HIGH COURT OF MADHYA PRADESH: BENCH INDORE
DIVISION BENCH OF HON'BLE SHRI JUSTICE VIVEK RUSIA & HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

CRA No.38 of 2012

1. Rajaram
2. Kankiya
3. Jasodabai

..Appellants.

V/s.

State of M.P. P.S. Maheshwar,
District Khargone. ..Respondent.

Shri Vivek Singh, Advocate for the appellants.
Shri Kamal Kumar Tiwari, Govt. Advocate for respondent/State.

JUDGMENT
(Delivered on 21st April, 2022)

Per Vivek Rusia, J :

The appellants have filed this appeal against the judgment dated 26.12.2011 passed by Additional Sessions Judge, Mandleshwar, District Khargone in Sessions Trial No.14/2011 whereby they have been convicted u/s. 302/34 of the IPC and sentenced to undergo life imprisonment and to pay fine of Rs.2,000-2000/- each and in default of payment of fine, to further undergo 50 days' RI. The appellants have been convicted and sentenced, as aforesaid, on account of committing murder of Vikram in prosecution of common intention by setting him ablaze after pouring him kerosene oil.

2. Facts of the case, in short, are as under :

The marriage of the deceased was solemnized with appellant No.3 20 years ago and they have three children viz. Raju (P.W.6), Shailendra (P.W.8) and daughter Reena. 15 days before the date of the incident, Jasodabai came to the house of her brother Rajaram. On 26.9.2010 at 5 pm., Vikram came there to take his wife Jasodabai and children. Jasodabai objected as he is a habitual drinker. There was a verbal altercation between them. By that time, Rajaram and Kankiya came there and questioned him as to why he has come to their house. Both of them caught hold of him, Jasodabai brought kerosene oil cane and matchbox, poured on Vikram and set him on fire. He shouted but nobody came to save him. He removed his clothes. Thereafter, his parents and brother-in-law came on a motorcycle to the place of the incident. He narrated the entire story and took Vikram to the hospital.

Dehati Nalisi (Exh. P/14) was recorded by the police at the instance of Vikram and on the basis of which, FIR (Exh. P/15) was registered. He was taken to Maheshwar Hospital for treatment and from where MLC report vide Exh. P/5 was sent to Police Station . Police reached the spot and drew a map vide Exh. P/16 procured half burnt clothes of Vikram, plain and kerosene stained soil, tin and plastic can of kerosene, etc. vide Exh. P/17. The accused were arrested vide Exh. P/18, P/19 and P/20 respectively. Since the condition Vikram became serious, therefore, he was referred from the Maheshwar Hospital to the M.Y. Hospital, Indore and during treatment, he succumbed to the burn injuries. His dying declaration was recorded by the Tehsildar vide Exh. P/6 in which he has made specific allegations against all the accused/appellants. He died on 26.9.2010 ,an autopsy was conducted and according to which, he suffered 100% burn injuries and died of its complications. Initially,

FIR was registered u/s. 307/34 of the IPC against all the accused but after the death, it was converted to offence u/s. 302/34 of the IPC.

Upon completion of the investigation, charge-sheet was filed on 23.12.2010 and the trial was committed to the Court of Sessions on 4.1.2011. Charges were framed which the appellants denied and pleaded their false implication. According to them, Vikram was a habitual drinker and in intoxication condition, he poured the kerosene on himself and set him ablaze. He committed suicide and they have falsely been implicated.

In order to prove the charges, the prosecution has examined as many as 12 witnesses. In defence, the appellants examined 8 witnesses. After evaluating the evidence that came on record, learned Additional Sessions Judge has held that although none of the prosecution witnesses has supported the prosecution case, there is no reason to disbelieve the dying declaration which is corroborated by the medical evidence and accordingly convicted and sentenced the appellants, as stated first. Hence, this appeal before this Court.

This Court has rejected all the earlier applications for suspension of the jail sentence, therefore, the appellants are in jail since their date of arrest i.e. 27.9.2010 and have completed more than 11 years of incarceration.

3. Shri Vivek Singh, learned counsel for the appellants submits that he is not assailing the findings on the merits of the case at this stage. He submits that even if the dying declaration of the deceased is believed to be true as it is, the incident took place in the house of appellants No.2 and 3. The deceased himself came there and started disputing with his wife Jasodabai. Although all the appellants are

not admitting that they set him ablaze but the dispute suddenly arose and in a heat of passion, they committed the crime. It is not the case of the prosecution that the appellants called Vikram in their house with a pre-intention and common object to set him ablaze. Therefore, the offence will not travel more than offence u/s. 304 Part I of the IPC because it falls under Exception 4 of Section 300 of the IPC. The appellants are in jail since last more than 11 years with no criminal past. Appellant No.3 Jasodabai has three children who have now reached the age majority and in order to settle their life, she is liable to be released on bail. It is further submitted that deceased's own son viz. Raju (P.W.6) and (P.W.8) have not supported the prosecution case. According to them, the deceased was insane and was a heavy drinker, therefore, he committed suicide by pouring kerosene oil which he brought with him in the house of the appellants . There is no eye-witness in this case, therefore, the offence be converted from Section 302 to 304 Part I of the IPC and the sentence be reduced to the period already undergone.

4. On the other hand, Shri Kamal Kumar Tiwari, learned Govt. Advocate appearing for the respondent/State opposes the aforesaid prayer by submitting that appellants No.1 and 2 caught hold of the deceased and appellant No.3 Jasodabai bring the kerosene oil and poured it on Vikram and set him ablaze. The deceased suffered 100% burn injuries, nobody saved him, therefore, all of them had shared a common intention to commit the murder of the deceased. Hence, no interference is called for and the appeal is liable to be dismissed.

5. Since the appellants are not disputing that the deceased suffered the 100% burn injuries and he died due to its

complications. The death took place in the house of appellants No.1 and 2. It is also not in dispute that the marriage of appellant No.3 and the deceased was solemnized 20 years ago and they have 3 children and out of them, two were examined and both of them are not supporting the case of the prosecution. The ocular witness has also not supported the case of the prosecution. It is also not the case of the parents of the deceased that the deceased was called by these three appellants and thereafter, set him ablaze. Since Dehati Nalisi was got registered by Vikram followed by the dying declaration recorded by the Tehsildar coupled with the fact that the deceased received 100% burn injuries, therefore, we are of the considered opinion that the learned trial Court has not committed any error while relying on the dying declaration.

The only issue which requires consideration by this Court is, whether the offence falls under Section 304 Part I of the IPC or not?

The dying declaration of the deceased Vikram is reproduced below :

> "मैं ग्राम मोगांवा का रहने वाला हूॅ। मेरी शादी 20 वर्ष पहले भाटनूर की जसोदा बाई के साथ हुई थी । तभी से मैं ग्राम भाटनूर में रह रहा हॅ। मेरे तीन बच्चे हैं । जिसमें दो लड़के एक लड़की है वर्तमान में मैं परिवार सहित पप्पू विताफतिंया के मकाान में रहता हूॅ। आज से 15 दिन पहले मेरी पत्नी जसोदा बाई तीनों बच्चों को लेकर साले राजाराय के घर चली गई थी । घर पर में अकेला था । मेरी पत्नी एक अच्चे अभी तक घर पर वापिस नहीं आये। इस पर आज शाम पांच बजे मैं अपनी पत्नी एवं बच्चों को लेने अपने बड़े साले राजाराय के घर पर गया था । मैंने पत्नी जसोदा बाई से बोला कि तू घर पर इतने दिनों से क्यों नहीं आई मेरे रोटी पानी के बेले पड़ रहें है। मेरी पत्नी ने कहा कि तू शराब पीता है। में नहीं आउगी। इस पर उससे मेरी माथा पच्ची होने लगी तो उसी समय मेरा साला राजाराम व उसका लड़का कनकिया आ गये वे बोले कि तू हमारे घर कैसे आया और दोने ने मुझे चपेड़ लिया तभी मेरी घरवाली ने राजाराम के घर के भीतर से घासलेट का डब्बा केन व माचिस लेकर आई । और जान से मारने की नियत से मेरे उपर घासलेट डाल दिया और माचिस से आग लगा दी । मैं जलने लगा और चिल्लाया, मुझे बचाने कोई नहीं आया । मैंने खुद ही अपने कपड़े निकाल दिये वहां पर मेरे बच्चे एव भांजा रू खड़िया भी वहीं पर खड़े थे। फिर वहां से मैं अपनी टापरी में आ

गया । बाद मेरे माता–पिता व जीजा बड़ी मोटर सायकल से आये। उन्हें मैनें सारी घटना वाली बात बताई। वे लोग ही मुझे अस्पताल लेकर आये फिर मेरा पूरा शरीर जल गया था । रिपोर्ट करता हूँ कार्यवाही की जावे ।"

According to the aforesaid, deceased Vikram went to the house of appellants No.1 and 2 to bring his wife appellant No.3 and children back. He told to his Jasodabai why she is not coming back and he has to cook the food. Jasodabai replied that she would not come as he is a habitual and heavy drinker. Thereafter, a verbal altercation started between them. By that time, appellant No.1 – Rajaram and appellant No.2 – Kankiya came and objected to his coming to their house. They caught hold of him and appellant No.3 Jasodabai brought kerosene oil from inside and poured him and ablaze. The deceased started burning and nobody came to save him. He removed his burning clothes and came back to his house ('Tapri'). His children and nephew Rokadia were there. It is clear from the aforesaid dying declaration that there was no pre-planning or premeditation to commit the crime by the appellants. In a heat of passion, appellants No.1 and 2 caught hold of the deceased and his wife out of anger brought kerosene and poured him. Thereafter, the deceased himself came back to his house and called his parents. The deceased's father has given the statement that his son Vikram used to consume the liquor, therefore, he had separated him from his house. Therefore, in the dying declaration, it is rightly stated that Jasodabai left him because of his drinking habit and that was the only cause of dispute between them.

6. In similar facts and circumstances of the case, the apex Court in the case of ***Ongole Ravikanth V/s. State of A.P. : AIR 2009 SC 2129*** where the husband poured the kerosene on the wife and set

her on fire, found that the incident took place all of a sudden without any pre-intention then the act of the accused is found to be punishable u/s. 304 Part I of the IPC and affirmed the judgment of conviction and sentence passed by the High Court. The aforesaid judgment has been relieved upon by the co-ordinate Bench of this Court in the case of ***Bherusingh V/s. State of M.P.*** (Cr. Appeal No.539/2005 decided on 13.3.2012). Para 22, 23, 24 and 25 of the said judgment are reproduced below :

> **"22.** On bare perusal of the dying declaration, we find that specifically the deceased is saying that the appellant wanted to perform second marriage and, therefore, he caused burn injury to her. As per Ex.D/5 dying declaration of the deceased, which was recorded on 17.6.04, by the Head Constable, she had deposed that in the night there was some quarrel with her husband and, thereafter, at 4.30 in the morning he sprinkled kerosene and lit the fire and then short circuited the electric wire. She also stated that she was at her in-law's place for a period of 1½ months. PW6, Gendkunwar, mother of the deceased, in paragraph 6 of her statement (Ex.D/3), very categorically admitted that during life time her daughter never lodged any complaint against her husband and in-laws. She also admitted that this fact was narrated by her to the police at the time of recording of her 161 statement (Ex.D/3).
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> **23.** From the above evidence, we are of the view that there was no enmity between the parties and the incident had occurred all of a sudden in a heat of passion, the act of the appellant would come within the purview of exception 4 to Section 300 of the IPC and if that would be the position, according to us the appellant has committed an offence under Section 304 Part-I of the IPC. In the case in hand, the incident occurred due to some quarrel between appellant-accused
> (husband) and deceased (wife).
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> **24.** The Apex Court in the case of Ongole Ravikanth ***v/s*** State of A.P. (**AIR 2009 SC 2129**) in the similar circumstances where the husband poured kerosene on the wife and set her on fire "found that incident taken place all of a sudden without any preintention then the act of the accused is found to be punishable under Section 304 Part-I of IPC and affirmed the judgment of conviction and sentence passed by the High Court".
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> **25.** The law laid down by the Apex Court in the case of Ongole Ravikanth (supra) will be fully applicable to the factual scenario of the present case also. Thus, the appellant-accused can be convicted for the offence punishable under Section 304 Part-I of the IPC and not under Section 302 of the IPC."

7. In view of the foregoing discussion, in the considered opinion of this Court, the offence would not travel more than Section 304 Part I of the IPC. Accordingly, the conviction of the appellants is converted from Section 302/34 to Section 304 Part I read with Section 34 of the IPC. The appellants have no criminal past and it is their first offence. Appellant No.3 has three children, out of which two were minor at the time of the incident and since last 11 years no one is there to lookafter them and now they have to be settled in their life. Hence, the sentence awarded to the appellants is reduced from the life imprisonment to the period already undergone. The appellants be released from the custody forthwith, if not required in any other cause.

With the aforesaid, this appeal stands partly allowed to the extent indicated above.

[VIVEK RUSIA]
JUDGE.

[AMAR NATH (KESHARWANI)]
JUDGE.

Alok/-