

(2012) 08 AP CK 0116
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 1027 of 2008

Ramakuri Nageswara Rao

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 300, 302, 304, 307, 498A

Citation : (2013) 1 ALD(Cri) 234 : (2013) 1 ALT(Cri) 241 : (2013) 1 ALT(Cri) 239

Hon'ble Judges : P. Durga Prasad, J;N.V. Ramana, J

Bench : Division Bench

Advocate : K. Suresh Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

P. Durga Prasad

1. This appeal is directed against the conviction and sentence passed in S.C.No.326 of 2007 by the Sessions Judge, Prakasam District on 09.05.2008. The appellant herein is the sole accused and he was prosecuted for the offence under Sections 498-A and 302 of the Indian Penal Code, 1860 (for short "IPC").

2. According to the prosecution, Ramakuri Rathamma, the deceased, is native of Kondamur village and she married the accused eight years back and she was blessed with a daughter, aged about 3 years. Since three years, the accused is residing with the deceased in Nagarajupalli village of Martur Mandal and doing cultivation. The accused suspected the fidelity of his wife and frequently quarreling with her and subjected her to cruelty and harassment and he decided to do away with the deceased. On 20.01.2006, the deceased purchased two litres kerosene from PW.7 from his fare price shop and took the kerosene container to his land in Nagarajupalli and secreted the same in his land. On 23.01.2006 at about 9.00 p.m. the accused quarreled with the deceased suspecting her fidelity and the same was witnessed by PWs.1 to 6. On 24.01.2006 the accused took the

deceased to their land in Nagarajupalli village for attending the agricultural work. The deceased and the accused had lunch and retired for some time under the shade of a tree. Then the accused pounced upon the deceased resting on the ground gagged her, tied her hands with a rope and brought the kerosene secreted by him and poured on the deceased and set fire with a match stick. The deceased struggled for her life, rose on her feet and tried to run away crying loudly. PW.1, who is grazing her sheep in the nearby land, came towards the deceased. The accused, who was after the deceased, kicked on her abdomen and made her to fall down. PW.1 witnessed the same and rescued the deceased. Then the accused pretended as if he was trying to extinguish the flames of the deceased. PW.2 and another came there on hearing the cries of the deceased and witnessed the occurrence. They questioned the accused why he set fire to the deceased. The accused fled away without giving any reply. PWs.3, 4 and 5 witnessed the deceased running into the village with burns and questioned her about the occurrence and the deceased disclosed them that the accused poured kerosene on her and set fire to her and attempted to murder her. The deceased was immediately shifted to the Government General Hospital, Guntur in a jeep. On receipt of the admission intimation, PW.15 recorded the statement of the deceased and sent the same to SHO, Martur police station on the point of jurisdiction. Thereafter PW.11 recorded the dying declaration of the deceased on 25.01.2006. PW.9 has registered the case in Cr.No.13 of 2006 u/s 307 of IPC on receiving the statement recorded by PW.15 and issued the FIR and he inspected the scene of offence and conducted the scene of offence panchanama in the presence of PW.8 and another and examined the witnesses. The deceased while undergoing treatment, succumbed to injuries on 01.02.2006 at about 5.00 p.m. On receipt of death intimation, PW.9 has altered the section of law to Section 302 of IPC and issued the express FIR to all concerned. Thereafter, the investigation was taken up by PW.13 and held inquest over the dead body of the deceased in the presence of PW.12 and another and sent the dead body for autopsy. On 07.02.2006 PW.13 arrested the accused and recorded his confessional statement and sent him to judicial custody. The doctor, who conducted autopsy over the dead body of the deceased, opined that the deceased died due to complications of burns. After completion of the investigation, PW.13 filed the charge sheet against the accused.

3. The Sessions Judge has framed the charges under Sections 302 and 498-A of IPC against the accused and the accused pleaded not guilty for the said charges.

4. The prosecution in order to establish the said charges examined P.Ws.1 to 15 and got marked Exs.P-1 to P-15 and MOs.1 to 6. No oral or documentary evidence was adduced on behalf of the accused in defence.

5. Taking into consideration of said oral and documentary evidence, the Sessions Judge found the accused guilty for the charge u/s 302 of IPC and convicted and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 100/- in default to undergo imprisonment for 15 days. The Sessions Judge found the

accused not guilty for the offence u/s 498-A of IPC and acquitted him for the said charge.

6. Aggrieved by the said conviction and sentence, the present appeal is filed.

7. Now the point that arises for consideration is whether the prosecution could able to establish the charges u/s 302 of IPC against the accused beyond reasonable doubt?

POINT:

8. The appellant's counsel has pleaded that the alleged eye witnesses PWs.1 and 2 are planted witnesses and they are not witnessed the incident and when the accused was extinguishing the fire sustained by the deceased accidentally they came to the spot and suspected the accused and as such their evidence cannot be relied upon. He further pleaded that the dying declaration recorded by PW.11 and the statement recorded by PW.15 and Section 161 of Cr.P.C. statement recorded by PW.9 cannot be relied upon as they were brought into existence after tutoring. He further pleaded that the doctor opined that the deceased died due to complications of burns and as such it cannot be said that the accused has committed the offence u/s 302 of IPC.

9. The Additional Public Prosecutor, on the other hand, has pleaded that the eye witnesses PWs.1 and 2 and the circumstantial witnesses PWs.3 to 6 have stated about the deceased sustaining burns in the fields and presence of the accused at the time of incident and the dying declaration recorded by PWs.11, 15 and 9 clearly establishes that the accused has caused the burn injuries to the deceased and as per the evidence of PW.10, the deceased died due to said injuries, as such the trial Court has rightly convicted the accused for the offence u/s 302 of IPC.

10. The case of the prosecution is that the accused suspected the fidelity of the deceased and used to harass her and treated her cruelly and on 24.01.2006 the deceased and accused went to their agricultural land and the accused has already hidden the kerosene tin by purchasing the same from the shop of PW.7 and kept it in his agricultural field and when the deceased was taking rest in the shade of tree after attending to agricultural work, he gagged her mouth and tied her hands with rope and poured kerosene on her and set fire to her and when she was raising cries, PW.1 came to the spot and witnessed the incident and on hearing the cries of PW.1, her daughter PW.2 also came to the spot and witnessed the incident and thereafter the other witnesses came to the spot and they shifted her to the hospital, where the dying declaration was recorded and while undergoing treatment in the GGH, Guntur she died on 01.02.2006.

11. PW.1, the eye witness to the incident, has specifically stated in her chief examination itself that the accused used to suspect the fidelity of the deceased and there were altercations in between them frequently. About two years two months back, she took her she-buffaloes for grazing to the fields and her daughter PW.2 and her son-in-law were cutting red gram crop in their land and

at about 2.00 p.m. while she was grazing her cattle she heard cries of deceased Rathamma and rushed there and noticed her in flames. The accused was behind the deceased and she felt afraid on seeing them and raised cries and then her daughter and son-in-law, who were cutting red gram crop in the fields, rushed there and all of them questioned the accused as to why he did it. He did not give any reply and fled away. When they enquired the deceased Rathamma, she disclosed that the accused poured kerosene on her and set her ablaze by suspecting her fidelity. She also noticed that the accused kicking the deceased on her stomach with his leg and made her to fall down. Herself, her daughter and others put off the flames and brought to the village and thereafter she was shifted to the Government General Hospital, Guntur in a jeep and while undergoing treatment she lost her breath on 8th day.

12. The said evidence of PW.1 was supported by another witness PW.2, who is her daughter and she also specifically stated about her attending to the cutting of the red gram crop in their field and her mother went for grazing the goats and buffaloes nearby their fields and at about 2.00 p.m. on that day on hearing the cries of her mother, herself and her husband immediately rushed towards her mother and noticed that Rathamma was burning in flames and the accused was near Rathamma. The accused kicked her and after she fell down he put off the flames in their presence. When enquired Rathamma, she disclosed that the accused poured kerosene on her and set fire to her suspecting her character. When they questioned the accused, he did not give any reply and left the place. Then herself, her husband and her mother took the deceased to their house from that place on hands. The neighbours gathered there and they secured a jeep and took Rathamma to the Government General Hospital, Guntur and after 8 days she died while undergoing treatment.

13. PWs.3, 4 and 5 are the circumstantial witnesses. They noticed the deceased is being brought to the village with burn injuries by PWs.1, 2 and husband of PW.2 and thereafter she was being shifted to the Government General Hospital, Guntur in a jeep.

14. PW.6 is the sister of the deceased and she came to the hospital after receiving the information about the sustaining of burns by her sister and when she enquired her, she disclosed that her husband gagged her mouth with a cloth and caught hold her legs and poured kerosene and set her ablaze.

15. According to the first investigating officer, PW.9, after registering of the case in Cr.No.13 of 2006 u/s 307 of IPC, he took up investigation, proceeded to the Government General Hospital, Guntur and recorded the statement of the deceased in the burns ward u/s 161 of Cr.P.C. and thereafter he returned back to Martur police station and secured the mediator PW.8 and another and proceeded to the fields of the accused, which is the scene of offence at about 4.30 p.m. and conducted the scene of offence panchanama and noticed the smell of kerosene emanating from the said land and he noticed white kerosene tin with some blue colour liquid kerosene, partly burnt saree piece, partly burnt rope, partly burnt

gunny piece, pair of hawai chappals, pair of leather chappals, one turkey towel and he seized the same in the presence of PW.8.

16. PW.8, the mediator for the scene of offence panchanama, also supported the evidence of PW.9 with regard to conducting of scene of offence panchanama and seizure of said MOs as stated by PW.9 and he also observed the kerosene smell emanating from the fields. Therefore, from the above evidence, it is established that the scene of offence is the fields of the accused and from the evidence of PWs.1 and 2, it is established that the deceased sustained burn injuries in the said fields and according to PW.1, the accused set fire to her and the deceased disclosed them about the accused pouring kerosene and setting fire to her. Apart from the said oral evidence, the prosecution has relied upon the dying declaration recorded by PW.11 and the statement recorded by PW.15 and another statement u/s 161 of Cr.P.C. recorded by PW.9. The dying declaration was recorded by PW.11, the Judicial First Class Magistrate, on 24.01.2006 from 7.10 p.m. to 7.30 p.m. and according to him he received the requisition from the Casualty Medical Officer, Government General Hospital, Guntur on 24.01.2006 at 6.45 p.m. and immediately he proceeded to the hospital and got identified the deceased and satisfied about the mental condition of the patient by putting preliminary questions and the Medical Officer, who was present also certified about the fit state of mind of the deceased for giving her statement. Then he recorded the statement, which is marked as Ex.P-10 and certificates of the doctor are marked as Exs.P-10 (A) & (B) and Ex.P-11 is the requisition received by him. In Ex.P-10 dying declaration, the deceased has stated as under:

Myself, and my husband went to field and to get the cotton from the field at 8.00 A.M. we went to the field. Due to Sun-rise, we slept below the Japan-babul-tree. My husband tied my hands, and legs with rope, and he poured kerosene on me and lit fire on me with Match-box-stick. He brought the kerosene from the house. Then, I asked him what for the kerosene for that he said that to me that to burn the sticks from the field. He said that I am not so good. I said that I am ready to swear. He is not willing to marry me. He is consanguinity to me, i.e. he is the younger brother's son to my mother. So I was given in marriage to him and performed my marriage with him, about 4 years back, I am having a daughter. He frequently used to quarrel with me, as I think that I want to go village. Our neighbours advised to me that try to adjust with him. So that I am stayed with him. Mid-day at about 2.00 P.M. he poured kerosene on me and lit fire on me. Neighbouring fields persons i.e. my mother-in-law, elder-brother. When I was with flames and turned on the land, and I went there. My mother-in-law Kanikaramma, observed on me and she came to me and to scold my husband and to scat of flames. At that time my husband flee-away. My uncle brought me to the Hospital.

17. Subsequently PW.15 has recorded the statement of the deceased and according to him on 24.01.2006 he received the hospital intimation and proceeded to the Government General Hospital, Guntur at 8.00 p.m. and found

the victim in the burns ward and recorded her statement, which is marked as Ex.P-1 and according to him she has stated as under:

My husband is working in the Granite at Marturu. My marriage was performed about 8 years back. I am having a female child aged 3 years, and I am also pregnant, 5th month now. Today i.e. morning on 24.1.06 we both went to our field to attend field work in our own land, after completion of work, when we came to the shadow of the tree for lunch. My husband i.e. Nageswara Rao, all of a sudden he throw me and sit on me, he pressed my mouth with clothes, and tied my legs, and hands, and he brought the kerosene, without knowledge of me, he poured the same on me, and lit of fire on me. Then, I was screaming-loudly, who is working of beside of our land i.e. Ramakumari Kanikaramma, and informed to our relatives about the incident. Then, my relatives came to me I was shifted in a jeep to Guntur, Government Hospital, admitted me in Emergency Ward. My husband burnt me and flee away. I have received burning injuries to my entire body. The Magistrate came to me and recorded my statement, in Emergency Ward. My husband suspected my fidelity, he done the same in our field on 24.1.06 mid day at 2.00 P.M. He is the only responsible for this. None other is responsible for this incident. He suspected my fidelity, he poured kerosene on me and lit of fire on me. Then, the Doctor got treated me. I was admitted in the Emergency ward.

18. But the duty doctor was not present at the time of recording the said statement. Thereafter, the said statement recorded by him was forwarded to the Martur police station on the point of jurisdiction and PW.9, the A.S.I. on receipt of the said statement Ex.P-1, registered the case in Cr.No.13 of 2006 u/s 307 of IPC and issued the FIR and thereafter proceeded to the hospital and recorded the statement of the victim, which is marked as Ex.P-5, on 25.01.2006 and according to him, she has stated as under:

My marriage was performed with Nageswara Rao S/o Ramakuri Anjaiah, about 8 years back. We blessed a female child. Now she is 3 years aged. For the last 2 years my husband suspected my fidelity. On suspicion now and then he used to quarreled with me. Then I was annoyed on that night, I did not take dinner. 24.1.06 morning myself, my husband went to the fields. Due to festival time, we prepared the grains i.e. Jute, as powder, after completion of lunch, just we think that we reached the shadow of the tree at about 2.00 P.M. All of a sudden my husband, my husband fell me to the down i.e. on the ground, he fell on me, and he pressed the clothes on my mouth. He tied my hands, and legs with a rope. At that time, without my knowledge he brought one kerosene tin, and poured the same on me, and lit fire with a match-box-stick, and my body was coming with flames, due to the flames the rope, which was tied by husband to my hands, and the same were burnt. Then, I removed the cloth from my mouth and screaming loudly, and my legs were also tied with rope, and the same was also removed by me. I thrown my husband, I screaming loudly, I was ran towards Northern side of my land i.e. fields. There is nearby grazing the goats by my Aunt, as courtesy,

Ramakuri Nikaramma, seeing of me, she came to me in running mood and to scat of flames on me. While I was escape from the hands of my husband he also chased on me. When I reached to the field of Ramakuri Veeraiah, then my husband caught hold of me and he beat my stomach. The screamings of Nikaramma her daughter Chenchamma, her son-in-law by name Badi Sreenu, who are working nearby the fields are also came there. On seeing them, my husband acted that to take the nearby gunny bag to scat the flames on me. The above said 3 persons came to me, I was informed to them that "on what process is going on that why my husband was tried to kill me, the same was informed to them". The said 3 persons abused my husband. My husband flee away from there. Then myself, Nikaramma, Sreenu, Chenchamma, came to Madigapalli in running mood. From there to Marturu I was brought by a jeep. From there to Guntur General Hospital, brought by another jeep, and joined me. Due to suspicion on my fidelity, due to pre-plan my husband is tried to burnt me and killed me. Now I am 5th month pregnant. In the Hospital of Guntur, the police recorded my statement. On your enquiry I stated the same.

19. The appellant counsel has pleaded that the said statements recorded by PWs.15 and 9 when she was not in fit state of mind as the doctor has not certified the same.

20. PW.11, the Judicial First Class Magistrate has recorded the statement by satisfying himself with the mental condition of the patient by putting preliminary questions and obtained certificate from the doctor, which is marked as Exs.P-10 (A & B) and the doctor, PW.14, who certified the mental condition of the patient under Exs.P-10 (A & B), also stated about the recording of dying declaration of the patient and about certifying the condition of the patient as mentally conscious, coherent and in a fit state of mind as stated in Ex.P-10(A) and he also made an endorsement after completion of the dying declaration as mentioned in Ex.P-10(B). Therefore, the Judicial First Class Magistrate, PW.11 has recorded the dying declaration Ex.P-10 when the deceased was in fit state of mind.

21. In *Munnawar and Others Vs. State of U.P. etc.*, , the Apex Court has observed as under:

the reliability of multiple dying declarations depends upon facts of case and evidence produced by prosecution, there cannot be hard and fast rule by way of precedent can ever be adopted. Though the first dying declaration was liable to be discarded, the second dying declaration recorded by the Magistrate duly endorsed by the doctor identical to the first one should not be discarded. No suspicious circumstances whatsoever with regard to second dying declaration recorded by Magistrate and endorsed by doctor. As such the said second dying declaration cannot be discarded and basing on the same, the Apex Court has confirmed the conviction of the appellant therein.

22. In the present case, all the dying declarations recorded by PWs.11, 15 and 9 are consistent with each other with regard to the accused pouring kerosene and

setting fire but the certification as to mental condition of the patient while recording the statement by PWs.15 and 9 was not obtained from the duty doctor. But the Judicial Magistrate of First Class, who has recorded the dying declaration at the first instance when the patient was in a fit state of mind and the doctor PW.14 also certified about the patient's fit state of mind at the time of recording the dying declaration by PW.11. Therefore, the above said dying declaration recorded by PW.11, which is consistent with said statements recorded by PWs.15 and 9 can be relied upon. Thus, from the above, the prosecution could establish that the accused caused burn injuries to the deceased by pouring kerosene and setting fire to her.

23. The appellant counsel has pleaded that the burn injuries are not the cause for the death of the deceased but the death was due to complications of the burns to the deceased, as such the conviction cannot be sustained for the offence u/s 302 of IPC.

24. PW.10 is the doctor, who conducted the autopsy over the dead body of the deceased, has stated that the total body surface area involved in burn injuries is upto 64% and he opined that the deceased might have died due to complications of burn injuries, which are ante-mortem in nature.

25. The appellant's counsel in support of his contention that the death due to complications of burns cannot be said that the accused is responsible for causing the death of the deceased, relied upon *Ganga Dass alias Godha Vs. State of Haryana*, and *Shanmugam @ Kulandaivelu Vs. State of Tamil Nadu*,

26. In the decision referred 2nd supra, the Apex Court held as follows:

the deceased Umed Singh, aged about 65 years, on 18.11.1988 had gone to Mandir to worship where at about 7.45 a.m. he was attacked. His son Dharampal, PW.6 reached the Mandir and he also found his brothers there at the Mandir and on being enquired the deceased told PW.6 that the appellant hit him with an iron pipe while he was worshipping. The other eye witnesses PWs.12 and 13 also informed PW.6 about the occurrence. Thereupon PW.6 lodged a complaint with the police and the injured was shifted to the hospital and the deceased underwent an operation and he died on 05.12.1988 as a result of head injury due to septicemia, renal failure, respiratory failure and finally cardio-respiratory arrest. The Apex Court by taking into considerations of the circumstances of the case held that the appellant intended to cause death nor it can be said that he intended to cause that particular injury. In any event, the medical evidence shows that the injured deceased was operated but unfortunately some complications set in and ultimately he died because of cardiac failure and thereby set aside the conviction u/s 302 of IPC and convicted u/s 304 Part II of IPC.

27. In the decision referred 3rd supra, the Apex Court held as follows:

the incident has taken place on 17.11.1989 and the deceased died on 25.11.1989 i.e. a week after the incident with septicaemia. The post mortem

doctor, PW.6, has found six external injuries. The Apex Court has examined whether the said injuries are sufficient in the ordinary course of nature to cause death to bring home the guilt of the accused for the offence under Clause-III of Section 300 of IPC and observed that PW.5 broadly stated that the injuries 1, 2 and 6 were serious enough to cause death. In the cross-examination he made it clear that he was not aware of any internal injuries in the body of the patient. He noticed fatty covering of the stomach protruding outside. He proceeded to say that if there was no injury inside the stomach. There is no possibility of death. The evidence of doctor PW.6, who did post mortem is also not categorical so as to form a definite opinion that the injuries inflicted on the deceased were sufficient in the ordinary course of nature to cause death. But the death occurred by reason of onset of septicaemia because of puss and infection, he deposed that the wounds on the gall bladder of the deceased were capable of causing death and the Apex Court by taking into consideration the nature of injuries and the medical opinion observed that the bodily injuries inflicted on deceased were of such a nature that they were likely to cause death, there can be no doubt that the accused intended to cause and did cause the injuries and found in the above circumstances that the appellant is liable to be punished u/s 304 Part-I of IPC.

28. In both the decisions, the deceased sustained stab injuries and subsequently died due to septicaemia after conducting operations and in those circumstances, the Apex Court held that the said offence comes u/s 304 Part-I or Part-II of IPC.

29. In the present case, the deceased died due to complications due to burns, as per the opinion of the doctor, PW.10. In *Sudershan Kumar v. State of NCT of Delhi* 1995-SCC-3-831, the Apex Court held that-

the doctor, who conducted autopsy over the dead body of the deceased, has opined that death was due to taxaemia and septisemia from absorption of toxins from extensive superficial ulceration of the body caused by some corrosive material and there is no evidence that it was because she did not receive proper treatment that she developed taxaemia and septisemia and the doctor has opined that the injuries caused to the deceased were sufficient in the ordinary course of nature to cause death." In the above said decision, the deceased also sustained burn injuries and she died after 12 days of the incident. The Apex Court by taking into consideration of the facts and circumstances of the case held that as there is no evidence that it is because she did not receive proper treatment that she developed taxaemia and septisemia and as the injuries are sufficient in the ordinary course of nature to cause death, found the appellant guilty for the offence punishable u/s 302 of IPC.

30. In *Patel Hiralal Joitaram Vs. State of Gujarat*, the Apex Court examined-

whether the death of the deceased 14 days after sustaining burn injuries can be said that the act of the accused is with an intention to cause injury, which is likely to cause death of the deceased. In the above said decision, the interval between the date of incident when she sustained burn injuries and date of her

death was a fortnight and the doctor PW.2, who examined the deceased on 21.10.1988 noticed second degree burns on the upper and lower portions of her hands, front and back of her chest and on the neck, ears and forehead and found her condition was critical when he saw her for the first time. PW.12, the doctor, who conducted autopsy on the dead body of the deceased on 15.11.1988 has noticed burns of the third degree on the front and back of her trunk, both thighs, etc. besides second-degree burns on some other limbs. He opined that the deceased died due to a stroke on account of such burns and that those burns were sufficient in the ordinary course of nature to cause her death. But in the cross-examination he has stated that the death of the deceased had occurred due to "septic" and the counsel for the appellant has argued that the septic condition would have been developed on account of other causes and not due to burn injuries. The Apex Court by relying upon the decision *Om Parkash Vs. State of Punjab*, wherein the victim was set ablaze on 17.03.1979 and she sustained burns with which she died only 13 days thereafter. The assailant was convicted of murder and the conviction was confirmed by the Apex Court holding that it is preposterous to say that the deceased in this case would have been healed of the burn injuries and that she would have contracted infection through some other causes and developed septicaemia and died of that on 15.11.1988. The Court of law need not countenance mere academic possibilities when the prosecution case regarding death of the deceased was established on broad probabilities as a sequel to the burns sustained by her. Hence, they rejected the contention of the learned counsel on that score.

31. The Division Bench of the Delhi High Court in Criminal Appeal No. 172 of 2008 in *Baljeet Kumar v. State (Govt. of NCT of Delhi)*, has observed that-

the medical jurisprudence has noted that in case of burns by acid, if body area affected is above 30%, the same is usually fatal. In the above said decision, the deceased died due to burn injuries, which were recorded as 30% and the cause of death is septicaemia following ante-mortem burn injuries possible by coercive substance and the deceased died after 4 days of the incident. But the Division Bench has taken into consideration that the 30% of the burns is sufficient to cause death and confirmed the conviction of the appellant u/s 302 of IPC.

32. In *Munnawar's* case stated 1st supra, the Apex Court has examined-

when the deceased died due to septicemia on account of infection caused by the injuries after several days of the incident and convicted the accused for the offence u/s 302 of IPC. In the above said decision, the Sessions Judge has acquitted the appellant for an offence punishable u/s 302 of IPC but convicted him u/s 307 of IPC and in the above said case, the injuries had been suffered by Fateh Mohammad on 20.05.2000 but he died on 25.05.2000 and as per the statement of Dr. N.K. Gupta, who conducted the post mortem on the dead body of the deceased, the death was due to septicemia on account of infection caused by the injuries and that Fateh Mohammad had been given proper treatment, he may have survived. But the Apex Court has observed that the injuries that had

been caused from very close range as tattooing was present. Dr. Anil Kapoor also pointed that injuries 1, 3, 6 and 7 were grievous and were fatal to life and all the injuries were sufficient to cause death as they were on sensitive parts of the body and that the injured was under severe shock, and had been given three units of blood at the time of his admission to the hospital. In the light of this evidence, they are unable to comprehend as to how the trial Court could have concluded that it was the negligence on the part of Dr. Anil Kapoor which had led to septicaemia and finally to the death of the patient and with the above observation, the appeal by the appellant was dismissed.

33. In *State of Rajasthan Vs. Arjun Singh and Others etc.*, the Apex Court examined-

whether the death of the deceased due to septicaemia after 35 days of the incident is sufficient to convict the accused for the offence u/s 302 of IPC. In the above said case, the deceased sustained 7 gun shot injuries and died 35 days after the incident due to septicaemia. The Apex Court by taking into consideration the medical evidence that Himmat Raj Singh sustained 7 gun short injuries which were sufficient to cause death in the ordinary course, and satisfied that the death of the deceased falls under the ambit of Section 302 of IPC, even though the appellant counsel has pleaded that the death of the deceased after 35 days was due to septicaemia.

34. Therefore, in view of the above said decisions, it is to be examined whether in the present case, the burn injuries sustained by the deceased is sufficient to cause her death. PW.10, the doctor, only has given his opinion that the deceased died due to complications of burns and he also recorded that the deceased sustained body surface area of burn injuries upto 64%. Nothing was elicited from him as to how the complications were developed and there is no suggestion that complications were developed due to improper treatment given to her. Since the deceased has sustained 64% of burn injuries, which is fatal as per the medical jurisprudence, as observed by the Division Bench of the Delhi High Court. The said 64% of burn injuries are sufficient to cause death of the deceased even though the deceased died due to complications of burns. Unless the burn injuries are caused to her, the question of sustaining complications due to burns does not arise and the act of the accused in causing the burn injuries of 64% in the ordinary course of nature lead to her death.

35. Therefore, in the above circumstances, it cannot be said that the act of the accused in pouring kerosene and setting fire without any intention to cause death of the deceased. We hold that the accused is responsible for causing the burn injuries to the deceased, which led to her death. Thus, the trial Court has rightly convicted the accused for the offence u/s 302 of IPC and the said finding of the trial Court does not warrant interference by this Court in this appeal. In the result, the Criminal Appeal is dismissed and the conviction and sentence passed in S.C.No.326 of 2007 by the Sessions Judge, Prakasam District, is hereby confirmed.