At that time, deceased told PW No.6 that, the Appellant was not providing proper attention to her. That, the Appellant was having an affair with a neighbouring woman namely, Sushma Saroj. That, the Appellant used to beat deceased. Appellant also suggested deceased not to reside at

Virar. Appellant was not willing to see the face of deceased. PW No.6 consoled deceased and told her that, she was having three daughters and to take care of them, she should reside with her husband.

That, on 18th May, 2014, at about 1.00 p.m. she had received a telephonic call from the Appellant. He told her that, he has come to Mumbai and was going to his house at Virar. PW No.6 told the Appellant that, his younger daughter was serious and he should immediately go to home. Appellant told her that, he may or may not go to home. PW No.6 told the Appellant that, he should think of his daughter and to go to home. On 18th May, 2014, PW No.6 received a phone call from her maternal aunt Meeradevi informing her that, she was coming from Uttar Pradesh. Between 3.30 to 4.00 p.m., PW. No.6 received a phone call from the police informing her that the Appellant had poured diesel on the person of deceased and set her on fire. Police also informed PW No.6 that, Suman was admitted in Shatabdi Hospital. On the same day, at about 3.30 p.m., she received Meeradevi at Kurla Terminus. Meeradevi was accompanied with Mr. Sushilkumar i.e. brother of Suman. PW. No.6 informed him about the message received from police. All the three thereafter went to the said hospital within one and half hours. PW No.6 saw that, Suman was admitted in the hospital and treatment was being provided to her. Suman was in a condition to speak. Suman had sustained burned injuries all over the body. PW. No.6 inquired with Suman as to what happened. Suman told

PW No.6 that, she had lunch about 1.00 p.m. and was taking rest. Appellant came home at about 3.00 p.m. and inquired with her about the photographs of Sushama Saroj. Deceased told him that, she did not possess photographs. Deceased told the Appellant that she did not notice any photographs in a bag. Appellant thereafter set on fire the bag of clothes. Deceased extinguished the fire of bag by pouring water on it. Appellant told the deceased not to reside there. Appellant also suggested the deceased to go away. The deceased told Appellant that she was earning and therefore why she should leave home. Deceased told the Appellant that, he was having affair with Sushma Saroj and he should go with Sushma. Immediately after hearing the name of Sushma Saroj, Appellant got annoyed and assaulted the deceased. Appellant thereafter poured diesel on the person of deceased and set her on fire by igniting a match stick.

8.2) From the elaborate cross-examination of this witness, nothing is brought on record to disbelieve the said oral dying declaration or to create any doubt about its genuineness. This dying declaration given by the deceased to PW No.6 is an elaborate dying declaration and each and every instance and/or fact which occurred between the husband and wife within the four walls of their house have been stated by the deceased to this witness.

9) It be noted here that, in the oral dying declarations given by Suman Yadav to PW Nos.1 and 2, there is no reference of quarrel between the husband and wife. However, Mr. Rahul Jadhav (PW 4) has stated about the quarrel between the deceased and Appellant.

10) In this background, learned Advocate for the Appellant contended that, there is a systematic improvement by the witnesses while stating the alleged oral dying declarations in their testimonies, given by Suman Yadav and heard by them and therefore the oral dying declarations stated by PW Nos.1, 2 and 4 may not be taken into consideration. Learned Advocate for the Appellant however admitted that, there is no reason to doubt about the genuineness of the oral dying declaration given by Suman Yadav and as stated by PW No.6.

10.1) The afore-noted oral dying declaration in paragraph No.8.1 above is extracted from the testimony of PW No.6.

11) If we carefully read the oral dying declaration given by Suman to PW No.6, who was her cousin sister, it clearly indicates that, initially the Appellant and the deceased had a quarrel over the photographs of Smt. Sushma Saroj. When the deceased informed the Appellant that, she did not have those photographs, he got annoyed and set the bag containing clothes on fire. The deceased extinguished the fire by pouring water on it. Thereafter again a quarrel took place between them and when the deceased

told the Appellant to go with Smt. Sushma Saroj, he got annoyed and enraged. It appears that, he not only got annoyed but infuriated and lost his self control due to the said provocation given by the said deceased.

12) As noted earlier, the deceased alleged him of having an affair with Sushma Saroj and therefore the Appellant got enraged and in the said heat of passion, he poured the diesel on the deceased and set her on fire by igniting a match stick. The can of diesel was available at the scene of offence itself and the Appellant did not bring it from outside. The events took place in a quick succession and the Appellant did not get an opportunity to rethink over his act or to cool down from committing the successive acts.

13) The Hon'ble Supreme Court in its various decisions had occasion to consider the distinction between the implication of Exception 1 and Exception 4 of Section 300 of the IPC.

13.1) For bringing in operation of Exception 4 to Section 300 of IPC, it has to be established that the act was committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

13.2) The Fourth Exception to Section 300 of IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution (*sic*

provocation) not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle i.e. for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in the case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be

invoked if death is caused: (a) without premeditation: (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code. It takes two to make a fight. Heat of passion requires that, there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

13.3) The aforementioned aspects have been highlighted by the Hon'ble Supreme Court in the cases of *Dhirajbhai Gorakhbhai Nayak v. State of Gujrat* (2003) 9 SCC 322 : 2003 SCC (Cri) 1809 : (2003) 5 Supreme 223, *Prakash Chand v. State of H.P.* (2004) 11 SCC 381 : 2004 SCC (Cri) Supp

87, Byvarapu Raju v. State of A.P and Anr. (2007) 11 SCC 218 : (2008) 1 SCC (Cri) 30 and Hawa Singh v. State of Haryana (2009) 3 SCC 411 : (2009) 2 SCC (Cri) 132.

14) After taking into consideration the evidence on record and particularly the oral dying declaration given by the deceased to PW No.6, i.e. her cousin sister, we are of the considered view that, it is difficult to impute the intention to kill, to the Appellant. The act of the Appellant would fall within the purview of Exception 1 of Section 300 of the IPC. After applying Exception 1 of Section 300 of the IPC to the present crime, we are of the opinion that, the Appellant is guilty for an offence under Section 304 (Part-II) and not an offence punishable under Section 302 of the IPC.

14.1) We accordingly set aside the conviction and sentence of Appellant under Section 302 of the IPC and hold him guilty under Section 304 (Part II) of the IPC. Therefore we convert the conviction of the Appellant from Section 302 to Section 304 Part-II of the Indian Penal Code.

15.1) Hence the following order:-

- a) The conviction and sentence of Appellant under Section 302 of the IPC imposed by the trial Court is set aside and the Appellant is held guilty for the offence punishable under Section 304 (Part-II) of the IPC.

- b) Appellant is sentenced to suffer rigorous imprisonment for 10 years without remission and to pay a fine of Rs.10,000/-, in default of payment of fine, to further suffer simple imprisonment for six months.
- c) Appeal is partly allowed in the aforesaid terms.
- d) In view of disposal of Appeal, Interim Application Nos. 2646 of 2025, 2758 of 2025 and 3367 of 2025 do not survive and are accordingly disposed off.

(RANJITSINHA RAJA BHONSALE J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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