

(1991) 10 GUJ CK 0017
In the Gujarat High Court
Case No : Criminal A. No. 786 of 1990

State of Gujarat

APPELLANT

Vs

Kantilal Bababhai Panchal

RESPONDENT

Date of Decision : 08-10-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1993) 1 DMC 524 : (1992) 1 GLR 378

Hon'ble Judges : R.A. Mehta, J;N.J. Pandya, J

Bench : Division Bench

Advocate : D.B. Dholakia, appointed as Amicus curiae, M.R. Dave, Addl. P.P, for the Appellant;

Judgement

R.A. Mehta, J.—The respondent accused was charged with an offence punishable u/s 302 of IPC for having caused death of his wife by pouring kerosene over her and putting her to fire. The learned trial Judge has acquitted him mainly relying on the first statement made by the deceased herself before the Medical Officer which is recorded in the hospital case papers Ex. 36 by Dr. G.N. Thakkar, PW 9 as follows :

"Informant patient herself without yadi : Alleged H/o Burns Accidental by flames of stove while she tried to enlighten it today at about 12.30 p.m."

2. The learned A.P.P. appearing for the State has submitted that the dying declaration was recorded by the Executive Magistrate at Ex. 7 and in that statement, she has stated that about 11.30 in the morning, she was in the house and her husband (accused) was sitting near primus for rolling, rotis. He was rolling rotis and he stated that he would burn her. Therefore she herself gave him a kerosene can and she was sitting by the side of her husband and he poured kerosene over her and pushed the lighted stove towards her and her clothes caught fire. Her husband immediately poured water from the water pot and put off the fire. On the basis of this dying declaration. the learned APP has submitted that the accused has intentionally caused death of his wife and committed the

offence punishable u/s 302 of IPC.

3. Except the crucial fact as to how she caught fire. the rest of the things are not in dispute. The accused and the deceased i.e. husband and wife were married since 15 to 20 years and had three children : eldest son being 14 years of age. The deceased was 39 years old. Since about four years prior to the incident, the deceased was totally unemployed and was having no income as the factory in which he was working had closed down. The wife used to do miscellaneous domestic work to earn something and because of the economic hardships and miseries, there were frequent quarrels and as stated by the son Shailesh, the accused used to go away to his village on such occasions. On the date of the incident, the wife was washing clothes and the husband was cooking and preparing rotis and was sitting near the lighted primus. At that time, there was some quarrel and the accused had stated that he would burn and the wife had herself offered a kerosene can by challenging him to do so Such kerosene is said to have been poured on her by the accused-husband. The stove was already burning and she had caught fire. (the question is whether it was accidental or by the husband pushing to stove deliberately towards her). Immediately the accused-husband poured water over her and put off the fire and he himself took her to the hospital and thereafter he himself went to her relatives to inform them.

4. In the hospital, she has herself given her immediate version that the incident has taken place due to accident before Dr. Thakkar. Dr. Thakkar has stated this in his evidence and is corroborated by the case papers contemporaneously maintained at that time.

5. In these circumstances, the only question that requires to be considered is whether the accused had deliberately pushed or thrown the burning stove on his wife or whether she had caught fire from the burning stove which was very near. The subsequent and immediate conduct of the accused is eloquent and significant. If he had any intention to cause death or such other act as is likely to cause death, he would not have immediately poured water to put off the fire and tried to save her and he himself would not have taken her to the hospital for immediate treatment and would not have himself gone to inform her relatives. Therefore, the immediate version given by the wife herself to the doctor that the fire was accidental is more probable and credit-worthy. It is true that in the dying declaration before the Executive Magistrate recorded after the relatives had come, she has stated that the accused had thrown the burning primus on her but it does not seem to be reliable. A reasonable doubt arises from her own immediate statement coupled with the other strong circumstances that the accused himself had immediately put off the fire by pouring water and he himself brought her to hospital for treatment and thereafter he himself went to inform her relatives. From all these circumstances, it cannot be said that the prosecution has proved beyond reasonable doubt that the accused had intentionally caused death of wife by pushing or throwing the lighted stove on her. Therefore, the learned City Sessions Judge was right in acquitting the

accused of an offence punishable u/s 302 of IPC.

6. However, that is not the end of the matter. It is true that the deceased and the accused were in very miserable economic circumstances and hardships and they were having frequent quarrels and these quarrels had at times assumed serious proportions and at times, the accused used to go away to his native place. On several occasions, such threats of burning were uttered and perhaps such threats had become routine and casual thing. It is perhaps in these circumstances that when such threat was repeated by the husband, the wife herself offered in kerosene container and challenged to carry out his threat, it may be that the kerosene might have been poured on her, but it is not possible to believe in the facts and circumstances and conduct of the accused that he deliberately put her to fire. Her own first version before the Medical Officer is that the fire was due to accident and that seems to not only not probable, but also quite possible. But was an utterly rash and negligent act on the part of the accused to have poured kerosene on his wife when a stove was burning near. This rash and negligent act of the accused has unfortunately resulted into death of his wife. Therefore, even though this is not a murder or culpable homicide, it amounts to an offence punishable u/s 304(A) of the IPC which is punishable with imprisonment upto two years.

7. The accused had been in judicial custody since May 8, 1989 till he was acquitted on March 21, 1990. Thereafter, when this acquittal appeal was admitted, bailable warrant in the sum of Rs.10,000/- with one surety in the like amount was issued against the respondent accused. However, as he failed to furnish the bail, he is in judicial custody. Thus, for almost two years or more, he has remained in custody; that too without any remission, parole or furlough. His economic and domestic circumstances are pathetic. He had not been earning anything since four years prior to the date of the incident. This unfortunate incident has arisen out of miseries. He has three young children. Even when bail was granted, he was unable to furnish bail. He has not been even able to engage an advocate by himself and an advocate has been appointed at Government cost to present his case. In view of these circumstances, a sympathetic view of this unfortunate incident is required to be taken. Since the accused has already been in jail for a long period, we only direct that the punishment undergone is more than sufficient for the offence punishable u/s 304(A) IPC.

8. In the result, the appeal is partly allowed. The acquittal of the respondent accused for an offence punishable u/s 302 of IPC is confirmed. However, he is convicted of an offence punishable u/s 304(A) of IPC and the sentence already undergone by him is more than sufficient. Therefore, he is directed to be set at liberty unless required in any other case.