

(2013) 03 BOM CK 0197
In the Bombay High Court
Case No : Criminal Appeal No. 1264 of 2007

Santosh Tanaji Waghe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-03-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 504

Citation : (2013) ALLMR(Cri) 2901 : (2014) 3 BomCR(Cri) 64

Hon'ble Judges : V.K. Tahilramani, J;P.D. Kode, J

Bench : Division Bench

Advocate : Arfan Sait, for the Appellant; M.M. Deshmukh, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

V.K. Tahilramani, J.—This appeal is directed by the appellant-original accused against the judgment and order dated 29.11.2005 passed by the learned IV Ad-hoc Additional Sessions Judge, Thane in Sessions Case No. 4 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s 302 of IPC and sentenced him to suffer imprisonment for life and fine of Rs. 5000/- in default R.I. for one year. The prosecution case briefly stated, is as under:

(a) Shanta (deceased) was married to the appellant 12 years prior to the incident. She had three children from the said marriage. She was residing with the appellant and her three children at Vedhegaon, Bhiwandi. The appellant was in the habit of drinking liquor and used to raise petty quarrels with the deceased when he was intoxicated.

(b) On 15.11.2004 at about 02.00 p.m., the appellant came home and asked his wife Shanta to search papers in relation to the land purchased by him from Anand Patil. Shanta searched for the papers but she could not find the same, hence, the appellant got annoyed. He abused Shanta and then poured kerosene and set her on fire. The fire was extinguished and Shanta was taken to the

hospital. In the hospital, her dying declarations came to be recorded by PW 2 Police Constable Jadhav and PW 3 Smt. Koli. The said dying declaration was treated as FIR. Shanta succumbed to her burn injuries on 21.11.2004. The dead body of Shanta was sent for postmortem. Thereafter investigation commenced. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

2. Charge came to be framed against the appellant under Sections 302 and 504 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge acquitted the appellant for the offence u/s 504 of IPC but convicted the appellant u/s 302 of IPC and sentenced the appellant as stated in paragraph 1 above. Hence, this appeal.

3. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant poured kerosene on Shanta and set her on fire.

4. The conviction is mainly based on the dying declarations made by deceased Shanta. The first dying declaration came to be recorded by PW 2 Police Constable Jadhav. The said dying declaration was treated as FIR. Thereafter, PW 3 Smt. Koli recorded the dying declaration of Shanta. The said dying declaration is at Exh. 18. Thereafter, another dying declaration (Exh. 31) came to be recorded. In all the three dying declarations, Shanta has stated that on 15.11.2004, her husband came home in the afternoon. He asked her for the papers relating to purchase of land. As she could not find the papers, he got annoyed and poured kerosene on her and set her on fire.

5. Besides the three dying declarations Exh. 15, Exh. 18 and Exh. 31, the prosecution has relied on oral dying declarations made by Shanta to PW 1 Dr. Mhaske, PW 4 Pawar i.e. the father of Shanta and PW 5 Vanita i.e. the aunt of Shanta. In these dying declarations also, similar history has been given by Shanta as one stated by her in the three dying declarations stated above. Thus, the evidence on record shows that the appellant in the course of sudden quarrel, poured kerosene on his wife and set her on fire. No doubt the evidence on record shows that it was the appellant who set Shanta on fire, however, the pivotal question which arises in the facts and circumstances of this case is what is the nature of the offence proved against the appellant.

6. It is an admitted fact that the appellant told Shanta to search for some papers relating to purchase of land. As Shanta could not locate the papers, the appellant got annoyed and poured kerosene on her and set her on fire. However, immediately after Shanta caught fire, the appellant extinguished the fire. This

has been deposed to by PW 4 Mr. Pawar who is the father of Shanta. PW 4 Mr. Pawar has stated that it is true that his son-in-law went into the house, brought water, poured it on the person of his wife i.e. Shanta and extinguished the fire. This witness has further stated that it is true that in an attempt to extinguish the fire, both the hands and legs of the appellant were burnt. The fact that the hands and legs of the appellant were burnt is also borne out by arrest panchnama (Exh. 55) which shows that the hands and legs of the appellant had burn injuries. Thus, it is seen that immediately after Shanta caught fire, the appellant brought water and poured it on Shanta in order to extinguish the fire. This conduct cannot be seen divorced from the totality of the circumstances. Very probably, the appellant, would not have anticipated that the act done by him would have escalated to such a proportion that Shanta might die. If the appellant had ever intended Shanta to die, he would not have immediately thrown water on her in an effort to rescue her. It is also pertinent to note that Shanta had sustained 69% burns and she died on 21.11.2004 i.e. six days after the incident. In view of the evidence on record, we are of the opinion that all that the appellant thought of was to inflict burns and not to kill Shanta but unfortunately the situation slipped out of his control and it went to a fatal extent. We are fortified in taking this view by the observation of the Supreme Court in the case of Kalu Ram Vs. State of Rajasthan, . In the said case also, similar facts arose and the Supreme Court held that the case would not be covered by Section 302 of IPC but it would be covered by Section 304 Part II of IPC. In the present case, the fact that the appellant extinguished the fire shows that he had no intention to cause the death of his wife Shanta. Thus, in our opinion, the present case would fall u/s 304-II of IPC, hence, the following order:-

ORDER

i. Appeal is partly allowed.

ii. The conviction and sentence of the Appellant u/s 302 of IPC imposed by the learned IV Ad-hoc Additional Sessions Judge, Thane vide judgment and order dated 29.11.2005 in Sessions Case No. 4 of 2005, is set aside, instead, the appellant is convicted u/s 304-II of IPC and sentenced to suffer R.I. for eight years and fine of Rs. 2000/- in default, R.I. for one month.

iii. Office to communicate this order to the concerned prison Authorities and to the Appellant who is in jail.

iv. Writ of Order be expedited.

At this stage, we must record our appreciation for Advocate Mr. Arfan Sait who is on the High Court Legal Services Committee, appointed to represent the appellant in this appeal. We found that he had meticulously prepared the matters and he has very ably argued the appeal. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs. 2200/-. The said fees be paid to Advocate Mr. Arfan Sait within three months from today.