

HIGH COURT OF JUDICATURE AT BOMBAY

Bench: Justices Shivkumar Dige and A.S. Gadkari

D.D-12.Oct.2023

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 757 OF 2022

Israr Mukhtar Varsi,

V/s.

The State of Maharashtra

Sections, Acts, Rules, and Articles Mentioned in Judgment:

- Section 300 of the Indian Penal Code (IPC)
- Section 304 (Part-II) of IPC
- Sections 498A and 341 of IPC

Subject of the Judgment:

Criminal Case - Conviction for Culpable Homicide Not Amounting to Murder

Headnotes:

Criminal Case - Conviction under Section 304(Part-II) of IPC - Appellant convicted for the offence of culpable homicide not amounting to murder - Sentence of rigorous imprisonment for 10 years and a fine of Rs.1,000 imposed - Acquittal from the offence under Sections 498A and 341 of the IPC - Appellant's legal fees and expenses quantified at Rs.20,000 to be paid by the High Court Legal Services Committee - Interim Application No. 3581 of 2022 disposed of. [Para 25-28]

Referred Cases:

Not applicable

Judgment (Per Shivkumar Dige, J.) :

1. Appellant - original accused impugns Judgment and Order dated 22nd December 2017 passed by the learned Additional Sessions Judge, Mangaon, District-Raigad in Sessions Case No. 9 of 2013, whereby Appellant is convicted for the offences punishable under Sections 302, 498- A and 341 of Indian Penal Code, 1860 (for short "IPC"). Under Section 302 SHUBHADA SHANKAR KADAM of IPC Appellant is sentenced to suffer imprisonment for life and to pay fine Digitally signed by SHUBHADA SHANKAR KADAM Date: 2023.10.12 1/21 18:51:08 +0530 of Rs. 1,000/- (Rs. One thousand only), in default, to suffer rigorous imprisonment for six months. Under section 498-A of IPC, Appellant is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 500/- (Rs. Five hundred only), in default to suffer rigorous imprisonment for three months. Under section 341 of IPC, Appellant is sentenced to suffer rigorous imprisonment for one month.
2. Brief facts of the case are as under:

Deceased Jasmin Varsi was married with Appellant. It was a love marriage. After marriage, Jasmin went to reside in the house of her in-laws at Jharkhand. Jasmin and Appellant cohabited there for one month, thereafter Appellant went to attend his job in Gujarat. Jasmin was residing in her in-laws' house. In May 2012, there was a marriage of Reshma, younger sister of Jasmin. The said marriage was attended by Jasmin and her mother-in-law. In the said marriage, articles such as Pulsar motorcycle, washing machine, fridge, T.V., sofa, cupboard etc. were given to Reshma's husband. At that time, mother-in-law of Jasmin insisted that, such articles be given to them but PW-6 Mohammad Idrasi i.e. brother of Jasmin was not in position to give such articles. Due to which, mother-in-law of Jasmin got unhappy and she alone went back to her house. That time, understanding was given to Jasmin and her mother-in-law by her brothers that, they will give such articles to her. Appellant had not attended the marriage ceremony of Reshma. Thereafter, Jasmin was called to Mumbai by her elder brother PW-7 Aftab Idrasi. Accordingly, Jasmin came to Mumbai.

On 13th October 2012, Appellant also came to Mumbai to the house of PW-

7. An assurance was given to Appellant that, after Bakri Eid, articles would be given to him, therefore Appellant took Jasmin along with him to Tasgaon, Taluka Mangaon. There Appellant took a room on rent in the house of Deepak Mahalunge (PW-5). On 21st October 2012 at 10.00 a.m., Appellant was talking on cell phone with a girl named

Heena. Appellant had love affair with her. Due to that, quarrel started between Appellant and Jasmin. At that time, Jasmin told Appellant that, she would inform to her brothers about his love affair. After hearing this, Appellant got angry and he poured kerosene from a can on Jasmin and set her on fire by igniting matchstick. He also closed the doors of house and pressed her mouth so that, she should not shout. Even then Jasmin shouted and after hearing her shouts, PW-1 Anita @ Prema Gaikwad and PW-2 Shalini Mahalunge came at spot of incident. They opened the other door of that room and saw Jasmin in burning condition. Kerosene was spilt everywhere on the floor. Jasmin with the help of water tried to extinguish fire on her. Thereafter, PW-1 Anita Gaikwad brought Jasmin to the kitchen of Deepak Mahalunge. Anita put a Chaddar on Jasmin to extinguish her fire. At that time, Jasmin was saying that, "Mere ko mar dala". Appellant was present in the said room. While the incident was going on, PW-3 Dilip Polekar and other persons reached there. Thereafter, Jasmin and Appellant were sent to Sub- District Hospital, Mangaon for treatment through Minidor Rickshaw. Jasmin had sustained severe burn injuries on her person, therefore, Medical Officer referred her to Lokmanya Tilak Hospital, Sion-Mumbai. When Jasmin was taking treatment in Sion Hospital, on 23rd October 2012 her statement was recorded in presence of PW-11 Jigar Karani (Special Executive Magistrate). 2.1. After completion of the investigation, charge sheet was filed against Appellant. Case was committed to Additional Sessions Judge, Mangaon. Charge was framed against Appellant. He pleaded not guilty and claimed to be tried. To prove its case, prosecution has examined 13 witnesses. The statement of Appellant under Section 313 of the Code of Criminal Procedure [for short 'Cr.P.C.'] was recorded. His defense is of total denial.

2.2. Considering the evidence on record and submissions of both parties, learned Trial Court by its impugned Judgment and Order has convicted Appellant as mentioned above.

4. Heard learned counsel Mr. Hrishikesh Chavan for Appellant and learned APP Mr. Ajay Patil for the State.

5. The prosecution case is based on written dying declaration, oral dying declaration and evidence of witnesses who reached at incident spot immediately after hearing shouts of Jasmin.

Firstly, we would see the evidence which came on record regarding witnesses who reached the incident spot immediately. It is prosecution's case that, after hearing shouts of Jasmin, immediately PW-1 Anita Gaikwad, PW-2 Shalini Mahalunge, PW-3 Dilip Polekar and PW-4 Chandrakant Sakpal-PSI rushed to the incident spot.

6. In the evidence of PW-1 Anita Gaikwad, it has come on record that, Jasmin along with her husband was residing in rented premises of her brother since 8 to 9 days prior to the incident. Jasmin used to come to her house when her husband would go for work. On earlier day of the incident, Jasmin had come to the house of this witness for learning tailoring work. She was under tension, hence this witness asked her how her husband treats her. Jasmin told her "waise to achcha hai lekin bahot kamina hai". On 21 st October 2012 at about 11.00 a.m., this witness had been to the house of her brother for offering food to her aged mother. At that time, she heard shouts from the room of Jasmin. She was shouting as "bachav bachav". This witness also saw the flames of fire coming out from the door of Jasmin's room. This witness pushed the door of the said room and tried to open it but it was bolted from outside. PW-2 Shalini told her that, the door is bolted from upper side. This witness opened the door and went in Jasmin's room. She saw Jasmin in burnt condition. Kerosene was spilled on the ground. Jasmin poured pot of water on her person. Her husband was dragging her at the corner of that room so that she would burn. This witness took out Jasmine outside the said room in kitchen room of her brother, which was adjacent to Jasmin's room. She put chadar on the back of Jasmin because her back portion was burning. At that time, Jasmin was telling "mere ko mar dala" and Appellant was standing nearby. Then, other witnesses came at the incident spot. Jasmin was admitted in the Hospital at Mangaon, thereafter she was shifted to Sion Hospital Mumbai.

In cross-examination, this witness stated that it did not happen that, Appellant tried to extinguish the fire on Jasmin. She has admitted that Jasmin and her husband were residing in good manner and she did not know about the quarrel between them. She has stated that, she did not state before the police that, Appellant was dragging Jasmin towards the corner of the room.

7. In the evidence of PW-2 Shalini Mahalunge, niece of PW-1, she has stated that, on 21st October 2012 at about 11.30 a.m., PW-1 her paternal aunt had come to their house to offer food to her grandmother. At that time, she heard shouts of Jasmin as "bachav, bachav" from the room of Appellant. They both rushed to room of Appellant. Then PW-1 tried to open the door of Appellant's room. This witness told PW-1 to remove the latch of the said door. PW-1 removed the said latch and entered in the room of Appellant. After opening the door, this witness saw that, Jasmin was burning and she was trying to pour water on herself. Appellant was dragging her inside the room. Kerosene was spilled on the floor of that room. PW-1 tried to take Jasmin outside the room, however, Appellant was dragging Jasmin inside the room. PW-1 took out Jasmin in their kitchen. Backside portion of Jasmin was burning. PW-1 put chadar on Jasmin. At that time, Jasmin was shouting "Mere ko mar dala" and Appellant was standing inside the room.

Meanwhile, other witnesses came there, they took Jasmin to the hospital by rickshaw of Santosh Shinde. 7.1. In cross-examination, this witness admitted that, on 21 st October 2012, she had not entered in the room of Appellant, however, PW- 1 had entered in the said room. This witness stated that, the mori (bathroom) of the room of Jasmin was visible from their kitchen. 7.2. From the evidence of these witnesses, it has come on record that, after incident, they rushed to incident spot. PW-1 went in the room of Jasmin. Whereas PW-2 was standing outside. Jasmin was telling before PW- 1 and PW-2, Jasmin that, "mere ko mar dala". PW-1 has not stated before the police that, Appellant was dragging Jasmin at corner of room. So it is omission. Moreover, though PW-2 has stated that, Appellant was dragging Jasmin inside the room but this fact is not stated by PW-1 nor it was stated before police.

8. In the evidence of PW-3 Dilip Polekar, it has come on record that, on 21st October 2012, he was in the house of his uncle - Namdev Polekar. At that time, he heard shouts from the house of Deepak Mahalunge. He went there. At that time, Sudhakar Shinde met him at the house of Mr. Deepak Mahalunge. Sudhakar Shinde told this witness that, tenant residing in the room of Deepak Mahalunge set his wife on fire. Sudhakar Shinde told this witness that, he heard shouts "mere ko mar dala, mere ko mar dala". This witness and others went to the incident spot. This witness further stated that, they kept Jasmin in rickshaw to take her to the hospital. This witness asked Appellant to sit in the rickshaw and took his wife to the hospital. The Appellant was not ready to take Jasmin to hospital. This witness gave warning to him and threatened him, then Appellant sat in the said rickshaw. Jasmin was taken to hospital at Mangaon, thereafter she was shifted to Sion Hospital, Mumbai.

In cross-examination, this witness stated that, he was present till Jasmin was kept in rickshaw. Though this witness has stated that, Appellant was not ready to take Jasmin to hospital but other witnesses are not supporting this fact.

9. In the evidence of PW-4 Chandrakant Sakpal, PSI, it has come on record that, on 21st October 2012 he was in-charge of Ravalje Police Outpost and he was on duty of village Bhagad, Tal. Mangaon for grampanchayat election. When he was proceeding towards election booth, he heard the shouts "bachav, bachav". Then, he went to the house of Appellant and asked Sudhakar Shinde what happened. Sudhakar Shinde told him that, the said room was bolted from inside, therefore, he knocked the door of the said room. PW-1 opened the door of the said room from inside of the Appellant's house. Jasmin was taken out from that room by PW-1. At that time, Jasmin was saying "mere ko mar dala, mere ko mar dala". Her husband, Appellant was present in that room. Then, this witness called minidoor rickshaw. This witness kept Jasmin in the said rickshaw and sent Jasmin to the Government

Hospital. This witness informed the said incident to his superior. This witness called two panch witnesses and prepared spot panchanama. The spot panchanama is at 'Exhibit-26'.

In cross-examination, this witness has stated that, when he saw Jasmin, she was in position to speak. She was conscious. This witness enquired with her about the incident. At that time, Jasmin told him that, her husband poured kerosene on her person and said 'mere ko mar dala". This witness further stated that, he came to know that, the incident was a cognizable offence. He informed Mangaon Police Station. This witness has admitted that, Investigation Officer recorded his statement on 27 th October 2012 and he did not state before the Investigation Officer that, Jasmin had told him that, Appellant had poured kerosene on her person and set her on fire. This witness further admitted that, as per Jasmin's initial statement, she had no grievance against anybody. This witness further admitted that, he had seen burn injuries on the hands of Appellant.

10. It has come on record that, Jasmin had given two written dying declarations and oral dying declaration. Firstly, we would see the evidence regarding written dying declaration.

It has come in evidence of PW-11 Jigar Karani (Special Executive Officer) that on 23rd October 2012, he received call from a social worker in Sion Hospital, Mumbai. He informed this witness that, police required Special Executive Officer to record statement of one burning case victim. At that time, this witness told him that, he was unable to attend and requested to call another Special Executive Officer. Even then, social worker requested this witness to come to hospital. Thereafter he immediately reached Sion Hospital within 15-20 minutes with his stamp and Government Seal. When he reached there, he met P.S.I who was on duty. Thereafter said P.S.I took this witness to Burn Ward. They met Doctor. The Doctor took this witness to the ward where the said patient was admitted. The said patient was in severe pain. This witness was directed to record statement of the patient. P.S.I who was along with them recorded the statement of the said patient, as per her say, the said statement was recorded in the presence of this witness. As patient was not in position to sign the statement, she put her thumb impression on it. Accordingly this witness made endorsement on it with date and time. This witness put his signature as well as he put his stamp and government seal on it. It is at 'Exhibit 65'. In cross-examination, this witness admitted that, no written request was made to him for recording dying declaration of said patient. From the evidence of this witness, it reveals that Jasmin's dying declaration was recorded in his presence as per say.

11. To prove the state of mind of Jasmin at the time of giving dying declaration, Dr. Amol Bhardwaj(PW- 10) stated that, he was attached

to Sion Hospital. Jasmin was admitted in Sion Hospital in Burn Ward. On 23rd October 2012, police came to him and requested him to examine Jasmin and give his opinion whether she was in a position to give a statement. This witness examined Jasmin. She was conscious, alert and oriented and in a position to give a statement. Accordingly, this witness put the endorsement in margin of paper that, "the patient at present is alert, oriented and in a mental state to give a legal statement". This witness signed the above endorsement. During 01.00 p.m. to 01.30 p.m. her statement was recorded, during this period this witness examined Jasmin four times. She was conscious, alert and oriented. Accordingly this witness put four signatures as he had confirmed four times that, Jasmin was in position to give statement. Last signature was put by this witness at 01.30 p.m. after completion of the statement of Jasmin. The endorsement is at 'Exhibit-65'.

In cross-examination this witness admitted that, he did not receive a letter in writing for giving opinion about the condition of Jasmin. This witness denied suggestion that, Jasmin was not conscious, well oriented and alert when her statement was recorded.

From the evidence of this witness, it proves that, state of mind of Jasmin at the time of giving dying declaration was conscious, alert and well oriented. It is significant to note that, while recording dying declaration, this witness examined Jasmin four times to check if she was conscious, alert and oriented, and put four signatures along with time.

12. So far as oral dying declarations are concerned, it is the prosecution's case that, when deceased was admitted in hospital, she had told her brothers, PW-6 Mohammad Idrasi and PW-7 Aftab Idrasi about the incident. PW-6 Mohammad Idrasi has stated that, on 20th December 2011 Jasmin and Appellant got married, it was a love marriage. After marriage, they resided together for one month, thereafter Appellant resumed his job in Gujarat. At that time, Jasmin was residing with mother of Appellant at his native place. The marriage of Reshma, younger sister of this witness, took place in May 2012. Though invitation was given to the Appellant, he did not attend said marriage ceremony. However, Jasmin along with her mother-in-law attended said marriage. In the marriage of Reshma, his family gave washing machine, motorcycle, refrigerator, TV, sofa, cupboard to her husband. At the time of marriage of Jasmin, the said articles were not given to Appellant. The mother-in-law of Jasmin told them that, same articles be given to Appellant. However, family of this witness was not in position to give said articles to Appellant because they had just spent the amount for marriage ceremony of Reshma. Therefore, mother-in-law of Jasmin left her at parental house and she alone went to her native place. However this witness convinced Jasmin and Appellant that, after some period they will give same articles to Appellant. When Jasmin was at her parental house, she was receiving phone calls of

Appellant as well as her mother-in-law about the demand of articles. Appellant and his mother told Jasmin that, they would take her to her matrimonial house, after giving above referred articles only. Elder brother of this witness - PW-7 Aftab Idrasi called Jasmin to Mumbai. Jasmin came to Mumbai. Then this witness went to meet Jasmin. PW-7 called Appellant to Mumbai on 13th October 2012. Appellant came to the house of PW-7. This witness, PW-7 and his cousin brother assured Appellant that, after the festival of Bakari-Eid, they will give the demanded articles to him. Then Appellant took Jasmin along with him. Shahbaz, younger brother of this witness also went along with them at village-Tasgaon. Thereafter Shahbaz returned to Mumbai. On 21 st October 2012, this witness received phone call from Mangaon police station. Police told this witness that, Jasmin sustained burn injuries and she was shifted to Sion Hospital. This witness and other brothers went to Sion Hospital. They met Jasmin, she was conscious. On 23 rd October 2012, in presence of mother and sister, this witness asked Jasmin how and what happened. Jasmin told them that, Appellant was receiving phone calls of one girl Heena and on that reason, there used to be quarrels between her and Appellant and she told Appellant that, she will disclose this fact to her brothers. At that time Appellant threatened Jasmin that, he will kill her and her brothers if she disclose this fact to them. Jasmin further told that, Appellant bolted the door of the room from inside and poured kerosene on her person and set her on fire by igniting match stick. Due to fire, Jasmin shouted, at that time, Appellant pressed her neck and pushed her at the corner of wall. After hearing shouts, lady residing in the said vicinity and other neighbours rushed to the said room and they opened the door and poured water on her person. This witness further stated that, as they did not give the articles to the Appellant as per his demand, he killed his sister.

In cross-examination, this witness admitted that, Appellant was also admitted in Sion hospital and Jasmin was not in a position to speak. This witness admitted that, he had stated before Police about demand by Appellant about Pulser motorcycle and other articles and about Appellant's love affair with Heena. He further stated that, he cannot assign any reason, why it does not find place in his statement given to police.

13. PW-7 Aftab Idrasi, brother of Jasmin stated that, he had called Appellant in his house at Mumbai. He and PW-6 assured the Appellant that, they will give all demanded articles to him. This witness has stated the same facts as stated by PW-6. In cross-examination, this witness denied the suggestion that, on 23 rd October 2012, Jasmin was not in position to speak.

14. From the evidence of these witnesses, it reveals that, Jasmin had stated before them about the incident that happened in detail and cause of her death i.e. setting her on fire by Appellant. PW-10 Dr. Amol

Bhardwaj and PW-11 Jigar Karani are independent witnesses. In the presence of these witnesses, statement of Jasmin at 'Exhibit-65' was recorded.

15. If the evidence of PW-10, PW-11 and PW-6, PW-7 are considered as a whole, it appears that, there is no contradiction, or discrepancies in written or oral statements of Jasmin as over all tone of statement of Jasmin recorded by PW-11 and oral statement made to PW-6 and PW-7 shows that, Appellant is the author of her burn injuries.

16. Prosecution alleges that, death of Jasmin is homicidal, whereas defence states that, it is accidental.

17. It is contention of learned Advocate for Appellant that, the incident was an accident. 'Exhibit-78'- statement given by Jasmin shows the incident was accident. It has come in evidence of PW-12 Bhujang Hatmode, Investigating Officer, that on 21 st October 2012, police recorded the statement of Jasmin in Mangaon Hospital. It appears from record that, after incident when Jasmin was admitted in Sub-District Hospital, Mangaon, she had given statement before police. In the said statement, she has stated that, on 21st October 2012, when she was filling some kerosene in the stove it spilled on ground, however she was not aware of it. Then she tried to ignite the stove by matchstick, but suddenly there was a flare and her clothes caught fire and she got burn injuries. It is stated therein that, she has no complain against any one, nor anyone set her on fire. After this statement, Jasmin gave statement before PW-11.

Now question remains which statement is true? In earlier statement, Jasmin had stated that, incident had happened accidentally and in the statement before PW-11 recorded on 23 rd October 2012, Jasmin had stated about her statement given on 21 st October, 2012. She has stated that, on that day, when police came to make enquiry, she was frightened and said that, incident happened accidentally. It has come on record that when PW-1 reached the incident place, Jasmin told that "mere ko mar dala". It proves that, it was not accident. Moreover, there was no reason for Jasmin to implicate Appellant in the said incident, as she had love marriage with Appellant and within ten months of marriage said incident happened.

18. In statement recorded under Section 313 of Cr.PC. Appellant has stated that, at the time of incident, he was in the outside room and Jasmin was preparing food. At that time, Jasmin was filling kerosene in stove, but some kerosene spilled on ground. Jasmin had tried to ignite the stove with match-stick and there was flare-up, in which, she got

burn injuries. As per defense of Appellant, incident happened when Jasmin was preparing food.

19. It is necessary to see if food articles were found on the incident spot. Spot panchanama is at "Exhibit -26/C". From spot panchanama, it appears that, at the time of incident in that room, there were two stoves. On one stove milk pot was kept. From spot panchanama, it does not disclose that, at the time of incident Jasmin was preparing food. The burn injuries caused to Jasmin does not indicate that, they were caused due to flare of fire, had it been flare-up of the fire, front portion of body of Jasmin would have been affected, particularly chest, stomach and face but post- mortem report shows that, Jasmin had burnt 91% and there were burn injuries on back side of Jasmin. Inquest panchanama is at 'Exhibit-45C', it indicates that entire back portion of Jasmin was burnt, it proves that, it was not due to flare up of fire. It proves that, death of Jasmin was homicidal and not accidental.

20. It is contention of learned Advocate for Appellant that, at the time of recording dying declaration, Jasmin was not in a fit state of mind to give statement and there are inconsistencies in dying declarations. In our view, from the evidence of PW-10 and PW-11 it reveals that, before recording her statement, PW-10 had examined Jasmin and after finding she was in fit state of mind to give statement, then allowed to record statement of Jasmin, he endorsed on the paper i.e. at Exhibit-65. This witness examined Jasmin four times to check her state of mind and he found she was fit to give statement. We do not find merit in the contention that, at the time of giving dying declaration, Jasmin was not in fit state of mind.

It is contention of the learned Advocate for Appellant that, there was delay in filing the report of the alleged offence. It appears from record that, the incident happened on 21 st October 2012 at around 10.00 to 11.00 a.m., on the same day, Jasmin was admitted in the Sub-District Hospital, Mangaon. Thereafter, she was shifted to Lokmanya Tilak Hospital, Sion, Mumbai. On 23 rd October 2012, statement of Jasmin was recorded. On the basis of her statement, initially offence under Section 307 of IPC was registered. While taking treatment on 24th October 2012, Jasmin expired. Thereafter, Section 302 of IPC was added. It shows there was no delay in lodging complaint.

It is contention of learned Advocate for Appellant that, Appellant had no intention to kill Jasmin, he had tried to extinguish fire on her and got her admitted in Hospital, he also sustained burn injuries on his hand.

21. It is contention of learned APP that, the Appellant had intention, knowledge while setting Jasmin on fire and he was ill-treating her on

demand of articles. He bolted the door from inside, he set her on fire and pressed her mouth when she was trying to shout.

22. Considering rival submissions, the question that falls for our determination is that, whether offence committed by Appellant is murder or culpable homicide not amounting to murder?

23. Section 300 of IPC is reads as under:

300. Murder -- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or Secondly -- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or Thirdly -- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or Fourthly -- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Culpable homicide not amounting to murder.

Exception 1 -

Exception 2 -

Exception 3 -

Exception 4 -- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

24. In present case, from evidence on record, it appears that, incident had happened suddenly when Appellant had received phone call from his girlfriend - Heena and Jasmin told Appellant that, she will disclose it to her brothers, thereafter, Appellant poured kerosene on Jasmin and set her on fire. It has come on record that, Appellant had tried to extinguish the fire on Jasmin. Though it is alleged that, Appellant had ill-treated Jasmin for not giving articles but there is no evidence on record in that regard. It has come on record that no quarrels took place between Appellant and Jasmin when they were staying there. It appears that,

incident had happened in the spur of moment. Though in dying declaration, Jasmin has stated that, Appellant pressed her mouth, but record shows that, she had shouted for help. Moreover dying declaration of Jasmin at 'Exhibit-65' shows that, after setting her on fire, Appellant had pressed her mouth and she became unconscious, thereafter she regained consciousness in Sub-District Hospital, Mangaon. This statement of Jasmin is not supported by prosecution evidence as witnesses have stated that, Jasmin had shouted for help and she was telling "mere ko mar dala'. No evidence has come on record to show that, Appellant had bolted the door of room from inside. Considering above facts as observed earlier, incident happened in spur of moment and Appellant had knowledge about the act which he was committing and therefore the offence is culpable homicide not amounting to murder. The act of Appellant falls under Section 304 (Part II) of IPC.

25. Hence the following order :

1. Appeal is partly allowed.
2. The Judgment and Order dated 22nd December

2017 passed by the learned Additional Sessions

Judge, Mangaon, District-Raigad in Sessions Case No. 9 of 2013 is set aside.

3. Appellant is convicted for the offence punishable under Section 304(Part-II) of IPC. He shall suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,000/-, in default of payment of fine to further suffer rigorous imprisonment for six months.
4. Appellant is acquitted from the offence under Sections 498A and 341 of the IPC.
5. Appellant shall be released from jail on completion of sentence as directed, unless required in any other case/cases.

26. In view of disposal of the Appeal, Interim Application No. 3581 of 2022 does not survive and same is also disposed off.

27. Since Mr Hrishikesh Chavan, learned counsel is appointed to prosecute the case of the Appellant by the Legal Aid Committee, we quantify his legal fees and expenses at Rs.20,000/- (Rupees Twenty

Thousand Only) to be paid by the High Court Legal Services, Committee, Bombay expeditiously on producing the copy of this Order.

28. Registrar (Judicial-II) is directed to communicate this Order to the Appellant, presently lodged at Nashik Road Central prison expeditiously by all possible legal modes.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.