REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITON

CRIMINAL APPEAL NO. 1885 OF 2019

Suraj Jagannath Jadhav .. Appellant

Versus

The State of Maharashtra .. Respondent

J U D G M E N T

M. R. Shah, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.10.2018 passed by the High Court of Judicature at Bombay in Criminal Appeal No. 723 of 2013, by which the High Court has dismissed the said appeal preferred by the appellant herein-original accused and has confirmed the judgment and order of conviction passed by the learned Trial Court

convicting the accused for the offence punishable under Section 302 of the IPC, the original accused has preferred the present appeal.

2. At the outset, it is required to be noted that the only submission made by the learned counsel appearing on behalf of the appellant-original accused is that the death of the deceased can be said to be a culpable homicide not amounting to murder and the case would fall under Exception 4 to Section 300 IPC and therefore the case would be under Section 304 Part II IPC. Even this Court has issued the notice in the present appeal limited to the nature of offence.

3. Shri Sushil Karanjkar, learned counsel appearing on behalf of the appellant-original accused has vehemently submitted that, as such, there was no intention on the part of the accused to kill his wife. It is submitted that at the time when the unfortunate incident had taken place, the accused was under the influence of liquor and therefore his condition was such that he could not understand what he was doing. It is further submitted by the learned counsel appearing on behalf of the appellant-original accused that even

thereafter the appellant tried to save the deceased and poured water to save her and, while doing so, even the appellant-original accused also sustained the injuries. Therefore, relying upon the decision of this Court in the case of ***Kalu Ram v. State of Rajasthan*** (2000) 10 SCC 324, it is prayed to alter the conviction from Section 302 IPC to Section 304 Part II IPC.

4. On the other hand, Shri Nishant Ramakantrao Katneshwarkar, learned counsel appearing on behalf of the State, while opposing the present appeal, has vehemently submitted that the decision of this Court in ***Kalu Ram*** (supra) shall not be applicable to the facts of the case on hand. It is submitted that in that case before this Court, it was found that the accused was in a highly inebriated condition, which is not the case here. It is submitted that, in the present case, as such, after abusing and assaulting the deceased, the accused poured kerosene on her person and set her ablaze. It is submitted that when the deceased was trying to run out of the house to save herself, at which time, the accused came from behind and threw match-stick on her person and set her ablaze. It is submitted that at the relevant time,

the deceased was carrying pregnancy of 18 to 20 weeks. It is submitted that, as per the statement/dying declaration of the deceased, after the deceased came out of the room making noise, the accused poured the water on her. It is submitted that the act of pouring kerosene, though on spur of moment, was followed by lighting a match-stick and throwing it on the deceased and thereby setting her ablaze are intimately connected with each other and resulted in causing death of the deceased. It is submitted that the act of the accused falls under Section 300 fourthly and therefore the death of the deceased can be said to be culpable homicide amounting to murder. It is submitted that every person of average intelligence would have the knowledge that the pouring of kerosene and setting a person on fire is so imminently dangerous that in all probability such an act would cause injuries causing death. It is submitted therefore that Section 300 fourthly shall be attracted and not Exception 4 to Section 300 IPC as submitted on behalf of the accused.

4.1 It is further submitted by Shri Katneshwarkar, learned counsel for the State that merely because subsequently the accused

might have poured the water, that is not suffice to alter the conviction from Section 302 IPC to Section 304 Part II IPC. It is submitted that the subsequent act of pouring the water by the accused on the deceased appears to be an attempt to cloak his guilt since he did it only when the deceased came out for help and made the noise. It is submitted therefore that it cannot be considered as a mitigating factor.

4.2 Making the above submissions and relying upon the decisions of this Court in the case of ***Santosh v. State of Maharashtra*** (2015) 7 SCC 641 and in the case of ***Bhagwan Tukaram Dange v. State of Maharasthra*** (2014) 4 SCC 270, it is prayed to dismiss the present appeal.

5. Heard the learned counsel appearing on behalf of the respective parties at length. As observed hereinabove, in the present appeal, the sole question which is posed for consideration of this Court is, whether, in the facts and circumstances of the case, the case would fall under Exception 4 to Section 300 IPC or Section 300 fourthly and, therefore, whether Section 302 IPC shall be attracted or the case may fall under Section 304 Part II IPC?

5.1 It is the case on behalf of the appellant-original accused that as at the time when the incident took place, the accused was drunk and under the influence of liquor and he had no intention to cause death of the deceased-wife and that even subsequently the accused tried to save the deceased and poured the water on her and therefore the case would fall under Exception 4 to Section 300 IPC and, therefore the conviction is to be altered from Section 302 of the IPC to Section 304 Part II IPC, having relied upon the decision of this Court in the case of ***Kalu Ram*** (supra). However, it is required to be noted that, in the present case, the appellant-accused poured the kerosene on the deceased when she was trying to run out of the house to save herself and was trying to open the latch of the door of the house, the accused threw the match-stick on her person and set her ablaze. Nothing is on record that the accused was in a highly inebriated stage. Even looking to the conversation which took place between the deceased and the accused, so stated in the dying declaration given by the deceased, it can safely be said that the accused was in very much conscious condition when the incident took place. He was very much in the senses and was

conscious about what he was doing. Therefore, the accused was fully conscious of the fact that if kerosene is poured and match-stick is lit and put on the body, a person might die due to burns. Therefore, the case would fall under Section 300 fourthly and Exception 4 to Section 300 IPC shall not be applicable.

5.2 An identical question came to be considered by this Court in the case of ***Santosh*** (supra). In the said decision, this Court also had the occasion to consider the inebriation due to consumption of alcohol and when it may be said to be a mitigating factor. In the said decision, this Court also considered the submission made on behalf of the accused that as he attempted to extinguish the fire by pouring the water on the deceased and himself getting burn injuries in that process and, therefore, the case would fall under Exception 4 to Section 300 IPC. In the similar facts and circumstances of the case, this Court in the case of ***Santosh*** (supra) has observed in paragraphs 10 to 15 as under:

> **"11.** The question falling for consideration is whether the act of the accused pouring water would mitigate the offence of murder. Where the intention to kill is present, the act amounts to murder, where such an intention is absent, the act amounts to

culpable homicide not amounting to murder. To determine whether the offender had the intention or not, each case must be decided on its facts and circumstances. From the facts and circumstances of the instant case, it is evident that: (*i*) there was a homicide, namely, the death of Saraswatibai; (*ii*) the deceased was set ablaze by the appellant and this act was not accidental or unintentional; and (*iii*) the post-mortem certificate revealed that the deceased died due to shock and septicaemia caused by 60% burn injuries. When the accused poured kerosene on the deceased from the kerosene lamp and also threw the lighted matchstick on the deceased to set her on fire, he must have intended to cause the death of the deceased. As seen from the evidence of PW 5, panch witness, in the house of the appellant, kerosene lamp was prepared in an empty liquor bottle. Whether the kerosene was poured from the kerosene lamp or from the can is of no consequence. When there is clear evidence as to the act of the accused to set the deceased on fire, absence of premeditation will not reduce the offence of murder to culpable homicide not amounting to murder. Likewise, pouring of water will not mitigate the gravity of the offence.

12. After attending to nature's call, the deceased returned to the house a little late. The accused questioned her as to why she was coming late and he also suspected her fidelity. There was no provocation for the accused to pour kerosene and set her on fire. The act of pouring kerosene, though on the spur of the moment, the same was followed by lighting a matchstick and throwing it on the deceased and thereby setting her ablaze. Both the acts are intimately connected with each other and resulted in causing the death of the deceased and the act of the accused is punishable for murder.

13. Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death.

14. Insofar as the conduct of the accused in attempting to extinguish fire, placing reliance upon the judgment of this Court in *Kalu Ram case* [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] , it was contended that such conduct of the accused would bring down the offence from murder to culpable homicide not amounting to murder. In *Kalu Ram case* [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] , the accused was having two wives. The accused in a highly inebriated condition asked his wife to part with her ornaments so that he could purchase more liquor, which led to an altercation when the wife refused to do as demanded. Infuriated by the fact that his wife had failed to concede to his demands, the accused poured kerosene on her and gave her a matchbox to set herself on fire. On her failure to light the matchstick, the accused set her ablaze. But when he realised that the fire was flaring up, he threw water on her person in a desperate bid to save her. In such facts and circumstances, this Court held that the accused would not have intended to inflict the injuries which she sustained on account of the act of the accused and the conviction was altered from Section 302 IPC to Section 304 Part II IPC.

> **15.** The decision in *Kalu Ram case* [(2000) 10 SCC 324 : 2000 SCC (Cri) 86] cannot be applied in the instant case. The element of inebriation ought to be taken into consideration as it considerably alters the power of thinking. In the instant case, the accused was in his complete senses, knowing fully well the consequences of his act. The subsequent act of pouring water by the accused on the deceased also appears to be an attempt to cloak his guilt since he did it only when the deceased screamed for help. Therefore, it cannot be considered as a mitigating factor. An act undertaken by a person in full awareness, knowing its consequences cannot be treated on a par with an act committed by a person in a highly inebriated condition where his faculty of reason becomes blurred."

In the case of ***Bhagwan*** (supra), while considering the defence of the accused - at the time of the pouring the kerosene and litting a match-stick, he was under the influence of liquor and intoxication and, therefore, the intoxication can be said to be a mitigating circumstance and therefore the case would fall under Exception 4 to Section 300 IPC, this Court negatived the said defence by observing in paragraphs 12 and 13 as under:

> **"12.** Intoxication, as such, is not a defence to a criminal charge. At times, it can be considered to be a mitigating circumstance if the accused is not a habitual drinker, otherwise, it has to be considered as an aggravating circumstance. The question, as to whether the drunkenness is a defence while determining sentence, came up for consideration

before this Court in *Bablu* v. *State of Rajasthan* [(2006) 13 SCC 116 : (2007) 2 SCC (Cri) 590] , wherein this Court held (SCC p. 129, para 12) that the defence of drunkenness can be availed of only when intoxication produces such a condition as the accused loses the requisite intention for the offence and onus of proof about reason of intoxication, due to which the accused had become incapable of having particular knowledge in forming the particular intention, is on the accused. Examining Section 85 IPC, this Court held that the evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had the intention. The Court held that merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. This Court, in that case, rejected the plea of drunkenness after noticing that the crime committed was a brutal and diabolic act.

13. We find it difficult to accept the contention of the counsel that since the appellant-accused was under the influence of liquor, the offence will fall under Section 304 Part I or Section 304 Part II. A-1 was presumed to know the consequences of his action, of having lit the matchstick and set fire on the saree of the deceased, after A-2 sprinkled kerosene on her body. In our view, the accused was correctly charge-sheeted under Section 302 IPC and we find no reason to interfere with the conviction and sentence awarded by the trial court and affirmed by the High Court."

6. Therefore, the decision of this Court in the case of ***Kalu Ram*** (supra) upon which the reliance has been placed by the learned counsel appearing on behalf of the appellant-accused shall not be of any assistance to the accused, more particularly, in absence of any evidence led by the accused that he was in a highly inebriated condition and/or he was such a drunk that he lost all the senses.

7. Applying the law laid down by this Court in the cases of ***Bhagwan*** (supra) and ***Santosh*** (supra) to the facts of the case on hand and the manner in which the accused poured the kerosene on the deceased and thereafter when she was trying to run away from the room to save her, the accused came from behind and threw a match-stick and set her ablaze, we are of the opinion that the death of the deceased was a culpable homicide amounting to murder and Section 300 fourthly shall be applicable and not Exception 4 to Section 300 IPC as submitted on behalf of the accused. We are in complete agreement with the view taken by the learned Trial Court as well as the High Court convicting the accused for the offence punishable under Section 302 of the IPC.

8. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

.....J.
(ASHOK BHUSHAN)

.....J.
(M. R. SHAH)

New Delhi,
December 13, 2019.