

A SAYAJI HANMANT BANKAR
v.
STATE OF MAHARASHTRA
(Criminal Appeal No. 457 of 2007)

B JULY 13, 2011

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

Penal Code, 1860: s.304, (Part I), s.300, Exception 4; s.302 – Conviction on the basis of dying declaration – Allegation that accused-husband came home in drunken state and started abusing victim-wife and hit her on knee with brass pot and thereafter threw burning kerosene lamp on her – Victim was wearing a nylon sari which caught fire and she got engulfed in flames – In her dying declaration, she stated that accused had tried to douse the fire – Courts below convicted accused u/s.302 and awarded life imprisonment – On appeal, held: On facts and in view of evidence on record, Exception 4 to s.300 is attracted – There was sudden fight between accused and his wife and the act of throwing burning kerosene lamp was without premeditation – The evidence did not show the intention on part of accused to cause death or such bodily injury so as to result in the death of his wife – The burning seemed to be more out of the fact that at the time of incident, the victim was wearing nylon sari and had she not been wearing a nylon sari, she would not have been burnt to the extent of 70% – Conviction of accused altered from s.302 to s.304 Part I and sentence modified to period already undergone by him.

The prosecution case was that on the fateful night, the appellant-accused came home at 9 p.m. under the influence of liquor and started abusing his wife. There was petty quarrel between the accused and his wife and in that quarrel, the accused hit her left knee with a brass pot and thereafter threw a burning kerosene lamp on her.

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The wife was wearing a nylon sari which immediately caught fire and she was engulfed in flames. She was taken to hospital. As per the medical report, the victim was burnt to the extent of 70%. In her dying declaration, she mentioned that the accused had tried to douse the fire. The accused had also received burn injuries to the extent of 18%.

The trial court as well as the High Court took the view on the basis of dying declaration that the act on the part of the accused showed his intention to commit the murder or such bodily injury as was likely to result in her death. The accused was convicted under Section 302 IPC and sentenced to life imprisonment. The instant appeal was filed against the order of conviction.

Partly allowing the appeal, the Court

HELD: Exception 4 to Section 300 IPC is attracted if the act is done without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and the offender does not take any undue advantage or act in a cruel or unusual manner. The evidence on record did not show that the intention on the part of the appellant-accused was to cause death or such bodily injury as would have resulted in the death of his wife. There would have to be much more activity on the part of the accused if his intention was to commit the murder of his wife. If there was any intention to commit her murder, as mentioned in Section 299 IPC, there would have been much other acts like pouring kerosene on the victim-deceased etc. A perusal of evidence showed that as soon as the accused entered the house, there appeared to be some quarrel with his wife and in that fight first, he threw water pot and thereafter a kerosene lamp. The burning seemed to be more out of the fact that unfortunately at that time, the victim was wearing nylon sari. Had she not been wearing a nylon sari, she could not have been burnt to the extent of 70%. This was a case which clearly fell

A under Exception 4 of Section 300 IPC since there was sudden fight. There was no premeditation either. Therefore the accused-appellant is liable to be convicted for the offence punishable under Section 304 Part-I. The conviction of the accused is altered from Section 302 IPC
B to Section 304 Part-I IPC and sentence is reduced to the period already undergone by him. [Paras 5, 7, 8, 9] [237-D-F; 238-B-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 457 of 2007.

C From the Judgment & Order dated 11.8.2004 of the High Court of Judicature at Bombay in Criminal Appeal No. 319 of 2000.

Satyapal Khushal Chand Pasi, for the Appellant.

D Shankar Chillarge, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

E V.S.SIRPURKAR, J. 1. Challenge in this appeal is to the judgment dated 11.8.2004 in Criminal Appeal No. 319 of 2000 passed by the High Court of Bombay affirming the judgment and order dated 6.3.2000 passed by the trial court by which the appellant was convicted for the offence under Section 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs. 2000/- in default to undergo further rigorous
F imprisonment for one year.

2. The brief facts leading to case are as under:

G On 18.5.1998 at about 9 p.m., appellant-accused Sayaji Hanmat Bankar came home under the influence of liquor and abused his wife deceased-Suman. There was petty quarrel between the appellant and the deceased Suman and in that quarrel the appellant hit her left knee with a water pot made of brass and thereafter threw a burning kerosene lamp upon her. At that time, she was wearing nylon sari which immediately
H caught fire and she was engulfed by flames. The deceased was

immediately taken to the hospital by her parents where her dying declaration was recorded. The medical report of the doctor showed that the deceased was burnt to the extent of 70%. A dying declaration was recorded. During investigation the deceased gave the above version. In her dying declaration, it has also been mentioned that the accused-appellant also tried to douse the fire. It is established that he had received burn injuries to the extent of 18%.

3. The trial court as well as the High Court have taken the view on the basis of dying declaration that the act on the part of the accused showed his intention to commit the murder or such bodily injury as was likely to result in her death.

4. We have heard Mr. S.K.C. Pasi, learned counsel appearing on behalf of the appellant and Mr. Shankar Chillarge, learned counsel appearing on behalf of the State and also gone through the record.

5. In our view, from the evidence on record, it does not appear that the intention on the part of the accused was to cause death or such bodily injury as would have resulted in the death of his wife. There would be much more activity on the part of the accused if his intention was to commit the murder of his wife. It seems that there was a fight as soon as he came to the house under the drunken state and in the fight, he first hit her left knee with a water pot and thereafter, threw kerosene lamp on her. It is obvious from the evidence that this was done suddenly in the heat of passion. If there was any intention to commit her murder, as mentioned in Section 299 IPC, there would have been much other acts like pouring kerosene on the deceased etc. on the part of the accused.

6. The High Court rejected the contention of learned counsel for the appellant that this case would fall under Exception 4 to Section 300 IPC. It was held by the High Court that this is certainly not a case to which exception 4 to Section 300 would get attracted but would fall under clause "fourth" of 300 IPC. Exception 4 to Section 300 IPC reads as under:

Exception 4- Culpable homicide is not murder if it is

A committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner”

B 7. It is clear from the reading of aforesaid Exception 4 that if the act is done without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and if the offender does not take any undue advantage or act in a cruel or unusual manner, then Exception 4 will be attracted.

C 8. We have gone through the evidence carefully. It seems that as soon as the accused entered the house, there appeared to be some quarrel with his wife and in that fight first, he threw water pot and thereafter a kerosene lamp. The burning seems to be more out of the fact that unfortunately at that time, the lady was wearing nylon sari. Had she not been wearing a nylon sari, it is difficult to imagine how she could have been burnt to the extent of 70%. In our view this was a case which clearly fall under Exception 4 of Section 300 IPC since there was sudden fight. There was no premeditation either. Therefore the accused-appellant is liable to be convicted for the offence punishable under Section 304 Part-I.

E 9. We, accordingly, alter the conviction of the accused from Section 302 IPC to Section 304 Part-I IPC and sentence him to the period already undergone by him. The sentence of fine remains the same.

F 10. It is submitted by the learned counsel for the appellant that the appellant was taken into custody on 29.5.1998 and was never granted bail by the High Court and he has already undergone 13 years of sentence.

G 11. In that view of the matter, the accused-appellant is directed to be released from the jail forthwith unless he is required in any other case.

12. The appeal is allowed partly to the extent indicated above.

H D.G.

Appeal partly allowed.