

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1106 OF 2019
(@ SPECIAL LEAVE PETITION (CRL.) NO. 7230 OF 2018)

SHANKAR ...APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA ...RESPONDENT(S)

O R D E R

R.BANUMATHI, J.

Leave granted.

2. The appellant-accused (husband) is alleged to have abused his wife - Anusaya in a filthy language and quarreled with her on 05.05.2008 at 6.00 a.m. During the wordy quarrel, the appellant is alleged to have thrown a plastic bottle containing kerosene and lit a matchstick and set fire on her. Initially, the case was registered under Sections 307 IPC and 498 IPC in Crime No. 151 of 2008. Deceased-Anusaya succumbed to burn injuries and the case was altered to Section 302 IPC. The prosecution relied upon three dying declarations of the deceased-Anusaya. Based upon the dying declaration and other evidence adduced by the prosecution, the Trial Court convicted the appellant-accused under Section 302 IPC and sentenced him to undergo imprisonment for life. The Trial Court, however, acquitted the appellant under Section 498 IPC. Being aggrieved by the verdict of conviction, the appellant has preferred the appeal before the High Court. Before the High Court

on the date of hearing, none appeared for the appellant-accused. However, the High Court proceeded to consider the appeal on merits and, thereafter, dismissed the appeal thereby affirming the conviction and the sentence of life imprisonment imposed upon the appellant-accused. Being aggrieved, the appellant has preferred this appeal.

3. We have heard Mr. A. Sirajudeen, learned senior counsel appearing on behalf of appellant as well as Mr. Nishant Ramakantrao Katneshwarkar, learned counsel appearing on behalf of the respondent-State of Maharashtra and perused the impugned judgment and other materials on record.

4. Admittedly when the appeal was taken up for hearing before the High Court, there was no representation for the appellant. However the High Court proceeded to consider the appeal on merits.

5. When the accused has preferred the appeal against the conviction, the appeal can be disposed of on merits only after hearing the appellant or his counsel. When there was no representation for the appellant, in our considered view, the High Court ought not to have disposed of the case on merits. It was held in *2005 (11) SCC 185 titled Mangat Singh vs. State of Punjab* that where the advocate for the appellant is absent on the date of hearing, the Court shall either appoint an amicus curiae and then decide the appeal. Once the appeal against the conviction is admitted, it is the duty of the Appellate Court either to appoint an advocate as amicus curiae or to nominate a counsel through Legal Services Authority and hear the matter on merits and then dispose

of the appeal. When the appellant was not represented by the advocate, in our view, the High Court ought not to have decided the matter on merits and the impugned order is liable to be set aside and the matter is remitted back to the High Court. The High Court shall restore the Criminal Appeal No. 296 of 2014 and afford sufficient opportunity to the appellant and proceed with the matter in accordance with law. In case, if the appellant is still not represented, we request the High Court to nominate a counsel for the appellant through the Legal Services Authority and proceed with the matter. Since the appellant is said to have undergone more than twelve years of imprisonment and since the Criminal Appeal No.296/2014 is remitted back to the High Court, the sentence of imprisonment imposed upon the appellant is ordered to be suspended and the appellant is ordered to be released on the condition that he should execute bail bond for a sum of Rs.10,000/- with two sureties for a like sum each to the satisfaction of the committal Court. the High Court shall proceed with the Criminal Appeal in accordance with law.

6. The appeal is, accordingly, disposed of.

.....J.
[R.BANUMATHI]

NEW DELHI
23RD JULY, 2019

.....J.
[A.S. BOPANNA]

ITEM NO.13

COURT NO.7

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 7230/2018
(Arising out of impugned final judgment and order dated 08-06-2016
in CRA No. 296/2014 passed by the High Court Of Judicature At
Bombay At Nagpur)

SHANKAR

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

Date : 23-07-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. A. Sirajudeen, Sr. Adv.
Ms. Geetanjali Mehlwal, Adv.
Ms. Arna Das, Adv.
Ms. Kamakshi S. Mehlwal, AOR

For Respondent(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Registry is directed to send back the records forthwith.

(MADHU BALA)
COURT MASTER (SH)
(Signed order is placed on the file)

(NISHA TRIPATHI)
BRANCH OFFICER