
(2015) 01 BOM CK 0305
In the Bombay High Court
Case No : Criminal Appeal No. 381 of 2011

Asha Deepak Gaikwad

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 01 BOM CK 0305

Hon'ble Judges : V.K. Tahilramani, J; I.K. Jain, J

Bench : Division Bench

Advocate : Rohini M. Dandekar, for the Appellant; V.R. Bhonsale, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J—The Appellant/original accused has preferred this Appeal against the Judgment and Order dated 12/06/2009 passed by the learned 2nd Ad-hoc Additional Sessions Judge, Sewree, Mumbai, in Sessions Case No. 773 of 2008. By the said Judgment and Order, the learned Sessions Judge convicted the Appellant under Section 302 of Indian Penal Code and sentenced her to life imprisonment and to pay fine of Rs. 1,000/-; in default R.I. for 2 weeks.

2. The prosecution case briefly stated is as under:

Deceased Anita was residing with her husband, two sons and one daughter in Trimurti Ganesh Chawl, situated at Ghatkopar, Mumbai. The Appellant was the neighbour of Anita. On 03/09/2008 at about 5.30 p.m., Anita was going to the house of PW 4 Ramesh Yashwantrao for Ganapati darshan. Ramesh Yashwantrao was also residing in the same chawl i.e. Trimurti Ganesh Chawl. While Anita was proceeding to the house of PW 4 Ramesh, Anita dashed into the Appellant by mistake. The Appellant got angry and went into her house and brought a sharp iron strip and assaulted Anita on her head. Anita sustained injury. As Anita had severe pain, she caught her head and stood at the spot. In the meanwhile,

Appellant went inside her house and brought a can of kerosene. She poured kerosene on Anita. Then she took a piece of cloth, poured kerosene on it, set it on fire and threw the cloth ball on Anita. Anita caught fire and sustained burn injuries. She started shouting loudly whereupon her neighbour PW 1 Satish came running to her rescue. He put quilt on Anita and also poured water on her and extinguished the fire. Satish and others took Anita to Rajawadi Hospital at Ghatkopar. In the hospital, Anita was examined by PW 7 Dr. Khobragade. Anita told Dr. Khobragade that Asha Deepak Gaikwad had poured kerosene on her and set her on fire. In the hospital, two dying declarations of Anita came to be recorded. The first dying declaration was recorded by PW 6 PSI Bansode. The said dying declaration is at Ex. 19. It was treated as F.I.R. Thereafter another dying declaration of Anita was recorded by SEO PW 2 Sudha Brahma. In both the dying declarations, Anita stated that the Appellant poured kerosene on her and set her on fire. Anita died on 05/09/2008 due to shock due to 85% to 90% superficial to deep burns (unnatural). After completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant under Section 302 of IPC. The Appellant pleaded not guilty to the said charge and claimed to be tried. Her defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Additional Sessions Judge convicted and sentenced the Appellant as stated in para 1 above, hence this appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, the Judgment and Order passed by the learned Additional Sessions Judge and the evidence in this case. After carefully considering the same, for the below-mentioned reasons, we are of the opinion that there is no merit in the appeal.

5. The conviction is based on 2 dying declarations Ex. 9 and Ex. 19. Dying declaration Ex. 9 was recorded by PW 2 SEO Sudha Brahma and dying declaration Ex. 19 was recorded by PW 6 PSI Bansode. In addition, there are 3 oral dying declarations made to PW 1 Satish, PW 3 Dattaram and PW 7 Dr. Khobragade. There is also an eye witness in the present case.

6. PW 4 Ramesh Yashwantrao is an eye witness. He was residing in the same chawl as the Appellant as well as the deceased. On the date of the incident, it was Ganesh Chaturthi, hence he had kept a pooja in the house and invited all the persons in the chawl. He heard a cry, hence he came out of his house. He saw Anita in injured condition. She had stab injury on her head. He saw the Appellant going into her house holding a sharp object like knife in her hand. Then PW 4 Ramesh saw the Appellant coming out of her house holding a can in her hand. The Appellant poured kerosene on Anita. Then she threw a burning lump on Anita due to which the saree of Anita caught fire. Anita started shouting for help. Then PW 4 Ramesh, PW 1 Satish and one Sulochana extinguished fire. They then took Anita to Rajawadi Hospital.

7. PW 6 PSI Bansode recorded the first dying declaration of Anita in Rajawadi Hospital. PSI Bansode has stated that at about 5.30 p.m., he received wireless message that one lady with burn injuries was taken to hospital. Hence he went to hospital and met the doctor. The doctor took him to the burns ward. Doctor pointed out to a woman. Her name was Anita Shigwan. PSI Bansode asked the doctor whether Anita was in a position to give statement. Doctor told PSI Bansode that Anita was in a position to give statement. Then PSI Bansode recorded the statement of Anita. Anita told him that Asha Deepak Gaikwad poured kerosene from a can on her person and threw a burning lump of cloth on her and set her on fire. Anita also stated that Asha Gaikwad had assaulted her on the left side head by sharp iron strip. People came to her rescue and extinguished the fire. This dying declaration is at Ex. 19.

8. PW 2 SEO Sudha Brahma also recorded the dying declaration of Anita. The said dying declaration is at Ex. 9. In the said dying declaration, Anita has stated that at 5.30 p.m. while she was going for Ganapati darshan, she accidentally dashed the Appellant. The Appellant then brought a knife from her house and assaulted Anita on the head. Then the Appellant set Anita on fire.

9. In addition to the 2 dying declarations Ex. 9 and Ex. 19, there are 3 oral dying declarations. The first was made to PW 1 Satish. Satish was the first person who rushed to the rescue of Anita. Satish has stated that he heard shouts "save me, save me". He came out of his house. He saw that Anita was burning. He then took a quilt and put it on Anita's body. He also poured water on her. He took Anita to Rajawadi Hospital. Satish asked Anita what had happened, whereupon Anita stated that she sustained burn injuries as Asha Gaikwad had set her on fire. The fact that Satish extinguished the fire is also borne out by the evidence of PW 7 Dr. Khobragade. Dr. Khobragade has stated that Anita was brought to the hospital by Satish Pawar (PW 1) and two others. Satish had sustained superficial to deep burn injuries on his right hand and right arm. Satish gave history that he sustained those injuries when he went to save Anita Shigwan. Dr. Khobragade stated that Satish was also admitted in hospital.

10. Another oral dying declaration was made by Anita to her husband PW 3 Dattaram. Dattaram has stated that he heard shouts, hence he came out of the house. He saw his wife was burning. On seeing this, he felt giddy and became unconscious. He regained consciousness after one hour. Then he came to know that his wife was taken to Rajawadi Hospital for treatment. He met his wife Anita in Rajawadi Hospital. Anita told him that Asha Gaikwad assaulted her with knife and thereafter poured kerosene on her and threw a burning cloth lump on her due to which she caught fire.

11. Another oral dying declaration was made by Anita to PW 7 Dr. Khobragade. Dr. Khobragade was on duty on 03/09/2008 at Rajawadi Hospital. Dr. Khobragade has stated that at about 6.30 p.m., one patient Anita Shigwan was brought to the hospital by Satish Pawar (PW 1) and two others. The patient herself gave history that Asha Deepak Gaikwad poured kerosene on her and set

her on fire.

12. It is the prosecution case that the Appellant assaulted on the head of Anita with a sharp iron strip which was like a knife. Thereafter the Appellant poured kerosene on Anita and set her on fire. This is borne out by the medical evidence. PW 7 Dr. Khobragade was the first doctor to examine Anita. He has stated that on examination, he found superficial to deep burn injury involving face, neck, both upper limbs, both axilla, chest, abdomen, back, perineum, vulva, both lower limbs except feet. She had CLW on left frontal area 3 x .5 cm. PW 9 Dr. Gaikwad conducted post-mortem on the dead body of Anita. On external examination, he found following injuries.

i) Contused lacerated wound 3 x 1/2 cm. back and behind to the left muscard. 6 stitches present of size 7 and 1/2 cm x skin x deep structures. Age irregular margin no evidence of fracture skull.

ii) Burn injury - percentage of burns total 85% to 90% superficial to deep burns. According to Dr. Gaikwad, the injuries were ante-mortem. The opinion as to probable cause of death was "shock due to 85% to 90% superficial to deep burns (unnatural)". According to Dr. Gaikwad, injuries mentioned in the post-mortem report can be possible if kerosene is poured and burning lump is thrown on the person. On being shown iron strip Article D, Dr. Gaikwad opined that head injury mentioned in column No. 17(i) can be possible by Article D iron strip.

13. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the Appellant assaulted Anita on her head with an iron strip and thereafter poured kerosene on Anita and set Anita on fire. Thus, we find no merit in the Appeal. The Appeal is dismissed.

14. Office to communicate this order to the Appellant who is in prison.

15. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Rohini M. Dandekar at Rs. 5,000/-.