PETITIONER:
STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
RAM PRASAD

DATE OF JUDGMENT:
04/12/1967

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SIKRI, S.M.
HEGDE, K.S.

CITATION:
1968 AIR 881 1968 SCR (2) 522

ACT:
Indian Penal Code (45 of 1860), s. 300 (Fourthly)-Scope of. Practice-Acquittal by High Court of accused of major offence and conviction for lesser offence-Appeal against acquittal to Supreme Court-Right of accused to prove that he was not guilty of any offence.

HEADNOTE:
The accused poured kerosene upon his mistress and set her clothes on: fire. There were extensive burns and she died as a result thereof. On the question as do the nature of the offence.
HELD : The accused must have known that he was committing an act so imminently dangerous that it must in all probability cause death or such injury as was likely to cause death. As he had no excuse for incurring that risk the offence falls under s. 300 (fourthly) of the Indian Penal Code, that is culpable homicide amounting to murder, even if the accused did not intend to cause her death. [527 D-E]
Although the clause is usually invoked in those cases where there is no intention to cause the death of any particular person, it may, on its terms, be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knew that the act was likely to cause death or such bodily injury as was likely to cause death. [527 C]
Even though there is no provision to that effect in the Rules of the Supreme Court, in the case of an appeal by the State against acquittal for the major offence, it is safer, fair and just to the accused to give him a chance to prove that he was not guilty even of the lesser offence on the analogy of s. 439(6) of the Criminal Procedure Code. [524 F]

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 92 of 1965.
Appeal by special leave from the judgment and order dated' October 20, 1964 of the Madhya Pradesh High Court in Criminal Appeal No. 67 of 1964.

I.N. Shroff and M. N. Shroff, for the appellant.
O.P. Rana, for the respondent.
The Judgment of the Court was delivered by
Hidayatullah, J. The respondent Ramprasad against whom the State of Madhya Pradesh has filed this appeal by special leave was tried in the Court of Session under s. 302 of the Indian Penal Code. He was convicted by the Sessions Judge under s. 324 of the Code and sentenced to rigorous imprisonment for six months. The State Government there filed an appeal against his acquittal under s. 302, Indian Penal Code and also 'an application for
523
revision for the enhancement of the sentence passed on him. The High Court convicted him under s. 304 Part II and sentenced him to 4 years' rigorous imprisonment; concurrently the application for revision was dismissed as infructuous. The State Government has now filed this appeal and contends that the conviction of the respondent should have been under s. 302 of the Indian Penal Code and that there has been failure of justice in the case requiring interference from this Court.
The facts of the case are as follows : Ram Prasad was living with his mistress Mst. Rajji at Mannaur in District Panna. Evidence shows that they were having quarrels for some time previous to the incident which took place on May 24, 1963. On that date, Ram Prasad intended leaving Mannaur for a place called Harsa, because his cattle used to be stolen at Mannaur. Mst. Rajji was unwilling to go with him unless he first reported the matter to the police station house before taking her to Harsa; alternatively, she wanted that he should leave her at Mannaur and give her some cattle for her maintenance. To either course Ram Prasad was unwilling. Matters came to a head on the night of. the 24th when Rain Prasad ordered a van in which he began putting his luggage with a view to leaving for Harsa. Mst. Rajji then went to some of the village panchas and brought them over for intercession. It is these panchas who have now appeared as witnesses to the incident that took place immediately afterwards. To all the panchas Mst. Rajji again narrated the story of her grievance and Ram Prasad insisted on taking her away. As Rain Prasad would not give in, nor would Rajji, the panchas could do nothing further and some of them went away to their lodging which were close to the residence of Ram Prasad. Evidence then shows that Ram Prasad approached Mannulal (P.W.4) with a lantern in one hand and an aluminium bowl in the other. He asked for some kerosene oil, because oil in his lamp had run down, but Mannulal did not give any as he had none to spare. Immediately thereafter Ram Prasad went back to his room and a cry was heard from Mst. Rajji that Ram Prasad had put kerosene oil on her and set her alight. Mannulal, Holke and others immediately arrived on the scene and put out the fire, but before that happened, Mst. Rajii was extensively burnt. She kept on, accusing Ram Prasad with the deed, but Ram Prasad, according to the witnesses, did not say anything in protest. On the other hand, when he was questioned by the panchas as to why he had done so, he retorted that Mst. Rajji was his wife and what had they to do with the matter and added that they might even get him hanged. Mst. Rajji was -then taken on cycle to the police station house although the hospital was on the way. Evidence shows that Mst. Rajji insisted on being taken to the police station house first. There she made the statement which is Ex. P-7, in, which she charged Ram Prasad with her condition and stated also,,

524

that he had put kerosene oil on her and set her clothes on fire. Later she was removed to the hospital where separately to two doctors in attendance (Dr. Mrs. Ghosh and Dr. M. L. Gupta) she again stated that she was burnt by her husband who had put kerosene oil on her. Dr. Ghosh noted on the bed head ticket "homicidal burn by husband'. The next day, Mst. Rajji died Prosecution produced the panchas as witnesses to the earlier transaction in which Mst. Rajji and Ram Prasad had disagreed over going to Harsa and also in proof of the statement of Mst. Rajji that Ram Prasad had put kerosene oil on her and set her clothes alight. They have also through the same witnesses proved the conduct of-Ram Prasad when Mst. Rajji accused him of having committed the outrage. The prosecution has further relied upon the statements made by Mst. Rajji in Ex. P-7 and to the two doctors who have deposed in the court.

The High Court and the court below have agreed in holding Ram Prasad responsible for the outrage. They have accepted the three dying declarations as well as the evidence of the eye witnesses in support of the prosecution case. 'They have only ,differed as to the offence disclosed by this evidence.

We issued notice to the respondent to show cause against the appeal of the State Government. Although he received the notice, he did not make any arrangement for his own representation in this Court. We accordingly invited Mr. O. P. Rana to appear as amicus curiae on behalf of the respondent at State expense. We allowed Mr. Rana to argue not only about the nature of the offence but also on merits with a view to point out to us any circumstance proving that the conviction itself was wrong. Although there is no provision to this effect in the rules of this Court, we thought it safer to follow the procedure laid down for the High Court in the Code of Criminal Procedure when it hears 'a matter after notice of enhancement of sentence. It seemed to us to be both fair and just to give the accused a chance to prove to the satisfaction of this Court that the offence itself had not 'been brought home to him.

In so far as the quarrel between Ram Prasad and Mst.Rajji is concerned,there is nothing which can be said against it.In fact the record bristles with evidence on this point. All theevidence which has been brought to show that Ram Prasad was intending to leave for Harsa and Mst. Rajji was resisting him could not be false, because the panchas were called and they attempted to intervene. The real dispute is as to whether it was Ram Prasad who poured kerosene oil on Mst. Rajji and set her alight or whether, as suggested by Ram Prasad and pleaded by Mr. Rana, it was Mst. Rajji who herself put her own clothes on fire and committed suicide at the same time falsely charging Ram Prasad with the outrage. In this connection, prosecution produc-

525

ed four witnesses. The first is Mannulal who was present at the. calling of the panchayat by Mst. Rajji. In fact it was Mst. Rajji herself who went to summon him to the house of Ram Prasad and it was from him that Ram Prasad asked for some kerosene off. The fact that kerosene oil was asked for is admitted by Ram Prasad himself and the question arises why was it necessary for Ram Prasad to have asked for kerosene oil at that moment and why immediately afterwards Mst. Rajji was found with her clothes burning. No doubt, Mannulal did not give any kerosene oil but it seems to us that the lantern which Ram Prasad carried in his own hand had some kerosene oil in it. It was possible for him to

have extracted some oil from the lantern. We do not put too much emphasis upon this aspect of the case, because there is no direct evidence. But on the side of the prosecution and the defence, there is agreement that kerosene oil was in fact put upon the clothes before they were set on fire. In fact the burnt clothes even in the court emitted still a smell of kerosene oil and the aluminium bowl also smelt of kerosene. This was noted by the Sessions Judge who tried the case.

It, therefore, stands to reason that kerosene oil was in fact employed before the clothes were set on. fire and the short question. in this case is whether it was Ram Prasad who set fire to the clothes or it was Mst. Rajji who put kerosene oil on herself and set herself alight. On this part of the case, there is the evidence of Mannulal to which we have already referred. A similar statement was made by Holke (P.W. 3) and Soni (P.W. 6). They consistently spoke of Ram Prasad having asked Mannulal for kerosene oil and that immediately afterwards Mst. Rajji was found with her clothes burning and accusing Ram Prasad of the outrage upon her. There is one witness, however, who did not entirely support this story and that is Jhallu (P.W. 4). His version was that Mst. Rajji stated to Ram Prasad that their quarrel had been, settled, implying thereby that she had set herself on fire and thus terminated the quarrel. This statement was made by the accused in his examination under S. 342 of the Code of Criminal Procedure and support is therefore sought to the contrary story from the evidence of Jhallu. Jhallu was declared hostile and was crossexamined with reference to his previous statement before the police. We find that in his statement to the police he did not mention the fact to which he deposed in the Court of Session and it makes us doubtful whether what he stated in the Court of Session was true. In fact there is nothing brought out in his deposi-tion beyond this remark by Mst. Rajji that the quarrel between the bania and herself has been settled. Mst. Rajji in addition to making the accusation might have stated that their quarrel had got settled. It is possible this retort might well have been uttered: with the accusation. But it is curious that when Mst. Rajji roundly accused Ram Prasad with having set fire to her clothes, Ram

526

Prasad did not say anything in defence which one would expect a reasonable man to do. He should have protested then and there. He had no reason to state to the panchas that Mst. Rajji was his wife and the panchas had nothing to do with the matter .and that they could get him hanged. His attitude later in not ,,going to the police station house and to the hospital speaks against him. There are also the three statements by Rajji to say nothing of her shouts accusing her husband which were part of the res gestae. On the whole, therefore, we are satisfied that the conclusion of the High Court and the Sessions Judge that it was Ram Prasad who had put kerosene oil upon Mst. Rajji and set her clothes on fire was correct in the circumstances of this case.

The question then arises, what was the offence which Ram Prasad can be said to have committed ? The offence of causing injury by burning is a broad spectrum which runs from s. 324 causing- simple injury by burning through s. 326, namely, causing grievous injury by burning to the two major offences, namely, culpable homicide not amounting to murder and even murder itself. The Sessions Judge chose the lowest end of the spectrum which is surprising enough, because the burns were so extensive that they were certainly

grievous by all account. The High Court placed the offence a little higher, namely, culpable homicide not amounting to murder. We think that the matter goes a little further than -this. As death has been caused the question has to be considered in the light of homicide to determine whether the action of Ram Prasad Calls within culpable homicide not amounting to murder or the higher offence of murder itself. Here we see that death has actually been caused by the criminal act; in other words, there has been homicide and since it is not accidental or suicidal death, responsibility for the homicide, in the absence of any exceptions ;or extenuating circumstances, must be borne by the person who ,caused it. The High Court has apparently stopped short by holding that this was a case of culpable homicide not amounting -to murder. The question is whether the offence falls in any of the clauses of s. 300 Indian Penal Code. In this connection it is difficult to say that Ram Prasad intended causing the death of Mst. Rajji although it might well be the truth. That he set fire to her clothes after pouring kerosene oil is a patent fact and therefore the matter has to be viewed not only with regard to the firstly of s. 300, but all the other clauses also. We do not -wish to consider the second and the third clauses, because the question then would arise what was the extent of the injury which Ram Prasad intended to cause or knew would be caused to Mst. Rajji. That would be a matter of speculation. In our opinion, this matter can 'be disposed of with reference to clause fourthly ,of s. 300. That clause reads as follows :-

> ..... culpable homicide is murder..... if the person committing the act knows that it is so imminently
>
> 527
>
> dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death, and commits'such act without any excuse for incurring the risk or causing death or such injury as aforesaid."

It is obvious that there was no excuse for Ram Prasad to have taken the risk of causing the death or such bodily injury as was likely to cause death. The question therefore arises whether Ram Prasad knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, so as to bring the matter within the clause. Although clause fourthly is usually invoked in those cases where there is no intention to cause the death of any particular person (as the illustration shows) the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death. In the present case, Ram Prasad poured kerosene upon the clothes of Mst. Rajji and set fire to those clothes. It is obvious that such fire spreads rapidly and burns extensively. No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore, it is obvious that Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must be taken to fall within 4thly of S. 300, Indian Penal Code. In other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death of Mst. Rajji. He committed an act so imminently dangerous

that it was in all probability likely to cause death or to result in an injury that was likely to cause death. We are accordingly of the opinion that the High Court and the Sessions Judge were both wrong in holding that the offence did not fall within murder.

Mr. Rana contended that there was no proof from the medical reports that kerosene oil was employed because the wounds did not smell of kerosene. Apart from the fact that both the courts have held that kerosene was so employed, the evidence is quite satisfactory that kerosene was in fact poured upon the victim before the clothes were set on fire. The omission of this fact in the medical reports is not of consequence.

We accordingly allow this appeal, substitute the conviction under s. 302 of the Indian Penal-Code in place of the conviction under s. 304 Part II and sentence Ram Prasad to imprisonment for life.

V.P.S. Appeal allowed.

528