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CRA-1848-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 8th OF JANUARY, 2026CRIMINAL APPEAL No. 1848 of 2016*DHAMSU**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Shri Rustam Khan - Advocate for the appellant.

Shri Abhishek Singh - Government Advocate for the

respondent/State.

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ORDER

Per. Justice Vivek Agarwal

This Criminal Appeal is filed being aggrieved of the judgment dated 22.06.2016 passed by learned Second Addl. Sessions Judge, Multai District Betul in Sessions Case No. 248 of 2012, whereby learned trial Court has convicted the present appellant Dhamsu S/o Jiyalal Gond under Section 302 IPC and sentenced him with rigorous imprisonment for life time and fine of Rs.10,000/- with default stipulation of one year's rigorous imprisonment.

2. Learned counsel for the appellant submits that, prosecution story in short is that on 05.07.2012 at about 09:00 a.m. Rukmani Bai,



W/o Dilip Gond, R/o village Mayawadi was sitting in front of her home. Her husband Dilip had gone to the Jungle to graze goats. At that time, accused Dhamsu S/o Jiyalal Gond came and asked her, as to why she had fought with his mother. When Rukmani, retorted and said that she had not engaged in any duel, then Dhamsu was carrying a bottle of petrol in his hand, poured petrol over Rukmani Bai and put her on fire.

3. Learned counsel for the appellant further submits that, on the basis of the report, case Crime No. 439 of 2012 was registered under Section 307 IPC at Police Station Multai District Betul. This FIR was recorded by Rukmani Bai W/o Dilip Gond and it is available on record as Ex.P-18.

4. It is further submitted that dying declaration of victim Rukmani Bai is Ex.P-17, recorded at 13:50 hrs. on 05.07.2012 and proved by Shri V.K. Divan (PW-13), Tehsildar. It is submitted that, though incident took place on 05.07.2012, but Rukmani Bai died in the month of October, 2012, therefore, even if all the facts are admitted and dying declaration is taken to be correct, then also case will fall under Section 304 Part-I IPC.

5. Reliance is placed on the judgment of M.P. High Court in the case of *Harji Vs. State of M.P. 2013(5) MPHT 466 (DB)* and so also on the judgement of Allahabad High Court in the case of *Deepak & another Vs. State of U.P., decided on 20.10.2022 in CRA No. 1005 of 2013*. Reliance is also placed on the decision of Division Bench of this Court



in the case of *Badu Vs. State of M.P. decided on 24.10.2013 in CRA No. 523 of 2006*, so also on the judgment of Supreme Court in the case of *Maniben Vs. State of Gujrat (2009)8 SCC 796* and prayer is made to alter the conviction from one under Section 302 IPC to Section 304 Part-I IPC.

6. Shri Abhishek Singh, learned Government Advocate opposes the prayer and submits that, there is no ground to show indulgence in the present Criminal Appeal.

7. After hearing learned counsel for the parties and going through the records, it is an admitted fact that victim Rukmani Bai herself is the author of the FIR (Ex.P-18). She had also recorded Dehati Nalishi (Ex.P-17). In Dehati Nalishi, recorded on 05.07.2012 at about 12:25 noon, it is mentioned that she is resident of Mayawadi, working as a labourer. Thereafter, she has stated what has been reproduced above in the prosecution story. On the basis of this very Dehati Nalishi, FIR (Ex.P-18) was recorded at 16:30 hrs. vide Rojnamcha Sanha Entry No. 249 on 05.07.2012 under Section 307 IPC.

8. Vide Ex.P-19, victim was subjected to medical examination and in her medical examination, it is mentioned that she was suffering from Second Degree Burn about 70%. Dry, about less than 12 hrs. Blister seen. Hair almost intact. Patient referred to District Hospital, Betul. Dying declaration made/advise. This MLC is proved by Sub-Inspector S.S. Sharma (PW-17).



9. Dying Declaration given by Rukmani Bai is available on record as Ex.P-17, in which when the Executive Magistrate V.K. Divan (PW-13) asked Rukmani (victim), as to what happened, then she stated that Dhamsu Gond poured petrol and put her on fire. She stated that, incident took place at about 09:00 a.m. in front of her house. At the time of the incident, her mother-in-law, Sajjo Bai was present and later on village Kotwar Arjun also came and saw. She stated that, there was an altercation with mother of Dhamsu two days prior i.e. on Monday and therefore, he had poured petrol and put her on fire.

10. Post-mortem was conducted and report is available on record as Ex.P-16 in which, it is mentioned by the concerned Doctor, Dr. N.K. Rohit (PW-12) that, in postmortem finding regarding cause of death of Smt. Rukmani was septicemia, due to infective deep extensive burn. Time passed since death within 12 to 24 hrs. at the time of postmortem examination which was conducted on 07.10.2012.

11. Phoolwati (PW-1) stated that Rukmani is her '*Nanad*'. She stated that, she had received information that Rukmani was admitted in a hospital at Betul. Rukmani had informed her that appellant had poured petrol over her and put her on fire. In cross-examination, this witness (PW-1) has stated that, she had no conversation with Rukmani Bai and she had not said anything to her. Thus, testimony of this witness is of no use.

12. Dilip (PW-6) stated that, his wife Rukmani Bai was found in



burnt condition at home. His mother Sajjo Bai was taking care of his wife and poured water over her. Rukmani had informed him that Dhamsu Gond had poured petrol and put her on fire by lighting a matchstick. Her chest, neck/throat alongwith Saree had completely burnt. He stated that, he had taken Rukmani Bai to Multai Hospital in a jeep alongwith Arjun Kotwar, where statements of Rukmani were recorded, then Doctor had referred her to Betul. This witness stated that, Dhamsu's mother had a dispute with Rukmani, therefore, Dhamsu poured petrol on Rukmani. After her death, he had carried out last rites of Rukmani.

13. In cross-examination, this witness (PW-6) has admitted that Rukmani was not his married wife. She was living with him. He has denied a suggestion that Rukmani Bai was either alcoholic or had taken alcohol at the time of the incident. This witness admits that, when Rukmani Bai got burnt at that time, he was not at home. A suggestion was given to this witness that, Rukmani Bai used to prepare food on '*Chulha*' and to lit a '*Chulha*' kerosene oil is used, he stated that, at his house, fire wood is used to lit the '*Chulha*'. This witness admitted that, two days prior to the incident, there was an altercation between Rukmani Bai and the mother of appellant. This witness also admits that at Multai, dying declaration of victim was recorded.

14. Ramesh Pawar (PW-7), Sarpanch of the village Mayawadi is a hearsay witness. He stated that, Dilip Gond had informed him that,



Dhamsu had poured petrol over Rukmani Bai. He further stated that, he and Arjun Kotwar had gone to the house of Rukmani where she was lying in front of her house. Her face and chest was burnt, so also her saree was sticking to the body. She was shouting and had informed that Dhamsu had poured petrol and lit a matchstick. In his cross-examination, this witness admits that, he had not seen the incident.

15. Arjun (PW-8) who was working as Kotwar stated that, when he had reached the place of incident, Rukmani was in a painful state. Her face, back, chest and head were burnt. When he asked Rukmani, as to what had happened, then she stated that, Dhamsu had put her on fire. Even Dilip, who had met him on way, informed him that, Dhamsu had poured petrol over Rukmani and put her on fire. A suggestion was given to this witness in his cross-examination that he had no conversation with Rukmani which, this witness has specifically denied. This witness has also denied a suggestion that since Jiya Lal, father of Dhamsu had worked against him in election, therefore, he was deposing against Dhamsu.

16. Sajjo (PW-9) is mother-in-law of Rukmani. She has stated that, on the date of the incident, she had gone to call her younger daughter Sunita from the village. When she came back, then she found Rukmani lying in a burnt state in front of the house shouting at high pitch. She further stated that, she had poured water and had taken her inside, given her cloths and in the meanwhile, Arjun Kotwar had come



and he interrogated Rukmani, as to how incident had taken place, then Rukmani informed that Dhamsu Gond had poured petrol and lit a matchstick. A suggestion has been given to this witness in her cross-examination, that Rukmani was drunk and therefore, she had fallen on the '*Chula*' as a result of which she caught fire, but this suggestion is denied.

17. Dr. N.K. Rohit (PW-12) had conducted postmortem. He stated that, Rukmani died because of excessive burns, which resulted in septicemia. Death had occurred within 12 to 24 hours of postmortem. His postmortem report is Ex.P-16.

18. V.K. Divan (PW-13), retired Tehsildar had recorded the dying declaration of Rukmani. He proved dying declaration (Ex.P-17) and identified her signature so also that of Dr. Pramod Malviya who had certified Rukmani in a fit state to record her statement. There is no material contradiction in the evidence of Executive Magistrate (PW-13) Shri V.K. Divan, so to draw any adverse inference against the prosecution story.

19. Dr. Ramesh Badwe (PW-14) had treated Rukmani at District Hospital Betul, from where relative got her discharged for treatment at Nagpur. This Doctor had certified 70% burn injuries on the body of Rukmani.

20. Gannu (PW-15) is the father of Rukmani. He stated that Rukmani had informed him about this incident. Rooplal (PW-16) is the



brother of Rukani Bai. He too stated that, when he had reached Betul Hospital, then Rukmani had informed him that Dhamsu had poured petrol and burnt her.

21. Sub-Inspector, S.S. Sharma (PW-17) who had received the intimation from Primary Health Center on 05.07.2012 and recorded Dehati Nalishi and then FIR Ex.P-18 on the basis of Dehati Nalishi. R.D. Patel (PW-18), had carried out investigation.

22. Dr. Pramod Malviya (PW-19) is the Doctor who had carried out MLC (Ex. P-19 & P-19-A) and in front of whom dying declaration (Ex.P-17) was recorded. He proved signatures of Shri V.K. Divan and he also proved the dying declaration.

23. Thus, two facts are crystal clear. One Rukmani Bai was burnt by the appellant, a fact which is tacitly admitted by learned counsel for the appellant also. Now the only issue, which is to be examined and answered herein is that, whether under the facts and circumstances of the case, can conviction be altered from one Under Section 302 of IPC to Section 304 Part-I IPC.

24. Before, adverting to the judgment referred to by the learned counsel for the appellant, it will be appropriate to mention that, Section 299 of IPC defines culpable homicide. It states that "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits



the offence of culpable homicide." Therefore, onus is on the appellant to prove that the act of the appellant will not fall within the definition of culpable homicide given under Section 299 IPC, coupled with the fact that murder is define in Section 300 IPC. There are five exceptions to the situation when culpable homicide is not murder. For ready reference, they are noted hereunder:

"Exception 1.— When culpable homicide is not murder.

— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos : —

First. - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. — That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. — That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. — Whether the provocation was grave and



sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.— Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3. — Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

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.



Exception 5. — Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

25. When, this aspect is taken into consideration, then it is not a case of accident. It is not the case of the defense that, accidentally Rukmani was put on fire. Case of the prosecution is that, Dhamsu was enraged with a fact that, Rukmani had an altercation with the mother of the appellant. He had asked Rukmani, as to why she had an altercation with his mother, two days back. Thereafter, he had poured petrol and lit a matchstick. When this aspect is taken into consideration, then, both the ingredients of Section 299 IPC, which defines culpable homicide i.e. intention of causing death and knowledge that his act is likely to cause death are made out.

26. Now the only exception to take out a case from the clutches of Section 300 of IPC and to say that culpable homicide is not a murder is covered under five exceptions given below Section 300 IPC.

27. Exception-1 provides that, if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death, then it will be an exception to Section 300 IPC. In the present case, there is no evidence of grave and sudden provocation. It is not the case of the defense that an altercation was going on between mother of Dhamsu and Rukmani, when Dhamsu got enraged and put petrol on



Rukmani. In fact, dying declaration of Rukmani which has remained un rebutted, clearly states that on 02.07.2012 Dhamsu alleged that Rukmani had abused his mother. Thus, aspect of grave and sudden provocation is missing from the facts of the present case.

28. Exception-2, states that Culpable homicide is not murder if the offender, in the exercise of good faith exercises right of private defence of person or property, exceeds the power given to him by law and causes the death of the person. In the present case, case of the defense will not even fall under Exception -2 in as much as there is no plea of right of private defense of person or property on the part of Dhamsu.

29. Exception-3, talks of public servant and a duty performed by public servant, resulting in some act. Admittedly, Dhamsu was not a public servant and was not discharging any public duty at the time of the incident, therefore, his case will not fall even under exception-3.

30. Exception-4, says that in a sudden fight, without any premeditation, 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, then that act will not be murder but in the present case, it is not a case of sudden fight. It is not a case of sudden quarrel and in fact, Dhamsu was already equipped with petrol can and matchbox, therefore, even that kind of preparation which has come on record, will take away the case of defense out of the preview of Exception 4.



31. As far as Exception-5 is concerned, culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. This in our opinion will also not cover the facts of the present case, therefore, when appellant/defense has failed to make out that case of the appellant falls under any of the five exceptions, then without bringing the case within the four corners of any of the five exceptions merely for the asking, conviction cannot be altered from one under Section 302 IPC to Section 304 IPC.

32. When, tested in this light, then, the Division Bench of this High Court in the case of *Harji (supra)*, noted that, injuries were caused on the head of the deceased by using axe. It only noticed that deceased died after few days on account of septicemia and therefore, altered the conviction from one under Section 302 IPC to Section 304 IPC. However, when we have gone through the complete judgment, we have failed to note that, Hon'ble Division Bench which delivered the judgment in the case *Harji (supra)*, pin point as to under which Exception to Section 300 IPC case of *Harji (supra)* will fall and in our humble opinion, without making out a case and bringing it within one of the exception below Section 300 IPC merely for the asking, conviction cannot be altered from Section 302 IPC to Section 304 IPC.

33. In the case of *Badu (supra)* the prosecution story reveals that, there was some altercation between the appellant and the deceased, when



the appellant gave a kick upon her abdomen as a result of which, she fell down and thereafter, appellant had poured kerosene from the '*kuppi*' and threw a burning matchstick upon her. According to the narration in para-2, victim died after three months because of septicemia.

34. In that case also, while upholding the finding of the trial Court that the appellant had poured kerosene and set the victim on fire, the conviction was altered from Section 302 IPC to Section 326 IPC, without specifying under which exception the case of the appellant would fall so as to bring it within any exception to murder as defined under Section 300 IPC.

35. Similarly, in the decision of Allahabad High Court in the case of *Deepak and another (supra)* also it is mentioned that, deceased died after 17 days of the occurrence due to developing the infection in her burn wound i.e. septicemia and then altered conviction from one under Section 302 IPC to Section 304 IPC, but nowhere it is mentioned that under which exception case was considered to have fallen.

36. In view of such facts, in our opinion mechanical application of judgment of Supreme Court in the case of *B.N. Kavatakar & another Vs. State of Karnatka 1994 Supp(1) SCC 304* is not made out because, in that case, Hon'ble Supreme Court was dealing with a different set of fact. In that case, trial Court had acquitted the accused persons. High Court reversed the acquittal and convicted two of the appellants, but not without acquitting their father by giving him benefit of doubt. Under



such facts and circumstances, Hon'ble Supreme Court noted that, evidence being inadequate and insufficient to warrant the conviction against the appellants and secondly, if the evidence even is accepted, the offence would not amount to one punishable under Section 302 read with Section 34 IPC but would be only under Section 326 read with Section 34 IPC, altered the findings of the High Court. But, in the present case, since, defense has failed to point out, as to under which of the exceptions to Section 300 IPC, case of the appellant will fall and in our opinion, as discussed above, none of the exceptions are applicable to the facts and circumstances of the case.

37. We are of the opinion that submission made by learned counsel for the appellant to alter conviction cannot be accepted mechanically, as it will not only set a wrong precedent, but also will be doing injustice to the victim which is an important aspect of criminology.

38. Therefore, we refuse to show any indulgence. Appeal fails and is dismissed.

(VIVEK AGARWAL)
JUDGE

(RATNESH CHANDRA SINGH BISEN)
JUDGE

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