

(2017) 02 BOM CK 0133
In the Bombay High Court
Case No : Criminal Appeal No. 104 of 2011

Suryakant Kashinath Bhoir

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 300, Section 304

Citation : (2017) 1 AIRBomRCri 837

Hon'ble Judges : Smt. V.K. Tahilramani and Revati Mohite Dere, JJ.

Bench : Division Bench

Advocate : Mr. Pravin G. Sawant, appointed Advocate, for the Petitioner; Mrs. G. P. Mulekar, A.P.P, for the Respondent-State

Final Decision : Allowed

Judgement

Smt. V.K. Tahilramani, J. (Oral) - The appellant has preferred this appeal against the judgment and order dated 4th December, 2010 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No. 118 of 2010. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code ("IPC") and sentenced him to undergo RI for life and fine of Rs. 500, in default, RI for one month.

2. The prosecution case briefly stated is as under :

Deceased Gauri was married to the appellant about eight years prior to the incident. At the time of the incident, Gauri was residing with her husband i.e. the appellant at Manuwadi behind Tata Compound, Vile Parle, Mumbai. The incident occurred on 3rd November, 2009. Gauri asked the appellant to go to work whereupon, a quarrel took place between Gauri and the appellant. In the course of the quarrel, the appellant poured kerosene on Gauri and set her on fire. Gauri was admitted in the hospital. In the hospital, PW 1-Shri Sankhe recorded the dying declaration (Exhibit 18) of Gauri. PW 2-SEO Mrs. Temkar also recorded the dying declaration of Gauri, which is at Exhibit 19. PW 8-API Kadam also recorded

the dying declaration of Gauri. In all the three dying declarations, Gauri stated that a quarrel took place between her and the appellant and in the course of quarrel, appellant poured kerosene on her and set her on fire. The dying declaration recorded by PW 8 ? API Kadam, was treated as FIR. Thereafter, investigation commenced. Offence was registered under Section 307 of the Indian Penal Code. Gauri expired on 9th November, 2009, while she was admitted in hospital. Thereafter, the offence was converted from Section 307 to Section 302 of the IPC. The dead body of Gauri was sent for post-mortem. The medical evidence shows that Gauri expired on account of septicemic shock due to 76% superficial to deep burns (unnatural). After completion of investigation, the charge-sheet came to be filed.

Charge came to be framed against the appellant under Section 302 of IPC. He pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

3. We have heard the learned Counsel for the appellant and the learned A.P.P for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, for the below mentioned reasons, we are of the opinion that the appellant poured kerosene on his wife Gauri and set her on fire, which resulted in her death.

4. The conviction of the appellant is mainly based on three dying declarations, which were recorded by PW 1-Shri Sankhe, PW 2-SEO Mrs. Temkar and PW 8-API Kadam. PW 1-Shri Sankhe has stated that he was serving as Tahasildar. On 6th November, 2009, he received a letter from Juhu Police Station that one injured person i.e. Gauri Suryakant Bhoir is admitted in Cooper Hospital with burn injuries. He was informed to record her statement. Accordingly, he went to the hospital and met Gauri. Before recording the statement of Gauri, he asked the doctor whether Gauri was in a fit condition to make a statement. The doctor informed that the patient was conscious and able to give her statement. Thereafter, Shri Sankhe recorded the statement of Gauri. Gauri stated that at about 5:30 p.m., quarrel took place between her and the appellant. The appellant beat her and then put kerosene on her and set her on fire. The dying declaration recorded by PW 1-Shri Sankhe is at Exhibit 17.

PW 1-Shri Sankhe has specifically stated that prior to recording the statement of Gauri, he asked the doctor whether she was in a fit condition to make a statement and the doctor informed him that Gauri is conscious and able to give her statement.

5. PW 2- Mrs. Temkar was working as SEO. She has stated that on 3rd November, 2009, she received telephone call from Juhu Police Station informing her that she was required at Cooper Hospital to record statement of an injured

person. Hence, she went to the hospital. She met Gauri and asked her how she suffered burn injuries. Gauri informed her that she asked the appellant why he was not going for work. This resulted in quarrel between Gauri and the appellant and in a fit of anger, due to quarrel, the appellant poured kerosene on her person and set her on fire. This dying declaration is at Exhibit 19.

6. PW 8-API Kadam was attached to Juhu Police Station. He has stated that on 3rd November, 2009 at about 6:00 p.m. he received message from Cooper Hospital that one patient was admitted in the hospital. He immediately visited the hospital and inquired with Gauri about the incident. Gauri informed him that the appellant poured kerosene on her person and set her on fire. PW 8-API Kadam states that he obtained the certificate of the doctor that the patient is conscious and fit to give her statement. The dying declaration recorded by API Kadam is at Exhibit 41. This dying declaration was treated as FIR.

PW 9-Dr. Basu is the doctor who had examined Gauri on 3rd November, 2009 and informed the police that she was able to give her statement. PW 9 ? Dr. Basu also gave the endorsement on the dying declaration Exhibit 19 recorded by PW 2- SEO Mrs. Temkar.

7. In addition to three dying declarations recorded by PW 1-Shri Sankhe, PW 2-Mrs. Temkar and PW 8-API Kadam, the evidence of PW 5 ? Dr. Rupani and PW 9 ? Dr. Basu also supports the prosecution case. PW 5-Dr. Rupani has stated that on 3rd November, 2009 at about 7:00 p.m., he attended the patient Gauri Suryakant Bhoir. There were burn injuries on her body. She was smelling of kerosene. On inquiry, the patient Gauri gave history of burns. She stated that she and her husband had a fight at home. Her husband then poured kerosene on her and set her on fire at 5:30 p.m. PW 9-Dr. Basu has stated that on 3rd November, 2009, Gauri Suryakant Bhoir was brought to the hospital with burn injuries. He attended her at about 6:40 p.m. The patient gave history of fight with her husband and stated that her husband poured kerosene on her and set her on fire at about 5:30 p.m. Thus, the evidence of PW 5-Dr. Rupani and PW 9-Dr. Basu also shows that the appellant poured kerosene on his wife Gauri and thereafter, set her on fire.

8. It is the prosecution case that the appellant poured kerosene on Gauri and set her on fire. This is supported by the medical evidence. PW 5 ? Dr. Rupani has stated that when he examined Gauri on 3rd November, 2009 at about 7:00 p.m., he noticed that she had sustained burn injuries and she was smelling of kerosene. The Chemical Analyzer's report (Exhibit 37) also shows that kerosene residue was detected on the clothes of Gauri and the clothes of the appellant. The medical evidence further shows that Gauri expired on account of septicemic shock due to 76% superficial to deep burns (unnatural).

9. Mr. Sawant, learned Counsel for the appellant submitted that even if it is accepted that the act of the appellant of setting his wife Gauri on fire, resulted in her death, the case would not fall under Section 302 of IPC, but it will fall under

Section 304 part I of IPC. He pointed out that the evidence on record shows that when the incident occurred, a quarrel was going on between appellant and his wife Gauri, which is seen from the evidence of PW 1-Shri Sankhe, PW 2-Mrs. Temkar and the dying declarations Exhibits 17, 19 and 41. Mr. Sawant submitted that the act of the appellant was not premeditated or preplanned but it happened on the spur of the moment in a fit of anger. Mr. Sawant submitted that the fact that the incident occurred during the course of a sudden quarrel, would bring the case under Exception 4 to Section 300 of the IPC and would thus be covered under Section 304 Part I of the IPC.

10. To bring a case within Exception 4 to Section 300 of the IPC, all the ingredients mentioned in it must be found. It is to be noted that the word "fight" occurring in Exception 4 to Section 300 of the IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for passion to cool down. In this case, the evidence on record shows that both the parties had worked themselves into a fury on account of altercation going on between them. The act was not premeditated or preplanned. Looking to the fact that the incident occurred during the course of a sudden quarrel and the fact that there was no premeditation, we are of the opinion that Exception 4 to Section 300 applies to the facts of the present case.

11. In view of the above, in our opinion, the appropriate conviction would be under Section 304 Part I of IPC. Hence, conviction under Section 302 of IPC is set-aside, instead, the appellant is convicted under Section 304 Part I of IPC. In our view, custodial sentence of 10 years RI and fine of Rs. 500/-, in default, SI for three months would meet the ends of justice.

12. The Appeal is partly allowed to the aforesaid extent.

13. Legal fees to be paid to the appointed Advocate is quantified at Rs. 5,000/-.