

(1984) 04 BOM CK 0020
In the Bombay High Court
Case No : Criminal Appeal No. 543 of 1981

Babu Sadashiv Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-04-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 86

Citation : (1984) 04 BOM CK 0020

Hon'ble Judges : B.A. Masodkar, J; A.D. Tated, J

Bench : Division Bench

Judgement

Tated, J.—The accused Babu Sadashiv Jadhav preferred this appeal against the judgment and order dt. 1st November, 1980 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 74 of 1980 convicting him of the offence under S. 302 I.P.C. and sentencing him to suffer imprisonment for life.

2. The accused was married to deceased Kondabai about five years before the date of the incident, that is, 25th January, 1980, and during the wedlock they had one son and one daughter. The daughter was about four years of age and the son was about one year old at the time of the incident. After the marriage, for about three years they resided with the parents of the accused and thereafter they had a separate residence at a distance of about 100 feet from the hut of the parents of the accused. It is alleged that the accused suspected the character of his wife, and, therefore, there used to be quarrels between them. The accused was also addicted to liquor, and under the influence of liquor he used to quarrel and beat his wife. On 25th January, 1980 at night the deceased took food. The hut where the accused and the deceased resided was a small room with a roof of corrugated iron sheets. It was in the zopadpatti area surrounded by many huts. At about 11 p.m. the accused quarrelled with his wife and there were hot alterations. The accused was drunk and was very much upset. He beat his wife and poured kerosene oil on her person and set her on fire by applying a lighted match stick. Kondabai started shouting for help. The accused also tried to

extinguish the fire and in that attempt he sustained burns on his hands. The neighbours collected and poured water on Kondabai and extinguished the fire. She was taken to the neighbouring hut of the accused's parents. Her mother Shivbai Dharma More (P.W. 4), who resided at a distance of about 100 feet from the hut of the accused, on knowing about the incident, rushed to the hut of Kondabai's mother-in-law, Kondabai was at that time crying in agony and said that her husband poured kerosene oil on her and ignited by applying a match stick. On knowing this from Kondabai, Shivbai rushed to the Police Chowki and reported the matter to Police Head Constable Fatruddin Gurmohamed Mulani (P.W. 6), who made a note thereof in the Station Diary. Thereafter along with Shivbai he went to the hut of Peranbai, mother of the accused. He posted one constable to watch the spot, and returned to the Police Chowki and gave message to P.S.I. Sitaram Narayan Kadam (P.W. 14) about the incident. He called a wireless van and again went to the hut of Peranbai. Kondabai was removed to the Sassoon Hospital.

3. Dr. Jayantilal Mukundraj Talesara (P.W. 10), who was on duty at the hospital, examined Kondabai at about 1.40 a.m. He asked her how she suffered the burn injuries, and she replied that her husband poured Kerosene oil on her person and set her on fire. Dr. Talesara found burns on the face, head, neck, chest and on both upper arms of Kondabai. At some places burns were superficial and at other places burns were deep. Kondabai had suffered 44% burn injuries. P.S.I. Kadam (P.W. 14) on receiving information from the Police Chowki visited the hospital. He went to the residence of Special Executive Magistrate Mr. Digambar Krishnaji Kulkarni (P.W. 3) on 26th January, 1980 at about 2 a.m. and took him to the hospital for recording the dying declaration of Kondabai.

4. Special Executive Magistrate Mr. Kulkarni (P.W. 3) at about 2.30 a.m. reached the hospital and contacted Dr. Talesara (P.W. 10), who was on duty, and after making enquiry with him whether the patient was in a position to make statement, he recorded her dying declaration Ex. 11. In her statement before Mr. Kulkarni she gave out that her husband under the influence of drink beat her, and as she questioned him, he became angry, poured kerosene oil from the bottle and ignited her sari, with a match stick. She further stated that her husband started extinguishing her burning sari and at that time neighbours came there and extinguished the fire. Kondabai succumbed to the injuries on 9th February, 1980 at about 8.30 p.m. After necessary investigation, the accused was prosecuted for the offence of committing the murder of his wife, punishable under S. 302 I.P.C.

5. The accused denied the charge levelled against him. His defence as disclosed in his examination under S. 313 Cr.P.C. was that at the time of the incident he was standing in the chowk at a distance of about 20 feet from his hut. He heard the people crying, "Babu's wife is burning". He rushed to his hut. At that time Kondabai was outside the hut and the clothes on her person were burning. The people who gathered were pouring water on her person. He also started

extinguishing the fire. He caught her burning sari with his hands and began to rub the same to extinguish the fire, and thereby he also sustained burn injuries on his hands, Kondabai also sustained burn injuries right from her neck to her feet. He denied that he poured kerosene oil on his wife and set her on fire.

6. The learned Additional Sessions Judge, on considering the evidence adduced by the prosecution, found that the prosecution satisfactorily proved the charge levelled against the accused, and, therefore, he convicted him of the offence under S. 302 I.P.C. and imposed the sentence mentioned above. Feeling aggrieved, the accused has come up in appeal.

7. The learned Counsel for the appellant-accused took us through the whole evidence on record and submitted that it was a case of pure accident. According to him, while Kondabai was cooking food, the chimney in the house fell and thereby she must have caught fire and her husband, who was at that time outside the hut, rushed to the hut and tried to extinguish the fire. He submitted that the dying declarations, oral as well as written, in this case to the effect that the accused poured kerosene oil on his wife and set her on fire could not be safely relied upon. On considering the whole evidence and the dying declarations made by the deceased, first to the neighbour Janardan Bandu Tambave (P.W. 1), then to mother Shivbai (P.W. 4) and thereafter on admission in the hospital to Dr. Talesara (P.W. 10) and thereafter to Special Executive Magistrate Mr. Kulkarni (P.W. 3) and then to P.S.I. Kadam (P.W. 14), we are unable to agree with the learned Counsel that this is a case of mere accident.

8. Shaikh Muluk Yasin Shaikh Badsha (P.W. 11) is the next-door neighbour of the accused. On hearing the cries of Kondabai at about 11.15 p.m. he woke up. He heard Kondabai crying "Save me, save me." He took a bucketful of water and poured it on the person of Kondabai and extinguished the fire. On hearing the cries of Kondabai, some other persons had also arrived there. After the fire was extinguished, Kondabai was taken to the hut of her in-laws. Janardan (P.W. 1), who resides at a distance of about 125 feet from the hut of the accused, went to the hut of Sadashiv Jadhav, father-in-law of the deceased. He states that he asked Kondabai how she suffered burns, and thereupon she replied that her husband abused her and beat her and thereafter poured kerosene oil on her person and ignited her clothes with a match stick. Shivbai (P.W. 4), mother of the deceased, also rushed to the hut of Sadashiv Jadhav and saw Kondabai. She deposed that Kondabai told her that her husband had poured kerosene oil on her and ignited her with a match stick. On learning this from Kondabai, she rushed to the Police Chowki and saw Police Head Constable Mulani (P.W. 6) at about 11.30 p.m. Mulani says that Shivbai told him that her son-in-law under the spell of anger poured kerosene oil on her daughter and burnt her. Mulani recorded the information in the Station Diary. Exhibit 16 is a copy of the Station Diary.

9. Dr. Talesara (P.W. 10), while admitting Kondabai at the hospital at about 1.40 a.m., asked her how she suffered the burn injuries, and thereupon she replied that her husband poured kerosene oil on her person and set her on fire. Dr.

Talesara recorded the history of the burns he received from deceased Kondabai on the case papers Ex. 43. On receiving information from Police Head Constable Mulani (P.W. 6), P.S.I. Kadam (P.W. 14) went to Special Executive Magistrate Mr. Kulkarni (P.W. 3) and gave him requisition for recording the dying declaration of Kondabai. Mr. Kulkarni went to the hospital at about 2.30 a.m. and after ascertaining from Dr. Talesara that Kondabai was in a fit condition to make statement, he recorded her statement in question and answer form in her own language. It is at Ex. 11. Before Mr. Kulkarni also she gave out that her husband poured kerosene oil on her person and set her on fire.

10. Thereafter on the same night P.S.I. Kadam (P.W. 14) recorded the statement of Kondabai (Ex. 35). In that statement also she gave out that her husband poured kerosene oil on her person and set her on fire. The panchnama of the scene of offence (Ex. 22) and the evidence of the panch Uttamchand Lalchand Agarwal (P.W. 8), in whose presence the panchnama, Ex. 22 was drawn up, shows that some of the articles seized from the hut of the accused were smelling of kerosene oil. Some of those articles were sent to the chemical analyser, and the report of the chemical analyser (Ex. 37) shows that there was residue of kerosene on two pieces of jute cloth, on the lungi and on the partially burnt sari. The residue of kerosene oil was also noticed in the empty bottle. Thus the finding of kerosene oil on the half burnt sari and the smell of kerosene oil on the articles at the time of the panchnama clearly supports the statement of the deceased that kerosene oil was poured on her before she was set on fire.

11. It is true that at the time of the panchnama Ex. 22 a chimney (a small oil lamp) was found near the oven. Taking into consideration that kerosene oil was found on the half burnt sari and other articles mentioned above and the burn injuries on the deceased were found mostly on the upper part of the body, the defence suggestion that the fire must have been accidentally set in by the fall of the oil lamp cannot be accepted. On the contrary, as stated earlier, residue of kerosene oil on the half burnt sari and other articles mentioned above clearly supports the dying declaration of Kondabai that she was set on fire after pouring kerosene oil on her. All the dying declarations are consistent and they are fully supported by the other circumstances established in this case as mentioned above.

12. Consequently, agreeing with the learned trial Judge, we find that the accused poured kerosene oil on his wife and set her on fire and thereby she sustained the burn injuries found on her person. She succumbed to those burn injuries while in the hospital.

13. Having found that the prosecution satisfactorily proved that the death of Kondabai was caused due to burn injuries she sustained as a result of the accused pouring kerosene oil on her and setting her on fire, it is necessary to consider what offence is made out on the facts established in this case. There is no eye witness to the incident, and, therefore, except from the dying declaration of Kondabai, it is not possible to know what transpired between the husband and

the wife which led the accused to pour kerosene oil on his wife and to set her on fire. Kondabai in her statement before Special Executive Magistrate Mr. Kulkarni (P.W. 3) stated that her husband was drunk as usual and without rhyme or reason he beat her on that night. She also states that after the accused beat her she retorted by saying something to him, and thereupon he got angry and poured a little quantity of kerosene oil from the bottle and applied a lighted match stick. She further stated that when her sari started burning her husband tried to extinguish the fire and at that time the neighbours arrived and extinguished the fire by pouring water on her. It is in the evidence of Janardan (P.W. 1) that when the accused's mother Peranbai caught hands of Kondabai and took her to her hut, the accused also went there and stood outside the hut of Peranbai . Though Janardan and Shivbai (P.W. 4) stated that the accused suspected the character of Kondabai and on that account beat her, Kondabai does not say in her statement before Special Executive Magistrate Mr. Kulkarni that the accused suspected her character. On the contrary, her statement before the Special Executive Magistrate shows that on account of the influence of liquor her husband beat her without any cause, and on that night when Kondabai questioned him after beating, he became very angry and poured kerosene oil on her and set her on fire. The aforesaid statements of Kondabai and the subsequent conduct of the accused in trying to extinguish the fire and in doing so getting his hands burnt and in not running away from the scene of occurrence but going to the hut of his mother when his mother took Kondabai to her hut indicate that the accused did not intend to cause the death of his wife. The statement of Kondabai before the Special Executive Magistrate that her husband tried to extinguish the burning sari is supported by the burn injuries found on his person when he was arrested at 12-30 p.m. on 26th January, 1980.

14. The evidence of P.S.I. Kadam (P.W. 14) and the arrest panchanama Ex. 41 show that when the accused was arrested there were fresh burn injuries on his left hand thumb and wrist and the burn injuries were also on two middle fingers of his right hand. Dr. Aramchandra Bhaskar Kulkarni (P.W. 9) examined the accused on 26th January, 1980 at about 4.15 p.m. He gave evidence that he found two burn injuries on his left hand, and he issued injury certificate Ex. 27. In the cross-examination he stated that he could not trace out the original case papers wherein he noted the injuries found on the person of the accused. The injury certificate Ex. 27 shows that there were 2% burns on the left hand. It is rather surprising that while arresting the accused at 12.30 p.m. burn injuries on both hands were noticed by the panchas and also by P.S.I. Kadam, and it was so mentioned in the yadi Ex. 27-A sent to the hospital for examination of the accused. But Dr. Kulkarni noticed burn injuries only on the left hand. Whether the injuries were only on the left hand or on both hands makes no difference. The fact remains that the accused did try to extinguish the fire with his hands and in doing so he sustained burn injuries. There accused did not run away. He went to the hut of his mother when deceased Kondabai was removed to her hut. The accused had two children, the eldest being about three years of age and the

youngest of about one year, at the time of the incident, and both the children were at the time of the incident sleeping in the hut of the accused. The subsequent conduct of the accused referred to above clearly indicates that the accused did not intend to cause the death of his wife and there was no motive to cause her death. The accused was drunk and there was a hot exchange of words between the husband and the wife. The accused got very angry and in the angry mood he did the foolish act of pouring kerosene oil and setting his wife on fire. When the sari started burning, he immediately realised his mistake and started extinguishing the fire.

15. The effect of intoxication on the culpability for the offence requiring particular intent or knowledge is mentioned in S. 86 of the I.P.C. It reads as follows :-

"In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

The above provisions of section 86 were considered by their Lordships of the Supreme Court in *Basdev Vs. The State of Pepsu*, their Lordships propounded the law as follows :-

"So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being ? If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

"Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things."

On the evidence in this case, it cannot be said that the accused was so much intoxicated at the time of the incident that he was beside his mind altogether for the time being. He did set his wife on fire, but as soon as her sari started burning he realised the folly of his act and started extinguishing the fire. It shows that he was not so much intoxicated that he was besides his mind altogether. Therefore, the rule that a man is presumed to intend the natural consequences of his act can be applied to him also. At the same time, in order to gather his intention, all the attending circumstances and his preceding and subsequent conduct will have

to be taken into consideration. The established circumstances and the subsequent conduct of the accused mentioned above clearly indicate that the accused did not intend to cause the death of his wife, but from his act of pouring kerosene oil and setting her on fire it can be legitimately inferred that he intended to cause the burn injuries to his wife which were likely to cause death. Immediate attempts were made by the accused and the neighbours to extinguish the fire, and Kondabai succumbed to the burn injuries about 15 days after the incident. Under such circumstances, the offence committed by the accused is of culpable homicide not amounting to murder punishable under Part I of S. 304 I.P.C. Consequently, the conviction of the appellant-accused under S. 302 I.P.C. will have to be altered to one under S. 304(I) I.P.C.

16. On the question of sentence, the learned Counsel for the appellant-accused submits that the accused being a young man having two small children and old parents to support, leniency in awarding sentence may be shown. According to him, the sentence of imprisonment already undergone by the accused will meet the ends of justice. We are unable to agree with the learned Counsel. It is true that the accused is a young man with two small children, but that cannot be the ground for releasing the accused by reducing the sentence to the sentence already undergone by him. The accused has committed a serious crime of causing death of his wife by setting her on fire after pouring kerosene oil on her, and as such he does not deserve any leniency in the sentence. In the circumstances of the present case, we think that the sentence of R.I. for seven years will meet the ends of justice.

17. In the result, the appeal is partly allowed. The conviction of the appellant-accused under S. 302 I.P.C. and the sentence awarded to him by the learned Additional Sessions Judge are set aside and instead he is convicted under S. 304(I) I.P.C. and sentenced to suffer R.I. for seven years.

18. Appeal partly allowed.