

Bombay High Court

Manoj Mahadeo Mude (In Jail) vs State Of Maharashtra, Through ... on 20 June, 2016

Bench: B.R. Gavai

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apeal6.15.0

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 6/2015

Manoj Mahadeo Mude,  
aged 40 Years, Occ. Labour,  
R/o Ganjare Ward, Hingi, Tah. Seloo,  
Dist. Wardha, At present in Central

Prison, Nagpur.

.....APPELLANT

...V E R S U S...

State of Maharashtra, through

Police Station Officer, Seloo,  
Dist. Wardha.                      ig

...RESPONDENT

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Mrs. Smita Singalkar, Advocate for appellant.

Mr. C. A. Lokhande, A.P.P. for respondent.  
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CORAM:- B. R. GAVAI & V. M. DESHPAND E, JJ.

DATED :-

JUNE 20, 2016

JUDGMENT (Per : V. M. Deshpande, J.)

1. Being aggrieved by the judgment and order of conviction dated 11.07.2014 in Sessions Case No. 187/2011 whereby the appellant is convicted for the offence punishable under Section 498-A IPC and for the offence punishable under Section 302 of the IPC and on the said count was directed to suffer rigorous imprisonment for two years and life respectively and also to pay fine of Rs.1,000/- and Rs.5,000/- on the said counts, the appellant is before this Court.

2 apeal6.15.odt

2. The prosecution case is as under:

Mohd. Mustafa s/o Abdul Gani Sheikh, API (PW9) was deputed at the Police Chouki at Sewagram Hospital, which comes under the Police Station, Sewagram. He received information that the victim Lata is admitted in the hospital for sustaining burn injuries. He, therefore, visited the ward, obtained certificate from Doctor (Exh.-32) that the patient is mentally and physically fit to give her statement and thereafter recorded her statement (Exh.-32).

According to the statement of Lata given to Mohd. Mustafa, the appellant used to ill treat her under the influence of liquor. On 17.08.2011, Lata received one phone call from her sister in law, calling her to attend a religious function on 20.08.2011. Upon that, the appellant picked up quarrel with her.

On 18.08.2011 in the morning, again the appellant picked up quarrel and thereafter under the influence of liquor, poured kerosene on her and set her ablaze. The scribe Mohd. Mustafa handed over the said statement to the Police Station.

As the spot of occurrence was situated at Hingni within the jurisdiction of Police Station, Seloo, Ravindra Kangale (PW7) received a phone call from Sevagram Police Station that an offence is registered under the Crime No. 0/00 for the offence punishable under Section 307 of the IPC at Sewagram Police Station and, 3 apeal6.15.odt therefore, it was requested to this prosecution witness that the case diary of the said should be taken for registration of offence at Seloo Police Station. Accordingly, this witness went to Police Station, Sewagram, obtained statement of Lata and thereafter he registered the offence bearing Crime No. 147/2011 under Section 307 of the IPC against the appellant. The printed FIR is at Exh.-26.

3. The case diary of Crime No.147/2011 was entrusted to Laxman Hande PSI (PW15) at Police Station, Seloo. He visited the spot of occurrence. Spot Panchanama was drawn in presence of Pancha (Exh.-13). He also seized various articles from the spot under seizure memo (Exh.-14). He also recorded statements of the neighbours. Arrest of the appellant was made under arrest memo (Exh.-59). The clothes of the appellant i.e. full pant and shirt which were emitting kerosene smell were also seized under seizure memo (Exh.-60). The muddemal property was sent to the Chemical Analyser. He filed a charge-sheet in the court of law for the offence punishable under section 307 of the IPC.

When Suresh Ganpatrao Lakhe (PW12), Police Constable was on his duty at General Hospital, Wardha, the Doctor informed to Police Station, Wardha on 27.02.2012 that Lata died at General Hospital, Wardha. On the basis of the information, Accidental Death 4 apeal6.15.odt at 'o' number was registered by this witness at Police Station, Wardha. He conducted inquest on the dead body by drawing inquest panchanama (Exh.-45). He also obtained Post Mortem Report and then gave a wireless message to Seloo Police Station. Thereafter, the offence was converted into Section 302 of the IPC and the superior of Laxman (PW15) conducted further investigation.

On submission of the final report, the learned Magistrate found that the case is exclusively triable by the Court of Sessions, therefore, committal order was passed. The learned Ad hoc Additional Sessions Judge-2, Wardha framed the charge against the appellant in Sessions Case No. 187/2011. The appellant abjured his guilt and claimed for his trial. After full fledged trial, Sessions Judge, Wardha convicted and sentenced the appellant as noticed in the opening paragraph of the judgment. Hence, this appeal.

4. We have heard Mrs. Singalkar, learned counsel for the appellant and Mr. Lokhande, learned A.P.P. for the State. With their able assistance, we have gone through the record and proceedings.

5. The case is based on two written dying declarations. The first dying declaration is recorded by Mohd. Mustafa (PW9), which was treated as FIR. This prosecution witness has recorded the 5 apeal6.15.odt statement of Lata, after certificate of fitness from Dr. Sahil Yadav.

The said certificate is at Exh.-32. The dying declaration of Lata (Exh.-38) was recorded by Mohd. Mustafa as per the version given by Lata in presence of Dr. Sahil Yadav, who also gave the certificate (Exh.-35) after recording statement of Lata.

Another dying declaration of Lata is recorded by Narayan Thakre, Naib Tahsildar (PW2). On 19.08.2011, he received requisition from Sewagram Police Station for recording the statement of Lata, who was admitted in Sewagram Hospital. After receiving the requisition (Exh.-17), Narayan went to Kasturba Hospital, Sewagram in Burn Ward. He met the Medical Officer on duty. Coincidentally, the said Medical Officer was Dr. Sahil Yadav (PW8). Mr. Thakre (PW2) expressed his desire to record statement of Lata and, therefore, he requested the Medical Officer to examine Lata. Therefore, he requested the Medical Officer to examine Lata. Accordingly, she was examined by Dr. Sahil, who found that Lata is in a fit condition to give statement. He accordingly gave a fitness certificate (Exh.-34).

Armed with said medical certificate, though Narayan (PW2) could have straightway proceeded to record the statement, however, from the evidence of Narayan (PW2), it is clear that he himself also ascertained the fitness of the patient and when he found that Lata is giving cogent answers to his questions, thereafter, he started 6 apeal6.15.odt recording her statement. The statement is in question and answer form. The statement recorded by Shri Narayan Thakre also shows that the dispute arose between the husband and wife on account of phone call received from the sister of the injured Lata calling her to their place for religious function and thereafter she was poured with Kerosene and was set ablaze. The dying declaration recorded by Narayan is at Exh.-18. Dr. Sahil also

certified by giving certificate at Exh.-35 that during the period of recording dying declaration, Lata was fully conscious.

Though, there is no eye witness, from the dying declaration it is clear that the appellant is responsible for the burn injuries suffered by Lata. The record shows that Lata died at General Hospital, Wardha on 27.02.2012. The date of pouring kerosene and setting on fire is 19.08.2011. Thus, the death of Lata occurred after a period of six months from the date of pouring kerosene. According to medical appears such as intimation of death by hospital authorities to police, extent burn injuries was 49%. Dr. Nitinkumar Nimodia (PW16) had conducted post mortem. He proved Post Mortem Report (Exh.-68). According to the Doctor, the death is due to shock with injuries and burn with secondary infection (sepsis).

7 appeal6.15.odt The question, therefore, is whether the appellant could be convicted for the offence punishable under Section 302 of the IPC or whether it can be altered to any other offence.

6. Janardan (PW5) is father of the deceased Lata whereas Vandana Diwte (PW6) is mother of the deceased. Janardan Diwte's evidence disclosed that after getting information from the Doctor, he reached to Sewagram Hospital. Lata was an indoor patient for about two months in the said hospital. Following portion appearing in the evidence of Janardan Diwte, father of the deceased will be material to answer the said question which is reproduced hereinbelow:

"...My daughter was admitted in Sewagram hospital for the period of two months. I then informed to the doctor that I do not have money to continue treatment. Doctor said that we could not offer to give her medicines free of charge. Doctor said that the patient should be discharged. I then took her to my house. Her health could not be improved during the period of one and half month at my house. Her health was deteriorated and therefore she was admitted in Civil Hospital, Wardha. During the course of treatment, she died within two days."

Further, he has stated in his cross-examination that while taking discharge of Lata from Sewagram Medical Hospital he did not inform to the police and he had taken her to his house and given her 8 appeal6.15.odt treatment from the Rural Hospital, Sindi Railway. His evidence further disclosed that Lata was staying with him for 2 1/2 months but she was not ready to come to Sindi Raiwlay Hospital. He used to go to take medicines from Sindi Railway Hospital but the Doctor had not seen her nor examiner her. The evidence of his wife Vandana (PW6) is also on the same line.

7. From the aforesaid evidence, it is crystal clear that unfortunately when Lata was discharged from Sewagram Hospital, the said fact was not disclosed to the police by her parents. Their evidence shows that Lata was not willing to get herself admitted in Sindi Railway, Hospital and without her examination, she was being treated by the Doctor.

According to the Doctor who conducted the Post Mortem, Lata died due to septicemia, which shows that the injured was not properly medically treated which can also be seen from the evidence of her

parents. Had there been a proper medical treatment, Lata could have survived.

8. From the dying declaration, it appears that on a trivial issue, the dispute arose. However, both the dying declarations show that it is the appellant who brought auto rickshaw and had admitted 9  
apeal6.15.odt the deceased in the hospital. Therefore, in our view, the present case on the totality of the available evidence on record, falls under the exception-4 of Section 300. Therefore, this is a case of culpable homicide not amounting to murder. Though, the appellant was not having any intention to cause murder of his wife, at the same time, it was within his knowledge that pouring of kerosene and setting her ablaze is likely to cause death. Therefore, in our view, the case squarely falls under part II of Section 304 of the IPC.

9. In view of above, following order is passed.

ORDER

- (i) The appeal is partly allowed.
- (ii) Conviction of the appellant under Section 302

of the Indian Penal Code is altered to Part II of Section 304 of the Indian Penal Code. The accused is sentenced to suffer rigorous imprisonment for 10 years.

Rest of the order is maintained.

(V. M. Deshpande)

(B. R. Gavai)

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