

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 467 OF 2019
(Arising out of SLP(CrI.) No(s).10562 of 2018)

SAVITABEN

Appellant(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) This appeal arises out of the judgment dated 24.06.2014 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No.1389 of 2007 in and by which the High Court affirmed the conviction of accused No.1-Manaharbhai Ambalal Rohit and accused No.2-Savitaben under Section 302 IPC read with Section 114 IPC and sentenced them to undergo imprisonment for life and also imposed a fine of Rs.500/- each with default clause. They were also convicted under Section 452 IPC read with Section 114 IPC and sentenced to undergo rigorous imprisonment for two years along with a fine of Rs.100/- each with default clause. Accused No.1-Manaharbhai Ambalal Rohit was also convicted u/s 504 IPC and sentenced to undergo rigorous imprisonment for one month.

(3) Case of the prosecution is that on 04.06.2005 at 12.00 Noon, complainant-Bhikhabhai Mithabhai Rohit (PW-4) went to his field. At about 02.30 PM, Narmadaben, wife of the complainant was at her house and she was admonishing her son Bharat (PW-12) regarding some work. At that time, accused No.2-Savitaben thought that Narmadaben was telling the same to her only which resulted in wordy quarrel between them. Accused Manaharbhai Ambalal Rohit and his wife Savitaben started abusing deceased Narmadaben. Thereafter, accused Manaharbhai Ambalal Rohit chased Narmadaben with stick to beat her and Narmadaben went inside the house and closed the door of the house. Accused Manaharbhai Ambalal Rohit and his wife Savitaben are alleged to have broken the door and thereafter, accused Manaharbhai Ambalal Rohit took Narmadaben to the last room catching hold of her braid and made her to lie down in the cot. Thereafter, accused No.1-Manaharbhai Ambalal Rohit asked accused No.2-Savitaben to bring kerosene. It is alleged that accused-Savitaben brought the jar of kerosene and gave it to her husband Manaharbhai Ambalal Rohit and thereafter, accused No.1 poured the kerosene on deceased Narmadaben and set her on fire and thereafter, both the accused ran away. When Narmadaben fell down, Rajesh Kumar Makwana (PW-15) and Guvantsinh Makwana (PW-16) came there and covered Narmadaben with mattress. Bharat (PW-12)-son of the deceased went to the field and informed his father Bhikhabhai Mithabhai Rohit (PW-4) about the incident. PW-4 went to the house and found his wife lying in burnt condition. According to PW-4, he asked Narmadaben how the

occurrence took place and deceased Narmadaben is said to have narrated the whole occurrence to him. Thereafter, deceased Narmadaben was taken to the Civil Hospital, Ahmedabad and she succumbed to injuries at 07.00 PM.

(4) On the complaint lodged by Bhikhabhai Mithabhai Rohit (PW-4) on 04.06.2005, case was registered under Sections 302 and 452 IPC read with Section 114 IPC. Dr. Bhargav Jhaveri (PW-1) conducted the post-mortem on the dead body of deceased Narmadaben and found injuries viz. first to third degree burn injuries on the face and frontal scalp hair including eyelashes, eyebrows, chest, abdomen, both the hands, both the legs except sole of left leg, back and private part of the body. As per post-mortem certificate (Ex.17) issued by PW-1, there were ninety-five percent burn injuries on the body of deceased and also opined that the death was due to extensive burns over the body. Upon completion of investigation, charge sheet was filed against accused under Sections 302, 452 and 509 IPC read with Section 114 IPC.

(5) To bring home the guilt of the accused, in the trial court the prosecution examined Bharat (PW-12) who witnessed the occurrence, Rajesh Kumar Makwana (PW-15) and Gunvantsinh Makwana (PW-16) who covered the deceased with mattress, doctor (PW-3) who admitted the deceased in the hospital, doctor (PW-1) who conducted the post-mortem and other witnesses. Upon consideration of oral evidence and medical evidence and other facts and circumstances, the Trial Court held that the prosecution has established the guilt of the accused beyond

reasonable doubt and convicted both the accused under Sections 302 and 452 IPC read with Section 114 IPC and sentenced them to undergo imprisonment as aforesaid in para (1). In appeal, the High Court affirmed the conviction and sentence of imprisonment of both the accused.

(6) The special leave petition qua accused-Manaharbhair Ambalal Rohit was dismissed by this Court on 3rd December, 2018 and notice was issued qua appellant-accused, Savitaben.

(7) We have heard Mr. A. Sirajudeen, learned senior counsel appearing for the appellant and Ms. Hemantika Wahi, learned counsel appearing for the respondent-State and also perused the impugned judgment and the evidence/materials on record.

(8) The prosecution mainly relies on the evidence of Bharat (PW-12) son of the deceased. As per evidence of Bharat (PW-12) overt act is mainly attributed to accused no.1-Manharbhair Ambalal Rohit. Bharat (PW-12) has stated that the accused-Manharbhair Ambalal Rohit abused the deceased-Narmadaben due to which she rushed from the spot. Accused-Manharbhair chased the deceased-Narmadaben with stick to beat her due to which Narmadaben went inside the house along with her two sons, Bharat (PW-12) and Mehul and closed the door of the house from inside. Bharat (PW-12) further stated that the said accused broke the door and caught hold of his mother and told the appellant-Savitaben to bring kerosene. Upon which Savitaben brought the jar of kerosene and gave the same to her husband-Manaharbhair Ambalal Rohit who poured the kerosene on the deceased-Narmadaben and set her ablaze with matchstick.

(9) Though Bharat (PW-12) has attributed bringing of kerosene can to the appellant-Savitaben, learned senior counsel appearing for the appellant submitted that the same is not corroborated by other evidence. In this regard, our attention was drawn to the evidence of Dr. Chandrakant (PW-3) who was on duty in the Emergency Ward of the Civil Hospital, Ahmedabad, on 4th June, 2005. In his evidence Dr. Chandrakant (PW-3) has stated that Narmadaben was brought to the hospital at 5:15 p.m. on 04th June, 2005 and on being questioned, Narmadaben personally gave the case history to him i.e. "On 04-06-2005 at 02:00 hrs in the noon, my neighbour Manharbhai Ambalal set me ablaze by pouring kerosene. Incident occurred at Ghodasar, Mehmdabad, Kheda." The statement of the deceased-Narmadaben before Dr. Chandrakant (PW-3) was the earliest dying declaration in which deceased-Narmadaben attributed the overt act only to accused-Manharbhai Ambalal and the deceased-Narmadaben has not stated anything about the appellant-Savitaben. So far as the evidence of Dr. Manish (PW-2) is concerned, who was on duty in the burns ward, it is seen from the evidence of Dr. Manish that the case history was narrated to him by the husband of the deceased-Narmadaben. It is pertinent to note that the prosecution has not examined the other son of the deceased-Narmadaben, namely, Mehul. It is also brought in evidence that there was long-standing enmity between the family of the deceased and the accused. It is further to be noted that there was also delay of six hours in registration of FIR.

(10) Considering the facts and circumstances of the case and that the name of the appellant has not been stated by the deceased-Narmadaben in her earliest dying declaration before Dr. Chandrakant (PW-3), in our view, the prosecution has not established the guilt of the accused and benefit of doubt has to be given to the accused-Savitaben.

(11) In the result this appeal is allowed. The conviction of the appellant-Savitaben is set aside and she is acquitted of the charge under Section 302 I.P.C. and Section 452 read with Section 114 I.P.C. The appellant-Savitaben is ordered to be released forthwith unless her presence is required in any other case.

.....J.
(R. BANUMATHI)

.....J.
(R. SUBHASH REDDY)

NEW DELHI,
MARCH 11, 2019.