

Dattatraya
v.
The State of Maharashtra
Criminal Appeal No. 666 of 2012
01 February 2024
[Sudhanshu Dhulia and Prasanna B. Varale, JJ.]

Issue for Consideration

Whether the courts below were justified in convicting the appellant u/s. 302 and 316 IPC and sentencing to undergo life imprisonment and 10 years of R.I. respectively along with fine, for causing death of his wife as also the child she was bearing by pouring kerosene on her and then setting her on fire.

Headnotes

Penal Code, 1860 – ss. 304 Part II and 316 – Culpable homicide not amounting to murder – Causing death of quick unborn child by act amounting to culpable homicide – Prosecution case that on the fateful night the husband in an inebriated state, picked a fight with his nine months pregnant wife and then poured kerosene on her, as a result she sustained in 98% burn injuries and subsequently died – She also gave birth to still born child – Dying declaration recorded – Maternal grand mother of the deceased witness to the incident – Conviction of the appellant u/ss. 302 and 316 and sentenced to life imprisonment and 10 years of R.I. respectively along with fine by the courts below – Correctness:

Held: Prosecution has been able to prove its case beyond reasonable doubt regarding the incident – Maternal grand mother of the deceased witnessed the incident – She along with the maternal aunt clearly established the facts – Even though PW 1 who recorded dying declaration was declared hostile, there is sufficient evidence to prove that it was the appellant who had poured kerosene on the deceased which led to the burn injuries and the death of the deceased and the child she was bearing – Fact that the deceased gave birth to a stillborn child on the next day while she was still alive and the death was caused by the act of the appellant, makes a case u/s. 316 – From every available

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evidence placed by the prosecution, it is a case where a sudden fight took place between the husband and wife – Deceased at that time was carrying a pregnancy of nine months and it was the act of pouring kerosene on the deceased that resulted in the fire and the subsequent burn injuries and the ultimate death of the deceased – Said act at the hands of the appellant would be covered under the fourth exception given u/s 300 – Act of the appellant was not premeditated, but is a result of sudden fight and quarrel in the heat of passion – Thus, it would be a case of culpable homicide not amounting to murder u/s. 304 Part II in as much as, though the accused had knowledge of the consequences of the act he was committing, yet there was no intention to cause death – Findings of s. 302 converted to that of s. 304 Part II and the accused sentenced to 10 years of R.I – Since the appellant has already undergone incarceration for more than 10 years, he be released forthwith from the jail unless required in some other offence. [Paras 11, 12, 14, 17-21]

Case Law Cited

Kalu Ram v. State of Rajasthan, (2000) 10 SCC 324
– referred to.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Causing death of quick unborn child by act amounting to culpable homicide; Dying declaration; Life imprisonment; Culpable homicide not amounting to murder; Knowledge of the consequences of the act; Intention to cause death; Premeditated act; Sudden fight and quarrel in the heat of passion; Prove its case beyond reasonable doubt; Evidence; Witnesses; Sufficient proof; Burn injuries; Incarceration.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.666 of 2012

From the Judgment and Order dated 23.11.2010 of the High Court of Bombay at Aurangabad in CRLA No.6 of 2009

Dattatraya v. The State of Maharashtra**Appearances for Parties**

Sudhanshu S . Choudhari, Sr. Adv., Ms. Rucha Pande, M Veera Ragavan, Ms. Gautami Yadav, Pranjal Chapalgaonkar, M. A. Chinnasamy, Advs. for the Appellant.

Bharat Bagla, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Sourav Singh, Aditya Krishna, Ms. Raavi Sharma, Adarsh Dubey, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Order**

This appeal arises out of the final judgment and order dated 23.11.2010 passed by the Aurangabad Bench of Bombay High Court in Criminal Appeal No. 06/2009 whereby the conviction of the appellant under Sections 302 and 316 of the Indian Penal Code (for short 'IPC') was upheld and the appellant was sentenced to undergo life imprisonment under Section 302 and 10 years of R.I. under Section 316 of IPC, and was directed to pay fine amount of Rs.5000 and Rs.2000/-, respectively.

2. The facts of this case are that the appellant (32 years of age in the year 2007), was married to one, Meenabai Dattatraya Gawali, (who was 30 years of age on the date of the incident). The wife Meenabai (deceased) was having a pregnancy of nine months at that time. It is the case of the prosecution that the appellant came home at about 10.00 P.M. on the fateful night of 26.01.2007 in an inebriated state. He then picked a fight with his wife while she was cooking food in the kitchen and poured kerosene on her and as the stove burst, the wife sustained burn injuries, which in hospital were determined as 98%. She was taken to the Civil Hospital, Solapur at about midnight, where the first injury report itself indicates that she sustained burn injuries of about 98%. A statement is then recorded of the deceased at 01.30 AM on 27.01.2007, which states as under:-

"

STATEMENT

Solapur

Dated-27/01/2007

Time-01.30 AM

Saturday after completing Friday

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Patient is conscious oriental and fit for giving valid statement at present.

1.41 AM – 27.01.2007 – Sd/- Deshpande

Smt. Minabai Datta Gavli, age 30 years, R/o. A. Kata Savargaon, Tq. Taljapur, District. Osmanabad gives statement that in the night on Friday 26.01.2007 at 10 PM there was trifle dispute between husband and wife and at the time of cooking Mr. Dattatraya Gavli, age 40 years, service-wireman with the anger of dispute poured rockel on me. At that time stove flared up and I burned up to 98%. My husband is also burned 40%, Mr. Datta Gavli has also burnt. He got burnt while putting out the fire. At that time husband had drunk liquor. He was addicted to liquor. My grandmother admitted in Civil Hospital at night 12 am. Now I am under treatment and giving statement myself.

Yours faithfully
Thumb Impression
Thumb Impression of left hand of
Smt. Minabai Dattatraya Gavli

Before (M.V.Wagh) Executive Magistrate Office, Solapur.

Patient was conscious oriented and fit for giving valid statement.

(Exh.33)

Sd/- A.P.Deshpande-”

3. A case is then registered at Tamalwadi Police Station, as Crime No. 12/2007, filed under Section 307 of the IPC against the appellant.
4. As we have already stated above, the deceased at that time was nine months pregnant. She gave birth to a stillborn child on the next day i.e., 28.01.2007 and died on 04.02.2007.
5. The offence which was registered under Section 307 of the IPC was converted into an offence under Section 302 of the IPC and another charge under Section 316¹ was added.

¹ Section 316. **Causing death of quick unborn child by act amounting to culpable homicide.**-- Who-

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6. The police after an investigation filed its chargesheet in the Court of Judicial Magistrate, F.C., Tuljapur, which was registered as RCC No.96/2007 and the case was committed to Sessions, where it was ultimately placed before Addl. Sessions Court, Usmanabad, Maharashtra. The appellant faced the Trial Court where he was convicted of offences under Sections 302 and 316 of IPC and sentenced to undergo life imprisonment and 10 years of rigorous imprisonment respectively, along with fine and default stipulation.
7. The matter was taken in an appeal before the Bombay High Court by the appellant which was dismissed.
8. The Special Leave Petition later was filed by the appellant before this Court in which leave was granted vide order dated 09.04.2012.
9. We have heard Mr.Sudhanshu S. Choudhari, learned counsel appearing for the appellant and Mr.Bharat Bagla, learned counsel appearing for the respondent, at some length.
10. The prosecution in this case had examined nine prosecution witnesses and placed relevant documents such as medical reports, dying declaration etc., in order to establish its case. The appellant gave his statement under Section 313 of the Cr.P.C., but did not produce any defence witnesses. In his statement, under Section 313 of the Cr.P.C., the appellant admits to the fact that at the relevant point of time, PW-7 who is the maternal grandmother of the deceased (the wife of the appellant) was residing with them. He also admits that his wife was nine months pregnant at the time of the incident and gave birth to a stillborn child on 28.01.2007. He, however, denies all instances of quarreling with his wife and committing the act as alleged by the prosecution. PW-7 here is the star witness of the prosecution, who was present in the house and was witness to the crime. There is also a dying declaration.
11. After hearing the learned counsel for the parties and then examining the evidence placed by the prosecution, we find that there is an overwhelming evidence placed by the prosecution before the Trial Court regarding the incident itself. The prosecution has been able

ever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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to prove its case beyond reasonable doubt regarding the incident itself inasmuch as the incident took place on midnight of 26.01.2007 and 27.01.2007, and the appellant who was in an inebriated state, picked a quarrel with his wife and while she was cooking his meal in the kitchen, poured kerosene on her as a result of which she sustained burn injuries and subsequently died.

12. The fact that the appellant had quarreled with the deceased and had poured kerosene on her is well established. The statement given by the deceased herself, which the prosecution has placed as a dying declaration, categorically states that she was being tortured at the hands of her husband and that her husband was having an affair with another woman, and that on the fateful day, he returned late at night in an inebriated state had a fight with her and then threw kerosene on her, as a result, she sustained burn injuries. But then, she also states that he also tried to extinguish the fire and as a result, he too got burn injuries. The other evidence as we have stated above, is in the form of PW-7, Chaturabai Tukaram Kale, who is the maternal grand mother of the deceased, who was residing with the deceased and her husband (appellant) eight to nine days prior to the incident, and was taking care of the deceased as she was on the family way. She also supports the story that the appellant was having an affair with another woman which was the main reason for the quarrel between the couple. On the fateful day, the two were quarreling because of this reason alone and the appellant, thereafter, threw kerosene on his wife, and set her on fire. Having witnessed the incident she came out of the house and started shouting that my grand daughter has been set on fire.
13. Another prosecution witness which is worth mentioning here is PW-8 i.e. Vimal Suryakant Salunkhe, who is the maternal aunt, of the deceased and the daughter of PW-7. This witness was told by the deceased that the appellant had kept a mistress and this resulted in frequent fights between husband and wife (i.e., the deceased). Deceased had also informed her that her husband i.e., the accused, was addicted to liquor. She was told about the incident by her mother (PW-7) at about 1 'O' Clock in the night, and the fact that the burn injuries were caused by the act of the accused (the appellant). On information received from her mother (PW-7), she went to the Civil Hospital, Solapur, along with her husband where she saw Meena (the deceased), in a burnt condition and it was the deceased who

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told her that the appellant had kept a mistress at Kati-Sawargaon and it was for this reason, that he was picking quarrels with her. At the time of the incident, she was cooking food on the stove for her husband and it was for this reason that when he poured kerosene on her, which was lying in the can, the stove burst and she came out of the room shouting for help. She was also asked by people who had gathered at the house by that time as to why her husband has done this to her. This witness (PW-8), then states that the deceased died in the hospital after nine days. She had also recognized the accused who was before the Court. This witness was again put to a lengthy cross examination without giving any benefit to the defence.

14. Both PW-7 and PW-8 have clearly established the fact that the burn injuries were caused by the appellant and that he had returned to his house in an inebriated state and was under the influence of liquor while he did the act, after picking a quarrel with his wife. The presence of PW-7, being a witness, in the house at the time of the incident was never in doubt.
15. The statement was given to PW-8 by the deceased stating how she sustained burn injuries at the hands of her husband, i.e., the present appellant, and the same was first recorded in the statement which was given immediately after she had reached the hospital at about 01.30 AM on 27.01.2007, before PW-1. PW-1 was working as 'Avval Karkun'² in the Tahsil Office, North Solapur, at the relevant point of time and was requested by the police at 12:30 AM in the night to record the dying declaration of the deceased at Civil Hospital, Solapur.
16. The examination-in-chief of PW-1 reads as under:-

“ **Exam-in-Chief by APP Shri Jadhav**

1. ***I am working as Aval Karkun in Tahsil office, North Solapur. Since 2d Jan. 2007 I am working as Special Executive Magistrate. For two days, work of recording of dying declaration was allotted to me on Friday and Saturday. On 26th Jan. 2007 I was in my house. Police had been to my house in the night at about 12.30 O'clock. I was requested to record the dying declaration orally. Thereafter***

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I had been to Civil Hospital, Solapur. A letter was given to me for recording dying declaration of Meena Gawali and her husband Datta Gawali. I am having the copy of letter with me. I had given my endorsement on the office copy of the letter of the police. The said letter now shown to me is same. It is at exh.23. Thereafter I had been to Medical officer Shri A.P. Deshpande and requested him to show the patient. The patients were shown to me. Both the patients sustained burn injuries. Before recording DD I requested medical officer to examine the patient and certify about the same. Doctor examined Dattatraya Bhanudas Gawali. Dr. Deshpande accordingly made the endorsement on the statement of Dattatraya Gawali at the top of the same. The patient disclosed his name as Dattatraya Bhanudas Gawali R/o. Kati Sawargaon. As per the statement given by the patient, I recorded the same. I read over the statement to Dattarya and he admitted the same to be correct. I obtained the left thumb mark of the patient. I again requested the Medical officer to examine the patient and to tell me as to whether he is conscious or not. Doctor examined patient and certified the patient to be conscious. The endorsement now shown to me is of medical officer. While recording the statement I myself, Datta Gawali and medical officer only were there. I put my signature on the statement. The statement now shown to me is the same. It is in my hand writing. It is at exh. 24. The patient disclosed me that on 26.01.2007, in the night there was quarrel between myself and my wife and at the relevant time, I poured kerosene on her person in the angry mood when she was cooking food. Due to that according to the patient they both sustained burn injury. He told me that he was under the influence of liquor.

2. *I also recorded the dying declaration of Meenabai Gawali and requested Dr. A.P. Deshpande to*

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examine patient before recording her statement. After examining the patient Doctor told me that patient was conscious and was in position to give statement. Accordingly doctor put his endorsement on the dying declaration in the beginning of the statement. The patient disclosed her name as Meena Datta Gawali, R/o. Kati Sawargaon. Meenabai told me that in the nigh on 26.01.2007 when she was cooking the food there was quarrel between herself and her husband and at the relevant time her husband poured kerosene on her person in angry mood due to which there was bursting of stove in which she sustained burn injury. She also told that her husband was under the influence of liquor. Accordingly I recorded the dying declaration given by Meenabai. The same was read over to the deceased which she admitted to be true and correct. I also obtained the left thumb mark of the patient on the dying declaration. Again I requested the medical officer to examine the patient and tell me as to whether she was in position to give statement or not. Doctor A.P. Deshpande again examined the patient and certified the patient to be conscious. Accordingly he put the endorsement alongwith his signature on the dying declaration. At the time of recording of dying declaration I myself, patient and doctor only were there. The dying declaration now shown to me is the same. It is in my hand writing. It bears my signature. It is at exh. 25. The contents therein are true and correct. Thereafter I handed over the statements to the police chauky, Civil hospital, Solapur.”

17. This witness was cross-examined by the defence as there was some discrepancy in his statement as to whether the deceased was in a proper state of mind to give a statement. His examination-in-chief was taken again by the Assistant Public Prosecutor and the witness was declared hostile only to the extent of discrepancy that the patient was not in a position to talk. But nothing substantially

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moves on this aspect, inasmuch as, even if we do not consider the dying declaration of the deceased which was given at 01.30 AM in the night on 27.01.2007, there is sufficient evidence to prove that it was the appellant who had poured kerosene on the deceased which led to the burn injuries and the death of the deceased and the child she was bearing. There is no doubt that an offence under Section 316 has clearly been made out. We only have to examine whether an offence here is under Section 302 of IPC or is it of a lesser magnitude.

18. Having considered the entire evidence at length, we are also of the considered opinion that under the given facts and circumstances of the case, it would not be a case of murder but of culpable homicide not amounting to murder for the reasons which we want to state as under.
19. We have, by and large, accepted the case of the prosecution as to the incident itself. There is sufficient evidence to prove that the burn injury was caused to the deceased by an act done at the hands of the appellant and it was the appellant who had come to his house under the influence of liquor and poured kerosene on his wife while she was cooking food for him on a stove, which resulted in bursting of the stove and causing burn injuries on the deceased. There is also sufficient proof of the fact that the husband and wife were having frequent fights even earlier. This has come out in the deposition of PW-7 and her cross-examination has inspired our confidence as well as that of PW-8 though she is not an eye-witness to the incident. The fact that the deceased gave birth to a stillborn child on the next day i.e., 28.01.2007 while she was still alive and the death was caused by the act of the appellant which we have already stated above, also makes a case under Section 316 of the Indian Penal Code.
20. From every available evidence, which was placed by the prosecution, it is a case where a sudden fight took place between the husband and wife. The deceased at that time was carrying a pregnancy of nine months and it was the act of pouring kerosene on the deceased that resulted in the fire and the subsequent burn injuries and the ultimate death of the deceased. In our considered opinion, this act at the hands of the appellant will be covered under the fourth exception given under Section 300 of the IPC, i.e., "Culpable homicide is not murder if it is committed without premeditation in a sudden fight in

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the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner".

21. The act of the appellant is not premeditated, but is a result of sudden fight and quarrel in the heat of passion. Therefore, we convert the findings of Section 302 to that of 304 Part-II, as we are of the opinion that though the appellant had knowledge that such an act can result in the death of the deceased, but there was no intention to kill the deceased. Therefore, this is an offence which would come under Part-II not under Part-I of Section 304 of the IPC.

On almost similar facts, (as are present in the case at hand), this Court had converted the findings of Section 302 to that of Section 304 Part II IPC. The case of which reference is being made here is ***Kalu Ram v. State of Rajasthan (2000) 10 SCC 324***. The appellant who had been convicted under Section 302 IPC for causing death of his wife by pouring kerosene on her and then setting her on fire was convicted by the Trial Court under Section 302, which was upheld by the High Court. The facts of the case are as follows :-

In the above case, the appellant who in an inebriated state was pressurizing his wife to part with some ornaments so that he could buy some more liquor. On her refusal he poured kerosene on her and set her on fire by lighting a matchstick. But then he also tried to pour water on her to save her. This Court was thus of the opinion that :

"7....Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all that the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder.

8. We therefore alter the conviction from Section 302 IPC to Section 304 Part II IPC..."

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The facts of the present case, as we have already discussed above, by and large reflect the same situation, nature of crime as well as the act of the accused and the consequences of his action. We are inclined to accept the arguments raised by the learned senior counsel for the appellant, Mr. Sudhanshu S. Choudhari that under the present circumstances it would indeed be a case of culpable homicide not amounting to murder as given in Section 304 Part II in as much as, though the accused had knowledge of the consequences of the act he was committing, yet there was no intention to cause death.

The appeal is partly allowed. We convert the findings of Section 302 to that of Section 304 Part II of IPC and sentence the accused to 10 years of R.I. To this extent the findings given by the trial court and High Court will stand modified. We have also been informed that the appellant has already undergone incarceration for more than 10 years. Therefore, he shall be released forthwith from the jail, unless he is required in some other offence.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal partly allowed.