

KALABAI

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v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 763 of 2019)

APRIL 30, 2019

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**[ASHOK BHUSHAN AND K.M. JOSEPH, JJ.]**

*Penal Code, 1860: ss. 304 Part II and 302 – Murder – Dying declaration – On facts, quarrel between the victim and her husband and during the quarrel, appellant-sister-in-law who was living on the lower floor of the house arrived at the scene – She threw the burning kerosene stove on the victim – Victim suffered burn injuries, resulting in her death – Conviction and sentence of the appellant u/s. 302 by the courts below – On appeal, held: Dying declaration recorded within few hours of admission of the victim in the hospital was relied by the courts below, wherein the victim stated as to how she was burned – There is no evidence to come to conclusion that the appellant had any intention to kill the deceased – However, there cannot be any issue that when a person throws a burning stove on a person there is knowledge that the act is likely to cause death – Trial court rightly held that accused threw burning stove on the deceased but whether the act was done with intention to cause death had not been adverted to by the trial court – In the facts and circumstances of the case, the appellant can be said to have committed offence u/s. 304 Part II – Conviction of the appellant is altered from s. 302 to s. 304 Part II and sentenced of life imprisonment is reduced to rigorous imprisonment for five years.*

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*Hari Shanker v. State of Rajasthan (1998) 8 SCC 355*  
– relied on.

**Case Law Reference**

**(1998) 8 SCC 355**

**relied on**

**Para 8**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal  
No.763 of 2019.

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A From the Judgment and Order dated 25.03.2014 of the High Court of Madhya Pradesh, Bench at Indore in CRA No.453 of 2002.

Pawan Reley, Ms.Anuradha Mutakar, Advs. for the Appellant.

Mrs. Swarupama Chaturvedi, Adv. for the Respondent.

B The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.** 1.This appeal has been filed by the appellant against the judgment and order of the High Court of Madhya Pradesh, Bench at Indore dated 25.03.2014 by which Criminal Appeal filed by the appellant questioning her conviction and sentence under Section 302 IPC has been dismissed.

C 2. The prosecution case in brief is:

Deceased, Smt. Lalita Bai was wife of Vijay Singh. The appellant is sister-in-law of the deceased. On 20.08.1999 in the late evening a quarrel was going on between Lalita Bai and her husband, Vijay Singh. D The appellant who lives on the ground floor came on the first floor where Lalita Bai was boiling milk on battiwala stove. Appellant threw the burning stove on the deceased due to which clothes of deceased caught fire and serious burn injuries were caused. Husband of the deceased got her admitted in the M.Y. Hospital, Indore. On receiving information from the Hospital, a Police Inspector reached the Hospital. The information E was mentioned in the Rojnamcha and Head Constable, Udai Pal Singh was sent in the Hospital where Lalita Bai was being admitted with burn injury with 96% burn. Report was asked for from the Incharge-Medical Officer as to whether patient was in a position to give the statement, after receiving certificate that the patient was fit to give statement, I.O. F informed the Executive Magistrate-cum-Naib Tehsildar for recording her statement. Executive Magistrate-cum-Naib Tehsildar reached Hospital and recorded the statement of the patient, Lalita Bai. On the basis of the report case under Section 307 read with Section 34 IPC was registered on 20.08.1999. Lalita Bai, during the course of treatment G died on 23.08.1999 and case has been registered under Section 302 IPC. Chargesheet was submitted both against Kalabai and Vijay Singh and the trial proceeded against both of them.

3. The prosecution in support of its case has produced 24 witnesses. The trial court after considering the evidence on record and

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relying on the dying declaration of the deceased recorded on 21.08.1999 held the appellant guilty of murder. Appellant was convicted with life imprisonment and fine of Rs.2,000/-. Vijay Singh, husband of deceased was acquitted from charge under Section 302 read with Section 34 IPC. Appellant filed a criminal appeal in the High Court challenging her conviction and sentence. The High Court by the impugned judgment has dismissed the criminal appeal giving rise to this appeal.

4. This Court vide order dated 02.07.2015 issued limited notice which is to the following effect:

“Delay condoned.

Issue notice limited to the question of nature of offence.

Prayer for suspension of sentence is rejected.”

5. We have heard learned counsel for the appellant and learned counsel for the State of Madhya Pradesh, Shri Prashant Kumar.

6. Learned counsel for the appellant in support of his submission contends that the appellant ought not to have been convicted under Section 302 IPC. He submits that there was no motive for the appellant to kill the deceased. Appellant had neither intention nor motive to cause the death of the deceased.

7. Learned counsel has also submitted that deceased was not in a fit physical condition to record her statement, since the MLC of deceased clearly mentioned that the patient was restless, A febrile, Pulse not palpable. It is submitted that the patient was so feeble and so restless that she was not in a position to give the correct version of the incident.

8. Learned counsel for the appellant placed reliance on the judgment of this Court in **Hari Shanker vs. State of Rajasthan, (1998) 8 SCC 355**, and submits that the facts of the present case are similar to the facts of the above case and in the above case this Court had altered the conviction from under Section 302 IPC to Section 304 Part II IPC and reduced the sentence of imprisonment for life to rigorous imprisonment for five years. This case also deserves the same treatment.

9. Learned counsel for the State refuting the submission of the appellant submits that the deceased physical condition was certified by the Doctor who proved her to be in a fit state of mind to record her

A statement which has been proved by the prosecution witnesses. It is submitted that the burn injury on the neck and head was only 8% which was noticed by the High Court; The dying declaration had rightly been relied by the Courts below and the appellant cannot be allowed to raise submission that the dying declaration should not be relied. The limited notice having been issued on 02.07.2015, the appellant may not be permitted to challenge the conviction recorded against the appellant. The appellant can be permitted only to raise submissions on the nature of offence as is the limited notice in the present case.

10. We have considered the submissions of the parties and perused the records.

11. Limited notice having been issued only to the question of nature of offence, we confine our consideration of the case only to the above question.

12. The dying declaration which was recorded within few hours of admission of deceased in the Hospital has been relied by the Courts below. The Magistrate who recorded the dying declaration, namely Vijendra Singh Panwar, PW.15 has appeared in the witness box and proved her dying declaration. The High Court in its judgment has extracted the entire statement made by the deceased which is treated as dying declaration. On the question put to the deceased “How could you burn” detailed answer was given by the deceased. It is useful to extract the above question and answer given by the deceased which is to the following effect:

“Q.: How could you burn ?

Ans.: A quarrel was going on between myself and my husband, during the said quarrel my husband’s sister namely Kala who is living in the lower floor of my house, came at my house and said that I will see her, and while I was boiling the milk, took the said slow-match (batti wala stove) kerosene stove and put on me, due to which the kerosene oil was spared upon my body and my clothes caught the fire from its burnt wicks.”

13. It is relevant to notice that husband of the deceased, Vijay Singh was also charged under Section 302 read with Section 34 IPC and

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114 IPC who has been acquitted by the trial court. In the evidence which was led before the Courts below, there are no evidence of any strained relations between the appellant and deceased. The entire incident which happened has been elaborately described by the deceased herself in her dying declaration. There is no evidence to come to conclusion that the appellant had any intention to kill the deceased. As per statement of deceased herself that a quarrel was going on between herself and her husband, Vijay Singh and during that quarrel, the appellant who is living in the lower floor of house arrived at the scene. There cannot be any issue that when a person throws a burning stove on a person there is knowledge that the act is likely to cause death.

14. Before the trial court the argument was made on behalf of the appellant that at best, she be convicted under Section 304 Part II IPC which was not acceded to. In paragraph 60 the trial court while dealing with the said submission made the following observations:

“60.As far as the question of arguments placed by the learned advocate on behalf of the accused Kala Bai against the offence under Section 304 Part II IPC in place of Section 302 IPC is that it has been shown that the accused Kala Bai has burnt Lalita Bai by putting burning stove on her head and burnt her 96 per cent. Dr. A.K. Dixit (PW-11) has stated in his statement that the wound (Burn) found during his inspection, the wounds have been shown as fatal injuries and the examination of whole body of Lalita Bai was conducted after 3 days of her death. The Dr. Ravindra Singh Chaudhary (PW-17) has mentioned the reason of death burning, other serious problems, blockading of breathing process etc.”

15. The trial court has rightly held that accused Kala Bai threw burning stove on the deceased but whether the act was done with intention to cause death had not been adverted to by the trial court.

16. Learned counsel for the appellant has placed reliance on the judgment of this Court in **Hari Shankar (supra)**. In the above case the appellant had also picked up a burning kerosene wick-stove and threw it on the deceased. Kerosene from stove spilled over the clothes they caught the fire. The deceased in the said case also died as a result of the burns received by him. This Court held that since the appellant had thrown

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A a burning stove on the deceased, he would have known that his act was likely to cause burns resulting in death. It is useful to extract paragraphs 2,3 and 4 of the judgment which is to the following effect:

B “2. Only question that we have to consider in this appeal is what offence can be said to have been committed by the appellant on the basis of the facts found by the High Court. It has been held that while the appellant, deceased Bheem Singh and one Shah Megan were taking tea in the tea-club of the Air Force, 32 Wing (MT Section), an exchange of words took place between the appellant and the deceased on account of the demand made by the appellant for returning Rs 50,000 which he had advanced to the deceased. The appellant became angry and picked up the burning kerosene wick-stove and threw it on the deceased. C Kerosene from the stove spilled over the clothes of the deceased and as the burning wicks came in contact with his clothes they caught fire. The deceased ultimately died as a result of the burns received by him. D

E 3. What was submitted by the learned counsel for the appellant was that the appellant had no enmity with the deceased. He had no intention to kill the deceased as by killing him he could not have recovered the amount of Rs 50,000 which he had advanced to the deceased. He further submitted that the quarrel between the two took place all of a sudden and in the heat of the moment the appellant had picked the stove and had thrown it towards the deceased. He, therefore, submitted that it was merely a rash and negligent act on the part of the appellant. We cannot agree with the submission of the learned counsel. Since the appellant F had thrown a burning stove on the deceased, he would have known that his act was likely to cause burns resulting in death. In view of the facts and circumstances of the case, he can be said to have committed an offence under Section 304 Part II IPC.

G 4. We, therefore, allow this appeal partly, alter the conviction of the appellant from under Section 302 to Section 304 Part II IPC and reduce the sentence of imprisonment for life to rigorous imprisonment for five years.”

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[ASHOK BHUSHAN, J.]

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17. Following the above decision, we are of the view that the present is also a case where in the facts and circumstances of the case, the appellant can be said to have committed offence under Section 304 Part II IPC. A

18. In the result, we partly allow the appeal and alter the conviction of the appellant from under Section 302 IPC to Section 304 Part II IPC and reduce the sentence of imprisonment for life to rigorous imprisonment for five years. B

Nidhi Jain

Appeal partly allowed.