

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 683 OF 2015
(Arising out of S.L.P. (Crl.) No.5741/2013)

SANTOSH s/o SHANKAR PAWAR ...Appellant

Versus

STATE OF MAHARASHTRA
..Respondent

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the judgment of the Nagpur Bench of the Bombay High Court passed in Criminal Appeal No.343 of 2006 dated 2.2.2012 affirming the conviction of the appellant under Section 302 IPC and the sentence of life imprisonment imposed on him by the 5th Addl. Sessions Judge, Akola.

3. Briefly stated, case of prosecution is that the marriage of the appellant Santosh Pawar and deceased Saraswatibai was solemnized on 17.6.2005. Due to poverty, the deceased alongwith the accused was residing adjacent to her parental house situated at Ramji Nagar Boragonmanju in a rented house of one Kankale, since one month prior to the incident. The appellant and the deceased were earning their livelihood by doing daily wages work. On 4.9.2005 at about 6.00 A.M., the deceased Saraswatibai went to answer nature's call and on her return, the deceased was questioned by the appellant as to why she returned late and the accused suspected her fidelity. In spite of deceased trying to convince the appellant, the appellant started assaulting her with fists and kicks. The appellant poured kerosene from a nearby lamp and set her ablaze. Saree of the deceased caught fire and the deceased ran towards the accused in an attempt to catch him, thereby burning the hands of the accused. When deceased started screaming for help, the appellant, in order to save her, poured water

on the deceased. In the meanwhile, the neighbours and the parents of the deceased gathered and the deceased was taken to the hospital. On the way to the hospital, the deceased narrated the incident to her mother Gangabai-PW2 and sister-in-law-Sindhu Sunil Ingole (PW3) and also to neighbour Raju Janrao Gavai -PW1. On receipt of information about the occurrence, Sub Inspector of Police-Digamber Ramrao Ravrale (PW9) went to the Government Hospital and he verified the condition of the deceased through the Medical Officer. PW9 then recorded the statement of deceased-Ex.24, on the basis of which FIR was registered for the offence under Section 307 IPC. On requisition, PW7-the then Executive Magistrate, went to the hospital and satisfied himself about the fit mental condition of the deceased through Dr. Vijaya Madhuarrao Pawanikar-PW6 and thereafter PW7 recorded the dying declaration of deceased Saraswatibai. Saraswatibai succumbed to burn injuries on 12.09.2005. On the death of Saraswatibai, the FIR was altered to Section 302 IPC. Dr. Satish Udaybhanu Padhan-PW8 conducted autopsy on

the body of deceased Saraswatibai and issued Ex.22-Post Mortem certificate. PW8 opined that the deceased died due to shock and septicaemia caused by 60% burn injuries. Inquest was held and on completion and further investigation, chargesheet was filed against the appellant under Section 302 IPC.

4. To bring home the guilt of the accused, in the trial court prosecution examined ten witnesses and exhibited documents and material objects. The appellant was questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances and the appellant denied all of them. The appellant pleaded that the fire was accidental and during his questioning under Section 313 Cr.P.C., he filed Ex.34-his statement of defence. Upon consideration of the evidence, trial court held that the guilt of the accused is proved beyond reasonable doubt and convicted the appellant under Section 302 IPC and sentenced him to undergo life imprisonment and imposed a fine of Rs.1000/- with default clause to suffer rigorous imprisonment for two months.

Aggrieved by the same, appellant preferred appeal before the High Court of Bombay and the said appeal was dismissed confirming the conviction and sentence. The present appeal assails the correctness of the judgment passed by the High Court.

5. In the SLP, notice was issued, only limited to the nature of offence.

6. Drawing our attention to the supplementary statement-Ex.34 of the accused, learned counsel for the appellant contended that on the date of incident, the appellant went out to answer nature's call and when he returned, he saw his wife coming out of the house ablaze and the appellant immediately rushed and tried to extinguish the fire due to which his hands also got burnt and the courts below did not properly appreciate the evidence and the statement of the accused. It was further submitted that in any event, there was no pre-meditation and there was no intention on the part of the appellant to kill his wife and the facts and circumstances show that the

appellant could not have intended to cause the death of deceased.

7. Learned counsel for the respondent reiterated findings of the courts below and submitted that the act of pouring kerosene and throwing the lighted matchstick on the deceased to set her ablaze would clearly prove that the accused intended to cause death and courts below rightly convicted the appellant under Section 302 IPC.

8. Insofar as the first contention that the appellant is not responsible for the death of deceased Saraswatibai, defence made an attempt to contend that the fire was accidental and that the appellant tried to extinguish the fire in order to save her and in that process, he also suffered burn injuries. Prosecution has adduced cogent evidence to prove that the appellant has caused the death of deceased- Saraswatibai. Accused suspected the deceased of infidelity and picking up a fight over it, he kicked her and inflicted fist blows and further set her on fire by pouring kerosene over her person. PW-6 Doctor certified that the deceased was in a fit mental condition to

make statement and PW7-Executive Magistrate recorded the dying declaration-Ex.1. In the said dying declaration, the deceased had categorically stated that on the date of incident, the appellant poured kerosene over her person and set her on fire. That accused poured kerosene on the deceased and set her on fire is corroborated by the oral testimony of PW3-Sindhu Sunil Ingole (sister-in-law) of the deceased. PW1-Raju Janrao Gavai, neighbour of the deceased who accompanied the deceased to the hospital to whom the deceased is said to have made a statement about the overt act of the accused, had only stated that the deceased told him that the accused beat her and also kicked her. PW1 had not supported the statement of deceased in the dying declaration that the accused poured kerosene on her and set her on fire. However, the prosecution has established the guilt of the accused by Ex.1-dying declaration and the oral evidence of mother (PW2) and sister-in-law (PW3) and the same cannot be doubted.

9. Learned counsel for the appellant contended that there was no pre-meditation and the appellant had poured kerosene from the lamp nearby and thereafter the appellant attempted to extinguish the fire by pouring water on her and himself getting burn injuries in the process. It was submitted that the conduct of the appellant in trying to extinguish the fire immediately after the incident would clearly show that there was no intention on the part of the appellant to commit the murder. In support of his contention, he placed reliance on the judgment of this Court in *Kalu Ram vs. State of Rajasthan*, (2000) 10 SCC 324.

10. The question falling for consideration is whether the act of the accused pouring water would mitigate the offence of murder. Where the intention to kill is present, the act amounts to murder, where such an intention is absent, the act amounts to culpable homicide not amounting to murder. To determine whether the offender had the intention or not, each case must be decided on its facts and circumstances. From the facts and

circumstances of the instant case, it is evident that: (i) there was a homicide, namely the death of Saraswatibai; (ii) the deceased was set ablaze by the appellant and this act was not accidental or unintentional; (iii) the post mortem certificate revealed that deceased died due to shock and septicaemia caused by 60% burn injuries. When the accused poured kerosene on the deceased from the kerosene lamp and also threw the lighted matchstick on the deceased to set her on fire, he must have intended to cause the death of the deceased. As seen from the evidence of PW5-Panch Witness, in the house of the appellant kerosene lamp was prepared in an empty liquor bottle. Whether the kerosene is poured from the kerosene lamp or from the can is of no consequence. When there is clear evidence as to the act of the accused to set the deceased on fire, absence of pre-meditation will not reduce the offence of murder to culpable homicide not amounting to murder. Likewise, pouring of water will not mitigate the gravity of the offence.

11. After attending to nature's call, the deceased returned to the house a little late. The accused questioned her as to why she was coming late and he also suspected her fidelity. There was no provocation for the accused to pour kerosene and set her on fire. Act of pouring kerosene, though in a spur of moment, the same was followed by lighting a match stick and throwing it on the deceased and thereby setting her ablaze. Both the acts are intimately connected with each other and resulted in causing the death of the deceased and the act of the accused is punishable for murder.

12. Even assuming that the accused had no intention to cause the death of the deceased, act of the accused falls under clause (iv) of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all

probability such an act would cause injuries causing death.

13. Insofar as the conduct of the accused in attempting to extinguish fire, placing reliance upon the judgment of this Court in *Kalu Ram's case (supra)*, it was contended that such conduct of the accused would bring down the offence from murder to culpable homicide not amounting to murder. In *Kalu Ram's case (supra)*, the accused was having two wives. The accused in a highly inebriated condition asked his wife to part with her ornaments so that he could purchase more liquor, which led to an altercation when the wife refused to do as demanded. Infuriated by the fact that his wife had failed to concede to his demands, the accused poured kerosene on her and gave her a matchbox to set herself on fire. On her failure to light the matchstick, the accused set her ablaze. But when he realized that the fire was flaring up, he threw water on her person in a desperate bid to save her. In such facts and circumstances, this Court held that the accused would not have intended to inflict the injuries

which she sustained on account of act of the accused and the conviction was altered from Section 302 IPC to Section 304 Part II IPC.

14. The decision in *Kalu Ram's* case cannot be applied in the instant case. The element of inebriation ought to be taken into consideration as it considerably alters the power of thinking. In the instant case, the accused was in his complete senses, knowing fully well the consequences of his act. The subsequent act of pouring water by the accused on the deceased also appears to be an attempt to cloak his guilt since he did it only when the deceased screamed for help. Therefore, it cannot be considered as a mitigating factor. An act undertaken by a person in full awareness, knowing its consequences cannot be treated at par with an act committed by a person in a highly inebriated condition where his faculty of reason becomes blurred.

15. Within three months of her marriage, the deceased died of burn injuries. In bride burning cases, whenever the guilt of the accused is brought home

beyond reasonable doubt, it is the duty of the Court to deal with it sternly and award the maximum penalty prescribed by the law in order that it may operate as a deterrence to other persons from committing such offence.

16. This Court on various occasions has stressed the need for vigilance in cases where a woman dies of burn injuries within a short span of her marriage and that stern view needs to be adopted in all such cases. In *Satya Narayan Tiwari & Anr. vs. State of Uttar Pradesh*, (2010) 13 SCC 689, this Court in paragraphs (3) and (9) has held as under:-

“3. Indian society has become a sick society. This is evident from the large number of cases coming up in this Court (and also in almost all courts in the country) in which young women are being killed by their husbands or by their in-laws by pouring kerosene on them and setting them on fire or by hanging/strangulating them. What is the level of civilisation of a society in which a large number of women are treated in this horrendous and barbaric manner? What has our society become—this is illustrated by this case.

9. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much

money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialisation of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand.”

17. Upon analysis of the evidence adduced by the prosecution, courts below recorded concurrent findings that the accused caused the death of deceased Saraswatibai and convicted the appellant. It is well settled that concurrent findings of fact cannot be interfered with unless the findings are perverse and unsupportable from the evidence on record. This view has been reiterated in *Dhananjay Shanker Shetty vs. State of Maharashtra*, (2002) 6 SCC 596. In the totality of the facts and circumstances, in our view, the concurrent findings of facts recorded by the courts below are based on evidence and we see no infirmity in the impugned judgment warranting interference.

18. In the result, the appeal fails and is dismissed.

.....J.
(T.S. Thakur)

.....J.
(Adarsh Kumar Goel)

.....J.
(R. Banumathi)

New Delhi;
April 21, 2015



JUDGMENT