

SUPREME COURT OF INDIA

Mehboob

Vs.

State of Maharashtra

Crl.A.No. 277 of 2016

(Kurian Joseph and S.Abdul Nazeer,JJ.,)

11.10.2018

JUDGMENT

Kurian Joseph,J.,

1. The appellants have been convicted under Section 302 IPC. The deceased was the wife of the first appellant and the second appellant was his concubine. The conviction is mainly based on two dying declarations made by the deceased. The oral statement (Exhibit 19) given by the deceased to the police personnel shows that the first appellant had poured kerosene on her and the second appellant had set her on fire.
2. However, it is the vehement submission of Mr.Chanchal Kumar Ganguly, learned counsel appearing for the appellants, that the deceased had clearly stated in the first dying declaration that the second appellant had poured water and extinguished the fire. In the second dying declaration (Exhibit 28), which is recorded by Naib Tehsildar, it has come out that both the appellants had extinguished the fire. The learned counsel, therefore, submits that the appellants are liable, in any case, for conviction only under Section 304 Part II IPC.
3. But, as rightly pointed out by Mr. Nishant R. Katneshwarkar, learned counsel appearing for the State, extinguishing the fire has just come out of a spontaneous human instinct and in case the appellants had the real intention of saving the life of the deceased, they would have at least taken her to the hospital; instead she was just left at her paternal home and both the accused escaped from the place.
4. Having heard the learned counsel appearing on both sides and having gone through the pleadings and referring to the evidence, we are not inclined to take a different view as far as the conviction made by the trial court and upheld by the High Court.
5. However, we make it clear that in case the appellants have completed 14 years in jail, including the remission, subject to their jail conduct being satisfactory, they shall be released on bail, subject to such conditions as may be imposed by the trial court, pending a final decision for premature release.

6. Subject to the above, the appeal is disposed of.