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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.994 OF 2009**

**Gangesh Dnyanoba Dagade**

Aged : 42 Yrs. Occupation: Labour,  
R/at S. No.66, Bhangai Vasti,  
Kharadi, Pune-411 014.

(In Jail Central Prison Yerawada, Pune)

..Appellant.  
(Orig. Accused)

Vs.

**State of Maharashtra**

Through Police Station Yerawada, Pune

...Respondent.

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Mr. S.C. Halli, for Appellant.

Mr. A.S. Shitole, APP for Respondent-State.

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**CORAM: SMT. V.K. TAHILRAMANI, Acting C.J. &  
A.S. GADKARI, J.**

**30<sup>th</sup> September, 2015**

**ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, Acting C.J.]:-**

**1** The appellant has preferred this appeal against the judgment and order dated 18<sup>th</sup> September 2008 passed by the Additional Sessions Judge, Pune in Sessions Case No.483 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and

sentenced him to suffer imprisonment for life and to pay fine of Rs.1000/-, in default R.I. for three months.

**2** The prosecution case can briefly be stated as under:

Deceased Chhababai was the wife of the appellant. At the time of incident, the appellant and deceased had one son i.e. PW-2 Akshay who was about nine years of age at that time. The appellant was addicted to liquor and under the influence of liquor he used to abuse and beat his wife Chhababai. The incident took place on 6.4.2006. At about 6.00 p.m. Chhababai returned home and started cooking. Thereafter the appellant came home. He was intoxicated. The appellant demanded money from his wife Chhababai. Chhababai refused to pay the money, due to which the appellant started abusing and beating Chhababai. During the course of this quarrel, the appellant poured kerosene on his wife Chhababai and set her on fire with match stick. Chhababai started shouting. This incident was seen by PW-2 Akshay, the son of the appellant and deceased Chhababai. On hearing her shouts, her brother-in-law and his wife came to the spot and extinguished the fire. Thereafter Chhababai was taken to the hospital. In the hospital PSI

Nanaware (PW-5) recorded the dying declaration of Chhababai.

The said dying declaration Exhibit 14 was treated as F.I.R. of Chhababai. Thereafter investigation commenced. After completion of investigation, the chargesheet came to be filed against the appellant.

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

**4** We have heard the learned Counsel for the appellant and the learned APP for the State. We have carefully considered their submissions, the facts and circumstances of the case, judgment passed by the learned Sessions Judge and the evidence on record. After carefully considering the same, for the below mentioned reasons, we are of the opinion that the appellant poured kerosene on his wife Chhababai and set her on fire which resulted in her death.

5 The star-witness in the present case is PW-2 Akshay who is the son of the appellant and deceased Chhababai. Akshay has stated that when the incident took place, he was residing at Kharadi alongwith his parents i.e. appellant and deceased Chhababai. Akshay has stated that he was only son of the appellant. Akshay stated that the incident took place on 6.4.2006. On that day it was a holiday. His mother returned home at about 6.00 p.m. Thereafter his father i.e. appellant came home. His father was intoxicated. His father demanded the money from his mother Chhababai. Chhababai refused to pay the same. The appellant thereupon started abusing and beating Chhababai. Then Akshay went to the house of his uncle who was residing near their house. Within 15 to 20 minutes Akshay returned home. At that time Akshay saw his father pour kerosene on his mother and set her on fire. On seeing this Akshay got frightened and rushed to the house of his uncle to inform that his father poured kerosene on his mother Chhababai. When Akshay returned home with his uncle, he saw that his father had ran away from the spot. His mother was then taken in an ambulance to the hospital.

**6** The prosecution is also relying on the dying declaration of Chhababai wherein she has implicated the appellant. This dying declaration Exhibit 14 was recorded by PW-5 PSI Nanaware. PSI Nanaware has stated that on 6.4.2006 at about 11.15 p.m. he received a telephone call from Yerawada Police Station informing him that one woman with burn injuries was admitted in Sassoon hospital, Pune. PSI Nanaware was directed to go the Sassoon hospital and record statement of the patient. Accordingly, PSI Nanaware went to the Sassoon Hospital. He reached the hospital at about 11.45 p.m. On enquiry, he came to know that the woman i.e. Chhababai Dagade was admitted in the burns ward of the hospital. PSI Nanaware then requested the Medical Officer (PW-1) Dr. Parakh in the ward to examine Chhababai and to certify whether she was in a fit condition to give statement. PSI Nanaware has stated that the Medical Officer examined the patient and certified that she was in a fit condition to give her statement. Thereafter PSI Nanaware recorded the statement of Chhababai in the presence of said Medical Officer. PSI Nanaware has identified Exhibit 14 as the very same dying declaration which was recorded by him. In this

dying declaration, Chhababai has stated that she was married to appellant about 10 years prior to the incident. From the appellant she had one son Akshay who was nine years of age. Chhababai has stated that on 6.4.2006 her husband came home in intoxicated state. The appellant demanded that she should bring money from her father which came to her share after her father sold the land. Chhababai told him that when the entire amount was received from selling of the land, she would get her share from her father. Thereupon the appellant started abusing her. Thereafter her husband i.e. the appellant poured kerosene on her and set her on fire.

7 PW-5 PSI Nanaware has stated that when he went to the Sassoona hospital he asked the doctor on duty in the burns ward to examine Chhababai and to certify whether Chhababai was in a position to give her statement. At the relevant time Dr. Parakh (PW-1) was the resident doctor of Sassoona Hospital. Dr. Parakh has stated that on 7.4.2006 at about 1.00 a.m. the police came to the burns ward and requested him to examine the patient Chhababai as they intended to record her statement. Dr. Parakh then examined the patient and certified

her to be conscious and in a condition to give valid statement.

Thereafter police recorded the statement of Chhababai in the presence of Dr. Parakh. Dr. Parakh has specifically stated that he was present through out the period when the statement of Chhababai was recorded by the police and whatever was stated by Chhababai was recorded by the police.

**8** It is the prosecution case that the appellant had poured kerosene on Chhababai and set her on fire. This is supported by the medical evidence. PW-6 Dr. Wakchaure conducted the postmortem on the dead body of Chhababai. Dr. Wakchaure noticed 90% burn injuries. According to him the burn injury was sufficient to cause death of Chhababai in the ordinary course of nature. In the opinion of Dr. Wakchaure Chhababai died due to septicematic shock due to burn. The evidence on record shows that partially burnt saree and petticoat of Chhababai was seized and set for chemical analysis. The C.A.Report Exhibit 30 shows that partially burnt saree and petticoat of Chhababai tested positive for kerosene residue.

**9** Mr. Halli submitted that even if it is accepted that the

act of the appellant of setting his wife Chhababai on fire resulted into her death, the case would not fall under Section 302 of IPC, but it would fall under Section-II of IPC. Mr. Halli pointed out that the evidence on record shows that when the incident occurred, a quarrel was going on between the appellant and his wife Chhababai. In support of his contention, he has placed reliance on the evidence of PW-1 Dr. Parakh. He pointed out the averments of Dr. Parakh in para-2 of his evidence. In the said para, Dr. Parakh has stated that when Chhababai was admitted in the hospital on 6.4.2006 at about 10.00 p.m. At the time of admission, Dr. Parakh examined Chhababai. At the time of admission, Chhababai gave history of incident to him and he recorded the same in the case paper, Article-A. Dr. Parakh has stated that Chhababai told him that her husband was constantly quarreling with her and on the relevant day the appellant quarreled with her. Her husband demanded money from her and on that count a quarrel took place between the appellant and Chhababai. Dr. Parakh has stated that Chhababai further told him that during the said quarrel her husband poured kerosene on her and set her on fire. Mr. Halli submitted that the fact that the appellant set Chhababai on fire during the course of a

sudden quarrel, would bring the case under Exception 4 to Section 300 of IPC and would thus be covered by section 304-II of IPC.

**10** To bring a case within Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noted that the word "fight" occurring in Exception 4 of IPC is not defined in the IPC. Heat of passion requires that there must be no time for passion to cool down. In this case, the evidence shows that both the parties had worked themselves into a fury on account of quarrel going on between them. The appellant did not come to the spot armed with a weapon, but he poured kerosene on Chhababai which was taken from the spot.

**11** Looking to the evidence on record, we are of the opinion that the Exception-4 to Section 300 would apply to the facts of the present case. However, we are not prepared to accede to the submission of Mr. Halli that the case would fall under Section 304-II of IPC. In our view, the case would fall under Section 304-I of IPC because we are of the opinion that the appellant did not just have the knowledge that his act is

likely to cause death of Chhababai as contended by Mr. Halli, but in fact the appellant intended to cause the death of Chhababai. We say so on the basis of extent of burn injuries sustained by Chhababai which as seen from the evidence of PW-6 Dr. Wakchaure were to the extent of 90%. Looking to all these facts, we are of the considered opinion that the case cannot fall under Section 304-II of IPC.

**12** Considering the evidence on record, we are of the view that the Exception 4 to Section 300 of IPC would apply to the facts of this case and the proper conviction would be under Section 304-I of IPC. Hence, the conviction of the appellant under Section 302 of IPC is set aside, instead the appellant is convicted under Section 304-I of IPC. In our view, the sentence of imprisonment of 10 years R.I and fine of Rs.1000/- , in default S.I. for 15 days would meet the ends of justice.

**13** The Appeal is allowed to the aforesaid extent.

**(A.S. GADKARI, J.)**

**(ACTING CHIEF JUSTICE)**

**CERTIFICATE**

**Certified to be true and correct copy of the original signed Judgment.**