

(2016) 02 GUJ CK 0151
In the Gujarat High Court

Case No : Criminal Appeal Nos. 2826 and 2822 of 2008

State of Gujarat

APPELLANT

Vs

Bhikhabhai Mohanbhai Chauhan

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, Section 302, Section 304, Section 307, Section 326, Section 34, Section 498-A, Section 504

Citation : (2016) 02 GUJ CK 0151

Hon'ble Judges : M.R. Shah and Z.K. Saiyed, JJ.

Bench : Division Bench

Advocate : Moxa Thakkar, Additional Public Prosecutor, for the Appellant; Umang H. Oza, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

M.R. Shah, J.—1. As both these appeals arise out of the impugned judgment and order passed by the learned Additional Sessions Judge (2nd Fast Track Court), Amreli (hereinafter referred to as "trial Court"), both preferred by the State, one challenging the impugned judgment and order of acquittal passed by the learned trial Court acquitting the original accused for the offences punishable under sections 498-A, 504, 307 and 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and another for enhancement of the sentence imposed by the learned trial Court, while convicting the original accused for the offence punishable under section 304 (Part-II) of the IPC, both these appeals are decided and disposed of by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 17.09.2008 passed by the learned Additional Sessions Judge (2nd Fast Track Court), Amreli in Sessions Case No. 13/2008, State has preferred Criminal Appeal No. 2822/2008 challenging the impugned judgment and order insofar as acquitting the original accused for the offence punishable under

sections 498-A, 504, 307 and 302 of the IPC and has preferred Criminal Appeal No. 2826/2008 for enhancement of the sentence imposed by the learned trial Court while convicting the original accused for the offence punishable under section 304(Part-II) of the IPC.

2.1 At the outset it is required to be noted that as such by impugned judgment and order though the learned trial Court has acquitted the original accused for the offences punishable under sections 498-A, 504, 307 and 302 of the IPC, the learned trial Court has convicted the original accused for the offence punishable under section 304(Part-II) of the IPC and has imposed the sentence of 5 years" R.I. It is also required to be noted that so far as the impugned judgment and order of conviction is concerned, it has attained the finality inasmuch as the original accused has not challenged the same. Therefore, as such conviction of the original accused for the offence in which his wife died homicidal death, has attained finality and therefore, as such this Court is not required to consider whether infact the original accused has committed the offence or not and what is required to be considered is whether the learned trial Court is justified in acquitting the original accused for the offences punishable under sections 498-A, 504, 307 and 302 of the IPC and convicting the original accused for the offence punishable under section 304 (Part-II) of the IPC only.

3. The prosecution case in nut-shell is as under:

3.1 That as per the FIR given by the complainant Kundanben wife of Bhikhabhai on 13.11.2007, prior to 14 years, her marriage was solemnized with the original accused and out of the said wedlock she was having two son and one daughter. It is further the prosecution case that on the date of incident, complainant was alone in the house and original accused came in drunken condition and thereafter, by saying he should not have wife like the complainant, attacked his wife and poured kerosene and set her ablaze and the complainant sustained burn injuries on most of her body parts. It is further the case of the prosecution that immediately the neighbors came there and by pouring water on the complainant, shifted the complainant to the hospital and complaint was registered with Amreli Police Station and thereafter on 24.12.2007 the complainant - deceased died and thereafter FIR being I-CR No. 72/2007 was registered with the Lathi Police Station.

3.2 That the aforesaid FIR was investigated by the Investigating Officer. During the investigation the IO recorded the statement of concerned witnesses. That at the time when the complaint was filed, which was given by the victim herself, the victim was alive and taking treatment in the hospital, the IO managed to get the dying declaration of the deceased recorded through Executive Magistrate. It appears that thereafter while taking the treatment, the deceased died after 1 & 1/2 months. That the IO also collected the medical evidence such as Post Mortem Report etc. As, subsequently, the victim died, offence punishable under section 302 of the IPC and section 498-A of IPC were added.

After conclusion of the investigation and having found prima facie case, the IO filed the charge-sheet against the original accused for the offences punishable under sections 498-A, 504, 307 and 302 of the IPC in the Court of learned JMFC, Lathi. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the learned Sessions Court, Amreli which was subsequently transferred to the Court of learned Additional Sessions Judge, 2nd Fast Track Court, Amreli registered as Sessions Case No. 13/2008. That the learned trial Court framed the charge against the accused for the offences punishable under sections 498-A, 504, 307 and 302 of the IPC. The original accused pleaded not guilty and therefore, he came to be tried by the learned trial Court for the aforesaid offences.

3.3 To prove the case against the original accused, the prosecution examined the following witnesses.

Through the aforesaid witnesses the prosecution brought on record the following documentary evidences.

3.4 That after closing purshis submitted by the prosecution, further statement of the accused came to be recorded under section 313 of the Code of Criminal Procedure, 1973 and the accused denied having committed any offence. That at the end of the trial, by impugned judgment and order the learned trial Court has convicted the original accused for the offence punishable under section 304 (Part-II) of the IPC however has acquitted the original accused for the offence punishable under sections 498-A, 504, 307, 302 of the IPC. That while convicting the original accused for the offence punishable under section 304(Part-II) of the IPC, the learned trial Court has directed the original accused to undergo the sentence of 5 years" RI. Hence, the State has preferred the present Criminal Appeals.

4. Ms. Moxa Thakkar, learned Additional Public Prosecutor appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the learned trial Court has materially erred in convicting the original accused for the offence punishable under section 304 (Part-II) of the IPC only and has materially erred in acquitting the original accused for the offences punishable under sections 307 and 302 of the IPC and also under section 498-A of the IPC.

4.1 It is also vehemently submitted by Ms. Thakkar, learned Additional Public Prosecutor that in the present case the prosecution has been successful in proving that the death of the deceased was homicidal death. It is submitted that in the present case admittedly the deceased died because of the burn injuries which was due to pouring kerosene on the victim/deceased. It is submitted that in the present case there are 4 dying declarations, one before the learned Executive Magistrate, another before the Police Officer in the form of complaint which was given by the victim herself and two other oral dying declarations before the brother and brother's wife of the victim. It is submitted that in all the

dying declarations the victim/deceased categorically stated that her husband poured kerosene on her. It is submitted that therefore the learned trial Court ought to have convicted the original accused for the offence punishable under sections 302 and 307 of the IPC.

4.2 It is vehemently submitted by Ms. Thakkar, learned Additional Public Prosecutor appearing on behalf of the State that in the present case the learned trial Court has acquitted the original accused for the offence punishable under sections 307 and 302 of the IPC and has convicted the original accused for the offence punishable under section 304 (Part-II) of the IPC solely on the ground that the deceased was discharged from the hospital after 7 days and that thereafter she died after a period of 1&1/2 months due to septicemia and therefore, it cannot be said that the intention of the accused was to kill the victim/deceased. It is submitted that as such the aforesaid finding is absolutely perverse. It is submitted that while holding so the learned trial Court has not properly appreciated the fact that as such by pouring the kerosene on the deceased and set her ablaze, the intention of the accused was to kill the deceased. It is submitted that therefore, even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause fourthly of section 300 of the IPC i.e. act of causing injury was imminently dangerous where it will in all probability, cause death. It is submitted that therefore, the learned trial Court has materially erred in acquitting the original accused for the offence punishable under section 302 of the IPC. In support of her above submissions, she has heavily relied upon the decision of the Hon''ble Supreme Court in the case of Santosh v. State of Maharashtra reported in , (2015)7 SCC 641.

Making above submissions it is requested to allow the Criminal Appeal No. 2822/2008 and quash and set aside the impugned judgment and order of acquittal passed by the learned trial Court and convict the original accused for the offence punishable under section 302 of the IPC and in the alternative for the offence punishable under section 307 of the IPC.

4.3 Ms. Moxa Thakkar, learned Additional Public Prosecutor appearing on behalf of the State has alternatively submitted that in the facts and circumstances of the case, learned trial Court has materially erred in imposing the sentence of 5 years'' R.I. only while convicting the original accused for the offence punishable under section 304(Part-II) of the IPC. It is submitted that the manner in which the accused committed the offence and poured kerosene on the deceased and thereby she sustained burn injuries and thereafter she died, the sentence imposed by the learned trial Court cannot be said to be adequate, sufficient punishment commensurate with the gravity of the offence.

4.4 It is vehemently submitted by Ms. Thakkar, learned Additional Public Prosecutor appearing on behalf of the State that as such the offence committed by the accused was against the woman which is considered to be heinous crime. It is submitted that therefore while imposing the sentence the learned trial Court

has not appreciated the aforesaid facts and has mechanically imposed the punishment/sentence of 5 years" R.I. only.

Making above submission and relying upon the decision of the Hon"ble Supreme Court in the case of Satya Narayan Tiwari v. State of U.P. reported in , (2010)13 SCC 689 and in the case of Dhananjay Shanker Shetty v. State of Maharashtra reported in , (2002)6 SCC 596 it is requested to allow the Criminal Appeal No. 2826/2008 and enhance the sentence imposed by the learned trial Court. Ms. Thakkar, learned Additional Public Prosecutor has submitted that however the aforesaid shall be without prejudice to the submission in Criminal Appeal No. 2822/2008 that the accused be convicted for the offences punishable under sections 302 and 307 of the IPC.

5. Present Criminal Appeals are opposed by Shri Umang Oza, learned advocate appearing on behalf of the original accused. The original accused is also kept present in the Court pursuant to our earlier order dated 03.02.2016.

5.1 Shri Oza, learned advocate appearing on behalf of the original accused has vehemently submitted that as such in the facts and circumstances of the case, no error has been committed by the learned trial Court convicting the original accused for the offence punishable under section 304 (Part-II) of the IPC and acquitting the original accused for the offence punishable under sections 302 and 307 of the IPC. It is vehemently submitted by learned advocate appearing on behalf of the original accused that as such in the present case and even as per the post mortem note, the deceased died because of the septicemia and after a period of 1 & 1/2 months from her discharge from the hospital. It is submitted that as such the deceased herself got discharged from the hospital after a period of one week and thereafter she was at her residence and thereafter she died due to septicemia because of not taking proper care and treatment. It is submitted that considering the aforesaid facts and circumstances and after observing that if the deceased would have taken proper treatment, she would not have died and as such had died because of septicemia, learned trial Court has rightly acquitted the original accused for the offences punishable under sections 302 and 307 of the IPC.

Making above submissions it is requested to dismiss the Criminal Appeal No. 2822/2008 preferred by the State.

5.2 In support of his above submissions, Shri Oza, learned advocate appearing on behalf of the original accused has heavily relied upon the decision of the Hon"ble Supreme Court in the case of B.N. Kavatakar and Anr. v. State of Karnataka reported in 1994 Suppl (1) SCC 304. It is submitted that in the aforesaid case the death was due to septicemia consequent to injuries caused 5 days ago and the Hon"ble Supreme Court has held that the offence is covered under section 326/34 and not under section 302/34 of IPC.

Making above submissions, it is requested to dismiss the criminal appeal preferred by the State.

5.3 Opposing the Criminal Appeal No. 2826/2008 preferred by the State which has been preferred for enhancement of the sentence it is vehemently submitted by the learned advocate appearing for the original accused that in the facts and circumstances of the case and by giving cogent reasons, when the learned trial Court has exercised the discretion judiciously and has thought it fit to impose the sentence of 5 years" R.I. while convicting the original accused for the offence punishable under section 304(Part-II) of the IPC, it is vehemently submitted by the original accused that the same is not required to be interfered by this Court in exercise of the appellate jurisdiction.

Making above submissions it is requested to dismiss even Criminal Appeal No. 2826/2008.

6. Heard learned advocates appearing for respective parties at length.

At the outset it is required to be noted and as observed hereinabove, by impugned judgment and order as such the learned trial Court has convicted the original accused for the offence punishable under section 304(Part-II) of the IPC and has imposed the sentence of 5 years" R.I. The conviction of the accused for the offence punishable under section 304(Part-II) of the IPC for the death of deceased Kundanben has attained finality. However, the learned trial Court has acquitted the original accused for the offence punishable under sections 302, 307 and 498-A of the IPC.

6.1 Having heard learned advocates appearing for respective parties and on appreciation of entire evidence on record and the reasoning given by the learned trial Court, it appears and it is not in dispute that in the present case the prosecution has been successful in proving that the accused poured the kerosene on his wife - deceased (victim). The same has been established and proved by leading cogent evidence such as dying declaration before the Executive Magistrate (Exh. 38), which has been duly proved. In the dying declaration before the Executive Magistrate, victim has categorically stated that she had been set ablaze by her husband by pouring kerosene on her. It is required to be noted that even the complaint which was given by the deceased herself (Exh. 55), which was recorded by the ASI, Amreli City Police Station, she had categorically stated that her husband has poured kerosene on her and set her ablaze by the match stick. The same has been proved by examining the ASI who recorded the complaint. Therefore, the aforesaid also can be said to be a dying declaration. Considering the aforesaid facts and circumstances and the evidence on record as such pouring the kerosene by the accused on his wife has been established and proved by the prosecution by leading cogent evidence. Even the learned trial Court has also given the finding against the accused and has held that the deceased sustained burn injuries by the accused by pouring kerosene on her.

However, the learned trial Court has convicted the original accused for the offence punishable under section 304(Part-II) of the IPC only on the ground that

as the accused was in drunken condition and has come after quarrel with another person and was angry and thereafter poured kerosene on her, there was no intention of the accused to kill the deceased and therefore, the case would fall under section 304(Part-II) of the IPC. The learned trial Court while convicting the original accused for the offence punishable under section 304(Part-II) of the IPC and acquitting the original accused for the offence punishable under sections 302/307 of the IPC, one another ground which has weighed with the learned trial Court seems to be that the deceased died because of septicemia and that too after a period of 1 & 1/2 months and after she was discharged from the hospital.

6.2 However, it is required to be noted and it also emerges from the evidence on record that the accused poured kerosene on the deceased and not only poured kerosene but also set her ablaze by match stick. It also emerges that even he did not took the deceased to the hospital for treatment. That the deceased also sustained 40% burn injuries. It is true that for whatever reason the deceased took discharge from the hospital and seems to be because of the poverty and not able to bear expenditure of the medical treatment. It is also true that thereafter she has died because of septicemia. However and even assuming that the accused had no intention to cause the death of the deceased, as observed by the Hon"ble Supreme Court in the case of Santosh (Supra), the act of the accused falls under clause fourthly of section 300 of the IPC i.e. act of causing injury was imminently dangerous where it will in all probability, cause death. In the case before the Hon"ble Supreme Court it was contended on behalf of the accused who poured kerosene on the deceased and set her ablaze by match stick that thereafter they tried to save the deceased by pouring water on her and therefore, it was contended on behalf of the accused that, by that conduct it cannot be said that the intention of the accused was to cause the death of the deceased. The aforesaid has been negated by the Hon"ble Supreme Court by observing in paras 9 to 18 as under:

"9. Insofar as the first contention that the appellant is not responsible for the death of the deceased Saraswatibai, the 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. The prosecution has adduced cogent evidence to prove that the appellant has caused the death of deceased Saraswatibai. The 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. P.W.6, doctor certified that the deceased was in a fit mental condition to make the statement and PW 7, the Executive Magistrate recorded the dying declaration Exh. 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 PW 3, Sindhu Sunil Ingole (sister-in-law) of the deceased. PW 1 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. PW 1 had not supported the statement of the 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 Exh. 1 dying declaration and the oral evidence of the mother (PW 2) and the sister-in-law (PW 3) and the same cannot be doubted.

10. The learned counsel for the appellant contented that there was no premeditation 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 v. State of Rajasthan*.

11. 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; and (iii) the post-mortem certificate revealed that the 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 PW 5, panch witness, in the house of the appellant, kerosene lamp was prepared in an empty liquor bottle. Whether the kerosene was 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 premeditation 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.

12. 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. The act of pouring kerosene, though on the spur of the moment, the same was followed by lighting a matchstick 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.

13. Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly 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.

14. Insofar as the conduct of the accused in attempting to extinguish fire, placing reliance upon the judgment of this Court in Kalu Ram case, 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 case, 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 realised 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 the act of the accused and the conviction was altered from Section 302 IPC to Section 304 Part II IPC.

15. The decision in Kalu Ram 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 sense, 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 on a par with an act committed by a person in a highly inebriated condition where his faculty of reason becomes blurred.

16. Within three months of her marriage, the deceased died of burn injuries. In bridge burning case, 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.

17. 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 then stern view needs to be adopted in all such cases. In Satya Narayan Tiwari v. State of U.P. this Court in paras 3 and 9 has held as under : (SCC pp.692 & 693)

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 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 of the same purpose. This is because of total commercialization 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.

18. Upon analysis of the evidence adduced by the prosecution, the 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 v. State of Maharashtra*. 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."

6.3 Considering the aforesaid facts and circumstances of the case more particularly the fact that the accused poured kerosene on the deceased, though on the spur of moment, the same was followed by lighting match stick and thrown it on the deceased and thereby set her ablaze, the act of the accused falls under clause fourthly of section 300 of the IPC i.e. act of causing injury was imminently dangerous where it will in all probability, cause death and therefore, the learned trial Court has materially erred in acquitting the original accused for the offences punishable under section 302 of the IPC.

6.4 Now, so far as the impugned judgment and order convicting the original accused for the offence punishable under section 304(Part-II) of the IPC only is concerned, from the impugned judgment and order and the reasoning given by the learned trial Court, it appears that what weighed with the learned trial Court is that the deceased died after a period of 1 & 1/2 month due to septicemia and that the deceased took discharge from the hospital after a period of one week after the medical advise and if proper medical treatment would have been taken, she would not have died. However, it is required to be noted as observed hereinabove, the act of the accused falls under clause fourthly of section 300 of the IPC i.e. act of causing injury was imminently dangerous where it will in all probability, cause death. There may be number of reasons for the deceased to take discharge from the hospital, one of the reason may be not able to meet with the expenditure. At this stage it is required to be noted that as such even the

accused did not take her to the hospital for medical treatment. In any case anything which had happened subsequent to the act of the accused i.e. act of pouring kerosene which was followed by lighting match stick and throwing it on the deceased and thereby setting her ablaze would fall under clause fourthly of section 300 of the IPC. Under the circumstances, on the aforesaid the learned trial Court is not justified in convicting the original accused for the offence punishable under section 304(Part-II) of the IPC. Now, so far as the reliance placed upon the decision of the Hon''ble Supreme Court in the case of B.N. Kavatakar and Anr. (Supra) by the learned advocate appearing on behalf of the original accused that as the deceased died because of septicemia, the case would not fall under section 302 of the IPC and case may fall under section 326 of the IPC is concerned, considering the facts of the case in the case before the Hon''ble Supreme Court, we are of the opinion that the said decision would not be helpful and/or of any assistance to the accused. In the case before the Hon''ble Supreme Court it was not found by the Hon''ble Supreme Court that act of the accused would fall under clause fourthly of section 300 of the IPC, as is there in the present case. Under the circumstances, the said decision would not be applicable to the facts of the case on hand more particularly in the present case as observed hereinabove, the act of the accused pouring kerosene on the deceased and setting her ablaze by throwing match stick would fall under clause fourthly of section 300 of the IPC.

6.5 In view of the above and for the reasons stated above, the original accused is to be held guilty for the offence punishable under section 302 of the IPC and the learned trial Court has materially erred in acquitting the original accused for the offence punishable under section 302 of the IPC and convicting the original accused for the offence punishable under section 304(Part-II) of the IPC only. Under the circumstances, impugned judgment and order cannot be sustained and the same deserves to be quashed and set aside and the appeal preferred by the State being Criminal Appeal No. 2822/2008 is required to be partly allowed.

7. In view of the above and for the reasons stated above, Criminal Appeal No. 2822/2008 preferred by the State is hereby partly allowed and the impugned judgment and order dated 17.09.2008 passed by the learned Additional Sessions Judge (2nd Fast Track Court), Amreli in Sessions Case No. 13/2008 is hereby quashed and set aside insofar as acquitting the original accused for the offence punishable under section 302 of the Indian Penal Code, 1860 and consequently the original accused is held guilty for the offence punishable under section 302 of the Indian Penal Code, 1860 and is sentenced to undergo life imprisonment. Consequently, Criminal Appeal No. 2826/2008 does not survive on the accused being sentenced to undergo life imprisonment and consequently Criminal Appeal No. 2826/2008 stands disposed of. It is reported that the original accused is already in the custody pursuant to our earlier order. Therefore, the original accused be sent to the concerned Jail Authority to undergo the sentence as per the present judgment and order. Consequently, Criminal Appeal No. 2822/2008 is allowed to the aforesaid extent and Criminal Appeal No. 2826/2008 stands

disposed of.