

**(2007) 04 BOM CK 0174**

**Bombay High Court**

**Case No:** Criminal Appeal No. 291 of 1990

Machindra Hariba Mohite

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision:** April 19, 2007

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302

**Citation:** (2007) 3 BomCR 513 : (2007) CriLJ 3860 : (2007) 4 MhLj 461

**Hon'ble Judges:** Nishita Mhatre, J; D.G. Deshpande, J

**Bench:** Division Bench

**Advocate:** None, for the Appellant; F.R. Shaikh, Assistant Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Nishita Mhatre, J.

The judgment and order of the Additional Sessions Judge, Sangli in Sessions Case No. 41 of 1987 has been impugned in this appeal. The learned Sessions Judge has convicted the accused for the offence punishable u/s 302 of the Indian Penal code and sentenced the appellant to suffer imprisonment for life and has also directed the payment of a fine of Rs.1000/-. The accused has also been convicted for offences u/s 201 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.200/-. Both the sentences are to run concurrently.

2. When the appeal was called out for hearing, the advocate for the appellant was not present. We, therefore, had no option but to decide the appeal with the assistance of the learned A.P.P. in this case relying on the judgment of the Apex Court in [Bani Singh and others Vs. State of U.P.](#),

3. The case of the prosecution is that, the accused was married to the victim for about one and a half months prior to the incident. The victim had complained to the members of her family that the accused suspected her chastity. It appears that, on

5.1.1987 the accused came running out of his house with his trousers on fire. Flames and smoke were billowing out of the house in which he was residing alongwith the victim. Two school boys who were nearby when the accused came out of the house, raised an alarm, others rushed to the spot. The accused walked away from his house, muttering "let her die". Somebody from the village informed the police patil who arrived at the scene of offence. The Police patil then reported the matter to the police station. Investigations were conducted and the F.I.R. was lodged by a teacher of the village school. The villagers found that the victim had sustained burn injuries and had died. An inquest panchanama was prepared and thereafter the body was sent for post-mortem examination. Certain articles including the burnt pieces of clothes and a kerosene can were seized from the scene of offence. The post-mortem examination revealed that the victim had died due to throttling. The police officer conducting the investigations lodged the F.I.R. When the accused was apprehended, he was found to have sustained burn injuries. He was, therefore, sent for medical treatment. A chargesheet was filed against the accused. The case was committed to Sessions and the accused was tried for having committed an offence punishable u/s 302 of the Indian Penal Code.

4. The prosecution has examined eight witnesses in support of its case. Admittedly, there are no eye witnesses to the incident and the case rests entirely on circumstantial evidence. PW-1 is a primary school teacher. PW-2 is the brother of the victim. PW-3 is a school boy Mohan who had raised an alarm when he saw the flames and smoke emanating from the house of the accused. PW-4 is a colleague of PW-1. PW-5 is the police patil. PW-6 is the police station officer who drew the inquest panchanama and after receiving the advance certificate from the medical officer that the victim died on account of throttling he lodged the F.I.R. PW-7 is the P.S.I. who submitted the chargesheet against the accused. PW-8 is the doctor who conducted the post-mortem examination on the deceased.

5. A circumstance relied on by the prosecution in support of its case is that, the victim had complained to her parents and her brother that the accused would regularly abuse her although they were married only one and a half months prior to the incident and that the victim had complained also of the accused doubting her fidelity. PW-2, the brother of the victim, has spoken about this fact. About eight days prior to the incident, when the accused returned home in the evening and found PW-2 present in the house, he started abusing him and demanded to know why PW-2 has come to his house. According to this witness, he spent a night with his maternal uncle. While returning home the next day, the victim met him at some distance away from her house and complained to him that the accused suspected her character and therefore abused her. There is no effective cross-examination on these facts mentioned by the witness and, therefore, this evidence is believable. The prosecution has established the motive of the accused for killing his wife.

6. The other circumstance relied upon by the prosecution is that PW-3 has seen smoke and flames billowing out of the house of the accused. This fact is corroborated by the testimonies of PW-1 and PW-4. PW-3 has spoken about raising an alarm after having seen the smoke and flames. He has spoken about his teacher having sent him home in the long recess which commenced at about 9.15 a.m. to wear his uniform. This witness has stated that, when he enquired with the tailor to whom he had entrusted the work of stitching his uniform, he was informed that it was not ready. He, therefore, did not return to the school that day. While going home from the tailor, he saw the smoke and flames emanating from the house of the accused. That is why he raised an alarm. PW-1 and PW-4 have spoken about hearing the alarm raised by PW-3 after the school assembly was over and the classes were resumed between 11.00 and 11.15 a.m. Both these witnesses have spoken about each others presence and of the presence of PW-3. The school was at a distance of about 50 to 60 feet from the house of the accused and, therefore, they would have certainly noticed the flames and smoke emanating from the house of the accused. Their testimonies are thus credible and believable.

7. All three witnesses have stated that they saw the accused coming out of the house and leaving the spot of the incident by muttering "let her die". Therefore, this circumstance, that the accused left the place, when the flames and smoke started emanating from his house has been proved. All these witnesses have also mentioned that the accused has sustained burn injuries on his right thigh. The medical evidence supports this evidence as the accused was sent for medical treatment. Thus, the presence of the accused in the house when it was on fire has been established.

8. The doctor PW-8 has opined that the death of the victim occurred due to shock on account of cardio respiratory failure due to asphyxia on strangulation. The medical officer has described the internal injuries which are as under:

1. Fracture at both superior both Horn of thyroid cartilage.

2. Compression of larynx and Trachea.

3. Haematoma around the trachea and larynx.

4. Trachea, larynx, branchi, shows congestion with blood stained mucous.

5. Trachea, branchi does not show smoke or black mucous. Right side of heart is full of blood. Left side is empty. Weight is 270 gms. Large vessels full of blood. It was on the basis of the internal injuries that the doctor concluded that the burn injuries were post mortem and that the victim was in fact strangulated and thereafter was set ablaze.

9. The seizure panchanama indicates that a kerosene can was seized from the spot of offence. No other person was seen entering or leaving the house of the accused. Considering the aforesaid circumstances relied on by the prosecution, it has been

able to prove that it was the accused who had throttled his wife and had then set her on fire in order to destroy the evidence.

10. On a scrutiny of the entire evidence on record we find that the prosecution has been able to prove the aforesaid circumstances against the accused. These circumstances are links in a chain which points to the sole hypothesis, that of the guilt of the accused.

11. We have considered the judgment of the learned Sessions Judge who has marshalled the facts properly and has appreciated the evidence on record and drawn the correct inferences. We agree with the findings recorded by the Sessions Court and dismiss the appeal.

12. The appeal is dismissed.

13. The conviction and sentence imposed on the appellant accused is maintained. His bail bond stands cancelled. The accused shall surrender before the Trial Court within three weeks from today. In the event he does not surrender, the Trial Court shall take the accused in custody and send him to jail for undergoing sentence.