SUPREME COURT OF INDIA REPORTABLE
Bench: ABHAY S. OKA, J. And PANKAJ MITHAL, J.
Date of Decision: NOVEMBER 01, 2023

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.2697 OF 2023

ANIL KUMAR ...APPELLANT

VERSUS

STATE OF KERALA ...RESPONDENT

Sections, Acts, Rules, and Article:

Sections 302, 304 Part-II, Exception 4 to Section 300, 307, 498A of the Indian Penal Code (IPC)

Subject: Appellant's conviction under Sections 302 and 498A of IPC, his appeal against the conviction, and the applicability of Exception 4 to Section 300 IPC in the context of uxoricide by burning.

Headnotes:

Criminal Appeal – Conviction under Sections 302 and 498A IPC – The appellant convicted and sentenced by both lower courts for causing the death of his wife by setting her ablaze – Appeal for reconsideration of conviction under Section 302 IPC, proposing a charge under Section 304 Part-II IPC instead. [Para 1-9]

Evidence – Multiple Dying Declarations – Two dying declarations by deceased wife, one before Judicial First Class Magistrate and the other recorded by Head Constable, along with the corroborative testimonies of other witnesses, establish appellant's act of setting his wife ablaze after she poured kerosene on herself amidst a quarrel. [Para 11-16]

Culpable Homicide and Murder – Exception 4 to Section 300 IPC – Appellant's argument for a charge under Section 304 Part-II IPC based on lack of premeditation and sudden quarrel rejected, as the act of setting ablaze was deliberate with a history of domestic quarrels, thus not falling within the ambit of Exception 4 to Section 300 IPC, and hence confirmed as murder under Section 302 IPC. [Para 18-24]

Judgment – Dismissal of Appeal – The appeal lacks merit due to overwhelming evidence proving the appellant's guilt in the intentional act of murder – Conviction and sentence of life imprisonment upheld with a note on appellant's liberty to apply for remission as per state policy. [Para 25-26]

Referred Cases:

Kalu Ram v. State of Rajasthan (2000) 10 SCC 324

J U D G M E N T

PANKAJ MITHAL, J.

1. The appellant Anil Kumar has been convicted under Sections 302 and 498A of the Indian Penal Code[1] by both the courts below and has been sentenced to life imprisonment and to pay fine of Rs.50,000/-, and in default to undergo simple imprisonment for one year under Section 302 IPC and rigorous imprisonment of one year under Section 498A IPC with direction that both the sentences would run concurrently.

[1] "IPC", for short

2. The incident is of 26.09.2010 and had taken place at 9:00 am in the morning at the house of the appellant. The allegation is that the appellant, with the intention to kill his wife, lighted a matchstick and threw it upon her when she had already poured kerosene upon herself due to the quarrel with the appellant.

3. The FIR No.621/2010 dated 26.09.2010 was initially registered under Section 307 IPC wherein it has been stated that the deceased wife, due to unbearable mental and physical harassment caused to her by the appellant, poured kerosene upon herself to deter the appellant from causing further torture to her and that the appellant with the clear intention to kill her took advantage of the situation and lighted the matchstick and threw it on her body uttering *"You Die"*. Thus, the deceased wife was inflicted with burn injuries at their residence by the appellant with clear intention of killing her. Subsequently, when the deceased wife died in the hospital, the case was converted into that under Sections 302 and 498A of IPC.

4. On the basis of the aforesaid FIR, the appellant was charged for uxoricide.

5. There is a clear and clinching evidence on record that the appellant used to harass the deceased wife by making demands for dowry and that both of them used to quarrel a lot. The marriage between the two was solemnized about 11 years before the date of incident and from the wedlock they had a boy and a girl. At the time of the incident, their children were playing in the courtyard and that the boy, though of a tender age, had deposed that appellant was in habit of beating his wife and there used to be frequent quarrels between his parents.

6. In the trial court as well as before the High Court, the defence of the appellant was that he is not at all guilty of burning his wife. She had the

suicidal tendency and had tried to immolate herself on one earlier occasion and had once even tried to cut her veins. She herself had poured kerosene upon herself and set herself on fire. The appellant had simply tried to douse the fire by pouring water from the bucket.

7. The defence so set up by the appellant was not accepted by either of the courts below in view of the overwhelming evidence on record regarding their frequent quarrel and the harassment meted out to the deceased wife. The ocular evidence of the witnesses clearly proved that on the date of the incident, there was again a quarrel between both of them though on a petty matter but the deceased wife, in order to avoid torture at the hands of the appellant and to deter him, went inside the kitchen and poured kerosene on herself. Thereafter, the appellant took advantage of the situation and set her on fire.

8. We had heard the learned counsel for the parties.

9. Learned counsel for the appellant had argued that the appellant had no premeditated mind to kill the deceased wife and that he had no intention even to kill her. Therefore, the provisions of Section 302 IPC are not applicable and at best he can be charged under Section 304 Part-II of IPC.

10. The above submission has been strongly opposed on the ground that the appellant had burnt the deceased wife with a matchstick fully knowing that she was drenched in kerosene oil and that lightning of matchstick and throwing it upon her would certainly cause her death.

11. In the case at hand, admittedly, there are multiple dying declarations on record. The first dying declaration is in the form of the statement *Ext.P1.* This statement of the deceased wife before her death was made before the Judicial First Class Magistrate, Ernakulam, i.e. PW5. The said

statement clearly reveals the cause and circumstances of the death of the deceased wife.

12. The other statement which can be read as a dying declaration is Ext.P10 recorded by PW16, Head Constable, Kuruppampady Police at General hospital, Ernakulam, wherein also the deceased wife repeated the same narration as in Ext.P1 in relation to the incident of her death.

13. Both the above statements, if read together, would reveal that on the fateful day, the appellant had assaulted the deceased wife under the influence of alcohol. He even struck a blow on her chest and pushed her. At the time of the said incident, the children were playing in the courtyard. When the assault of the appellant became unbearable, she took the cane of kerosene from kitchen and poured it on her body whereupon her husband lighted a matchstick and burnt her.

14. The Magistrate (PW5), before whom one of the dying declarations was recorded, proves the correctness of the statement and that when the statement of the deceased was recorded, she was coherent and oriented. He also accepted that there was no reason for him to believe that the deceased was not in a position to make the statement or that the statement made by her stands vitiated for any reason. The statement of PW5 was supported by that of PW14 (Dr. K. Venugopal).

15. The statement of the deceased wife further categorically states that the appellant was in habit of drinking alcohol and used to assault her frequently in inebriated condition. She also stated that various criminal cases are pending against the appellant in connection with similar kind of assaults. The above aspect, as stated by the deceased, was corroborated by the testimony of PW21 (Investigating Officer). Even the DW1 (Saji Mathew) also proved that the deceased, at the time of the admission in the

hospital, narrated about her burn injuries and alleged that her husband assaulted her and that she had poured kerosene on herself whereupon her husband had set her on fire. The medical report reveals that the deceased had suffered 96% burn injuries.

16. The incident was also proved by the oral testimony of PW1 (Sahajan) and PW2 (Gopalakrishnan), the neighbours who took the deceased to the hospital in a jeep and have seen the deceased in burning state.

17. In view of the aforesaid facts and circumstances and the overwhelming evidence on record, there is no escape from the conclusion that the deceased died of burn injuries. She had herself poured kerosene upon her body and that the appellant set her ablaze and later tried to douse the fire by pouring water. The appellant also accompanied the deceased to the hospital.

18. Now the only point for consideration is whether in the above circumstances, the appellant had any premeditated mind to kill the deceased or was it due to grave and sudden provocation which would not amount to murder or would at best be a case of culpable homicide not amounting to murder punishable with imprisonment for a term which may extend up to 10 years or with fine or with both under Section 304 Part-II of IPC.

19. In support of his above argument, learned counsel for the appellant relied upon ***Kalu Ram*** *v.* ***State of Rajasthan*** *(2000) 10 SCC 324* which was case of a similar kind in connection with uxoricide by burning. However, it would be relevant and material to refer to Exception 4 to Section 300 IPC which defines "Murder" before extending the benefit of the above decision to the appellant. The said exception reads as under:

*"**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.”

20. It is on the strength of the above exception that from the side of the appellant it has been argued that the appellant is not guilty of murder as he had no premeditated mind and that the action of the appellant arose out of a sudden fight. In the first place, the fight was not sudden. The appellant and the deceased wife had a past history of quarrel and that they had been quarrelling on the fateful day also since before the actual incident. During their quarrel, a neighbour/(Sahajan) i.e. PW1 had visited their house and the deceased wife had shown some injuries received by her during the assault. However, realizing the quarrel between the two, he left saying that he would come later on. It was thereafter that the incident of pouring kerosene and burning took place. So, there was sufficient time in between the two acts and it cannot be said that there was a sudden quarrel and provocation leading to burning. The appellant saw the deceased wife drenched in kerosene and was conscious that if lighted, she would be burnt to death even then ignited her to fire. This shows premeditated mind to kill her. More particularly, the appellant cannot take advantage of the 4th Exception only on the pretext that it was not on account of premeditated mind or out of a sudden fight or that his intentions were not bad as he tried his best to douse the fire and to save the life of the deceased wife for the reason that the benefit of the above exception would have been available to him, had he not taken undue advantage of the situation.

21. The exception clearly in unequivocal term states that it would be applicable where culpable homicide is committed not only without premeditated mind in a sudden fight or quarrel but also without the offender taking “undue advantage” of the situation. In the instant case, the appellant upon seeing the deceased drenched in kerosene clearly took advantage of the situation and lighted a matchstick and threw it upon her so that she can be burnt.

The appellant having taken "undue advantage" of the situation cannot be extended the benefit of Exception 4 to Section 300 IPC so as to bring the case within the ambit of Part-II of 304 IPC.

22. In view of the above legal position, the ruling cited above, viz. Kalu Ram (supra) would not benefit the appellant.

23. The First Information Report and the dying declarations on record clearly contain the statement of the deceased that when she had poured kerosene upon herself to deter the appellant from fighting and assaulting, he lighted a matchstick and with the intention to kill her, threw it upon her by saying *"You Die"*.

24. The aforesaid evidence clinches the issue and establishes beyond doubt that the appellant is guilty of the offence of culpable homicide amounting to murder and is not entitled to benefit of the Exception 4 to Section 300 IPC.

25. Accordingly, we are of the opinion that the courts below have not committed any error of fact or law in convicting and sentencing him to a maximum punishment of life imprisonment.

26. The appeal accordingly lacks merit and is dismissed. However, we would observe that the appellant who is in jail may, in usual course, be at liberty to apply for remission in accordance with the prevailing policy of the State.

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