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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 268 OF 2009

- (1) Bhaskar s/o. Laxman Channapagul
Age : 34 years, Occ. Mason work
R/o. 294, Bapuji Nagar, Solapur.
 - (2) Kurumurti s/o. Laxman Channapagul
Age : 36 years, Occ. Labour
R/o. 70, Shivaji Nagar, Near Asha Nagar
Solapur.
 - (3) Laxman s/o. Kurmayya Channapagul
Age : 61 years, Occ. Centering Work
R/o. 70, Shivaji Nagar, Near Asha Nagar
Solapur.
 - (4) Sou. Durgamma w/o. Kurumurti Channapagul
Age : 31 years, Occ. Household
R/o. 70, Shivaji Nagar, Near Asha Nagar
Solapur.
- ... Appellants

vs.

The State of Maharashtra
(On the information of Sou. Hanmakka
Laxman Channapagul (Deceased) ... Respondent

Mr. Arfan Saith, Advocate appointed for the appellant.
Mrs. M.M. Deshmukh, APP for the State.

**CORAM: MRS. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.**

JULY 12 , 2013.

ORAL JUDGMENT (PER MRS. MRIDULA BHATKAR, J.)

This appeal is directed against the judgment and order dated 30th January, 2009 passed by the Ad-hoc Sessions Judge-III, Solapur thereby convicting appellant nos. 1 to 4 for the offences punishable under section 302 read with section 34 of IPC. For the said offence, the appellants were sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default, to suffer S.I. for two months.

2. The case of the prosecution is that one Hanmakka Laxman Channapagul was burnt alive on 20th November, 2007 at her residence by appellants/accused. Hanmakka was the mother of appellant nos. 1 and 2, wife of appellant no. 3 and mother-in-law of appellant no. 4. Appellant/accused no. 3 Laxman (husband of Hanmakka) was not residing with her one year prior to the incident due to constant quarrel between them. Hanmaka was residing with her another son Shrinivas at Bapuji Nagar and her other two sons i.e. appellant nos. 1 and 2 were residing with their wives separately. The relations of Hanmakka with all the appellants were strange and there were constant quarrels between the family

members. On 20th November, 2007 in the morning at around 7.00 a.m. there was quarrel between Hanmakka and Bhaskar/appellant no. 1 on the point of filling the water. At that time, Bhaskar assaulted her and threatened her to kill in the evening. On the same day at around 10.00 p.m., Hanmakka's husband Laxman, her two sons Bhaskar and Kurumurti, her daughter-in-law Durgamma assembled in her house. Laxman and Kurumurti caught hold of Hanmakka, Bhaskar poured kerosene on her and Durgamma set her on fire by igniting the matchstick. Hanmakka came running on the road and tried to extinguish the fire by rolling on the ground. PW-5 Satish Kamble, resident of the locality informed Hanmakka's daughter Anuradha about the condition of her mother. Anuradha arrived at the spot and she took her mother to the Civil hospital. Her dying declaration was recorded by Special Judicial Magistrate. Thereafter the Investigating Officer Rajesh Jadhav PW-8 recorded the statement of Hanmakka which was treated as FIR and offences u/s. 307, 504 and 323 read with 34 of the IPC was registered against the four appellants at C.R. No. 267 of 2007 of Sadar Bazar Police Station, Solapur. The police initiated the investigation and recorded statement of other concerned witnesses.

3. Hanmakka was under treatment in the hospital from 21st November, 2007 to 1st December, 2007. On 1st December, 2007 Hanmakka's daughter Anuradha and son-in-law got her discharged from the hospital against the medical advice and she was shifted to Anuradha's house. She could not survive for long and has breathed last on 16th December, 2007. Thereafter the police altered the charge from Section 307 to Section 302 of IPC. In the post-mortem report, the doctor opined that Hanmakka died because of septicemic shock due to infected burns. After completion of the investigation, police filed charge sheet in the Court of learned Magistrate. The learned Magistrate committed the case to the Sessions Court.

4. The learned Sessions Court framed charge against all the four accused under sections 302, 323, 504 read with 34 of IPC and tried the case. The case concluded in the conviction of all the accused for the commission of offence of murder punishable under section 302 read with 34 of IPC, hence this appeal.

5. The learned counsel for the appellants has submitted that the case of prosecution stands on the three dying declarations of the accused.

Anuradha PW-1 who was the first to approach her mother and took her to the hospital did not support the case of the prosecution. PW-5 Satish Kamble who called Anuradha PW-1 after seeing the condition of Hanmakka also did not support the case of prosecution. The learned counsel submitted that all the three dying declarations are inconsistent and cannot be believed. He submitted that in the first dying declaration, Hanmakka did not take the names of either of the accused. In the second dying declaration, though it was recorded by Special Judicial Magistrate PW-3 Chiniwar it was recorded on the printed form and the material portion of the dying declaration is very cryptic. He further submitted that comparatively the third dying declaration is full of details and it does not appear true. Hence, all the dying declarations are to be disbelieved. The learned counsel further submitted that the deceased had sustained 49% burn injuries and was admitted to the Civil Hospital immediately i.e. 20th November, 2007. She was treated from 20th November, 2007 to 1st December, 2007 and then her daughter Anuradha and son-in-law got her discharged from the hospital against the medical advice, which led to death of the deceased and, therefore, the act of the accused cannot be blamed or considered as the cause of death of the deceased. He, therefore, prays that

all the accused be acquitted.

6. The learned APP opposes this appeal and argues that the judgment and order passed by the learned Sessions Judge is to be maintained. She submitted that there is sufficient evidence against all the accused to hold them guilty for the offence of murder of Hanmakka. She further argued that there are three dying declarations of the deceased and they are reliable.

7. The case of the prosecution stands on three dying declarations. The first dying declaration is at Exhibit 27 which is in the form of medical history recorded by the Medical Officer who attended Hanmakka first in time at Civil Hospital. It was recorded at 10.55 p.m. on 20th November, 2007. In the dying declaration, the doctor has noted down “Homicidal burn by pouring kerosene on ignite of matchstick by son and daughter-in-law and then left the home on 20.11.07 at about 10.00 p.m.”. This shows that she has mentioned about her son and daughter-in-law, but has not specifically mentioned their names. The name of her husband is absent.

8. The second dying declaration is recorded by PW-3 Chiniwar, Special

Judicial Magistrate. He has deposed that he was called by the Investigating Officer and then after confirming that the patient was conscious and able to give statement, he has recorded the dying declaration on 20th November, 2007 at 12.15 a.m. which is at Exhibit 19. This dying declaration was recorded in Marathi in question-answer form. The deceased has narrated that “Yesterday at 10.10 p.m. her husband Laxman , two sons Kurumurti and Bhaskar and daughter-in-law Durgamma were quarrelling with her and they burnt her by pouring kerosene and she has sustained severe burn injuries. She was asked whether she has complaint about anybody. She answered that she held her husband, two sons and daughter-in-law responsible for this act.

9. The third dying declaration was recorded by Investigating Officer Rajesh Jadhav. It was recorded on 21st November, 2007 at 2.10 a.m. at Exhibit 32. That statement was treated as FIR. Hanmakka gave all the details. She said that she was staying away from her husband as there were constant quarrels between them. However, she was worried about her future. She was staying with the other son Shrinivas. On 20th November, 2007 there was quarrel between Bhaskar and daughter-in-law on the issue

of filling the water. At that time, Bhaskar told her that she being quarrelsome, he would kill her in the evening. She has also stated that on the same night Bhaskar along with her husband Laxman, son Kurumurti and daughter-in-law Durgamma came to the house at around 10.00 p.m. Laxman and Kurumurti caught hold of her, Bhaskar poured kerosene on her and Durgamma ignited the matchstick and set her on fire. She also told that she came running out of the house and rolled on the ground to extinguish the fire. Anuradha PW-1 arrived at the spot and admitted her to Civil hospital.

10. It is true that all the three dying declarations are not identical. The first dying declaration is in the form of medical history and it was recorded by doctor. So, it is very cryptic. It only says about setting her on fire by pouring kerosene by the son and daughter-in-law. In the second dying declaration, she gave more particulars that her husband Laxman, two sons Bhaskar and Kurumurti and daughter-in-law Durgamma caught hold and set her on fire by pouring kerosene and she held all the four accused responsible for the act of burning. In the third dying declaration, she gave all details as it was recorded by the police officer. Her statement was

treated the FIR and we see more elaborately stated by the deceased in respect of her death, she has consistently maintained that she was burnt.

11. Hanmakka has attributed this act of burning to her husband, two sons and daughter-in-law , in second and third dying declarations she has taken names of her husband, two sons and daughter-in-law

12. In order to test the veracity of dying declarations, it is necessary for the Court to see whether the dying declaration is voluntary and truthful or not. Anuradha PW-1 who was the first to approach her mother and took her to hospital did not support the case of the prosecution. Truthfulness can be decided by the manner in which the incident has taken place and how it is narrated by the deceased to doctor, Investigating Officer and Special Judicial Magistrate. It is stated that on 20th November, 2007 in the morning there was a quarrel and threat was given to her by her son that he would kill her. In the night, all the four members of the family caught hold of her, poured kerosene and set her on fire. Then immediately she was taken to the hospital by her daughter. Her third dying declaration was recorded at 2.10 a.m. on the same night. She was consistently saying that

her relatives set her on fire. There cannot be any other possibility of committing suicide or accidental injuries. Thus, all the dying declarations are found voluntary and truthful. The discrepancies which are pointed out by the learned counsel for the defence don't go to the root to discard the dying declarations but the infirmities are natural and very superficial and one cannot expect deceased making all the three dying declarations giving parrot like version.

13. Thus, we are of the opinion that the incident of setting her on fire has taken place and the appellant nos. 1 to 4 have committed the act of pouring kerosene on her and setting her on fire with common intention. Thus, to that extent, the case of prosecution is proved.

14. There is one more angle to this case which directly deals on the point of sentence. When Hanmakka was admitted in the hospital, she had sustained 49% of burn injuries. She was under treatment from 20th November, 2007 to 1st December, 2007 in the hospital. However, against the medical advice, she got discharged from the hospital by her daughter and son-in-law. The learned counsel pointed out the medical case record

which is in the proceedings, shows that on 1st December, 2007 her son-in-law and daughter Anuradha PW-1 have taken responsibility of her health and it is mentioned that we are taking her against the doctor's advice. So, she was shifted from hospital to the house of her daughter and son-in-law on 1st December, 2007. Thereafter she survived nearly for 16 days fighting for her life. The total period of 26 days after the incident dated 20th November, 2007 she survived and ultimately succumbed to death on 16th December, 2007. Her death is caused not only due to septicemic but it was septicemic shock due to infected burns. We take judicial note that when there are burn injuries to the extent of 49%, then medical care to such patient is required more and of a very high degree. When the burns are 40 to 50%, there are some chances of survival of the patients. It cannot be said that there are no chances. If she would have given proper medical treatment, she could have survived. Thus, shifting from hospital might have caused more infection to the burn injuries, as the proper care is not available outside the hospital and at the residence. Under such circumstances, the act of burning deceased cannot be considered as a direct cause of the death of the deceased. Hence, the conviction under section 302 needs to be set aside and we are of the view that it is the case which is

to be brought under section 304 Part I of the IPC. We, therefore, pass the following order:

- (i) Conviction of the appellants under section 302 of IPC and life imprisonment is quashed and set aside.
- (ii) The appellants are held guilty under section 304 Part I of IPC and thereby sentenced to suffer R.I. for six years and fine of Rs.1000/-, in default, S.I for two months.
- (iii) All the accused who have undergone six years of sentence may be released forthwith, if not wanted in any other case.
- (iv) Accused no. 3 is on bail. The bail bonds of accused no. 3 stands cancelled.
- (iv) Writ of order be expedited.

15. Office to communicate this order to the concerned prison authorities and to the appellants, who are in jail.

16. At this stage, we must record our appreciation for Advocate Mr. Arfan Saith, who is on the panel of advocates of High Court Legal Services Committee and who was appointed to represent the appellant in this appeal. We found that he had meticulously prepared the matter and he

has very ably argued the appeal. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee, Bombay at Rs.2500/-.

(MRS. MRIDULA BHATKAR,J.) (MRS. V.K. TAHILRAMANI, J.)