

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.23 OF 2019

Rakesh Laxman Gaikwad	...Appellant
<i>Versus</i>	
State of Maharashtra & Anr.	...Respondents

Mr. Prasad B. Kulkarni, Advocate for Appellant.
Ms. Sangita D. Shinde, APP for Respondent No.1- State.
Ms. Rekha Musale a/w A. Siddique and Ms. Pooja Thorat for
Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED : 20th June 2025

JUDGMENT.:

1. Heard Mr. Prasad Kulkarni, learned Counsel for the Appellant, Ms. Sangita Shinde, learned APP for the Respondent No.1-State of Maharashtra and Ms. Rekha Musale, learned Counsel for the Respondent No.2.

2. The present Criminal Appeal has been filed challenging the legality and validity of the Judgment and Order dated 19th December 2018 passed by the learned Sessions Judge, Solapur in Sessions Case No. 323 of 2014 convicting the Appellant-Accused

No.1 under Section 324, 506(II) and 498-A of the *Indian Penal Code, 1860* (“**IPC**”). The Appellant was convicted for offence punishable under Section 324 of IPC and sentenced to suffer rigorous imprisonment of 1 year and also to pay fine of Rs.50,000/- and in default simple imprisonment for six months. He was sentenced to undergo rigorous imprisonment for 2 months for offence under Section 506 (II) of IPC and also to pay fine of Rs.10,000/- in default of payment of fine of Rs.10,000/- and to undergo simple imprisonment of two months and for offence under Section 498-A of IPC the Appellant was sentenced to suffer rigorous imprisonment of 1 year and to pay fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months. It has further directed that substantive sentence for all the offences shall run concurrently.

3. During the trial, the prosecution has examined following nine witnesses :

PW 1 (Pg. No.54)	Atul Sathe Panch witness-Spot Panchnama Exh.46 (Pg. No.151)
PW 2 (Pg. No.56)	Kamal Deshmukh Panch witness -Seizure Panchnama Exh.26-Clothes of victim and 47- Seizure of stroll of victim

	(Burnt) (Pg. No.156)
PW 3 (Pg. No.58)	S. S. Birajdar Panch witness-Seizure cloths of victim Exh.29 (Pg. No.60) Panchnama
PW 4 (Pg. No.62)	Uma Gaikwad Complainant/Victim
PW 5 (Pg. No.82)	Ambadas Jadhav, Uncle of PW4- Victim
PW 6 (Pg. No. 90)	Dr. Amruta Waghvekar Examined victim on 26.03.2024
PW 7 (Pg. No.93)	Anand Gaikwad
PW 8 (Pg. No.98)	Dr. Santosh Bhoi Examined victim on 28.03.2024
PW 9 (Pg. No.145)	Shashikant Kale, P.I. Investigating Officer

4. It is the main contention of Mr. Kulkarni, learned Counsel for the Applicant that the evidence on record do not show that the Appellant has committed the offence. He states that there are various lacunae in the evidence of victim i.e. PW4. He submitted that there is no evidence about demand of Rs.2,00,000/-, no evidence regarding physical and mental harassment. He also points out the evidence of PW6-Dr. Amruta Waghvekar and submits that in fact the injuries can be self inflicted. He also points out cross-examination of Dr. Subhash Bhoir and submits that the injuries are also possible by hard and blunt object and sharp cutting object. He

submits that there is no allegation that any hard and blunt object was used during the incident in question or any sharp cutting weapon was used. He points out injury certificate and states that all injuries are simple in-nature. He therefore submits that the judgment and Order of conviction and imposing sentence is liable to be quashed and set aside and the Appellant is entitled to be acquitted.

5. Mr. Kulkarni, learned Counsel further submits that in any case, the Appellant has undergone substantive sentence and the Appellant is presently undergoing sentence in default of payment of fine. He submits that as far as aggregate imprisonment for default is concerned, the same is 14 months and he has already completed substantial part of the same.

6. On the other hand, Ms. Shinde, learned APP and Ms. Rekha Musale, learned Counsel for Respondent No.2 pointed out evidence of PW4-Uma Gaikwad. They submitted that the marriage took place on 7th December 2013 and the incident took place on 25th March 2014, wherein the Appellant tried to burn the victim by pouring kerosene. Both of them pointed out evidence of PW5 i.e.

uncle of the victim. They also pointed out evidence of PW Nos. 6 and 8 i.e. the Doctors, who examined the victim and submitted that the said evidence clearly show that the kerosene has been poured on the body of the victim and attempt is made to burn the victim. Both of them also pointed out the Chemical Anylyser's report Exhibit 50 and submitted that the kerosene was found on the burnt clothes of the victim. Both of them therefore submitted that the Criminal Appeal be dismissed.

7. As far as contention that the sentence imposed in default is concerned, it is submitted that imposing sentence in default of payment of fine is the discretion of the Court and the said discretion has been exercised by the learned Trial Court in a reasonable manner and therefore no interference is warranted even on that ground also.

8. Perusal of record shows that PW4-Uma Gaikwad in her deposition has stated as follows :

“1. Accused Rakesh is my husband and Subhadrabai is my mother-in-law. My marriage took place with Rakesh on 07.12.2013. After marriage I went to the house of accused for cohabitation. I was residing with accused persons. For

one and half month after marriage accused treated me well, thereafter my mother-in-law started demanding Rs. 2,00,000/- for getting service to my husband in police department. At that time, Rakesh was jobless. I informed about said demand to my husband. On that, Rakesh also demanded Rs. 2,00,000/-. I told the accused persons that financial condition of my parents was not good and they are not able to fulfill the demand, however the accused did not pay any heed to my requested and started harassing me physically and mentally. Due to fear, I did not tell said fact to anybody. On 10.03.2014, accused Rakesh left me to my uncle Ambadas Jadhav's house. On 24.03.2014. my uncle gathered respectable persons from society and conveyed a meeting with the accused and his 15 relatives and thereafter send me for cohabitation with accused persons. On 23.03.2014, husband of my sister-in-law Anand came in our house. I served him tea and water. On that my husband asked me as to why I served tea and thereafter he heated a steel ladle and burned my forearms and thereafter bite me on my both arms and right side of breast. My husband and mother-in-law threatened to kill me if I would narrate said fact to anybody. Therefore, I did not tell it anybody. On 26.03.2014, my husband came from behind and caught my hands thereafter my mother-in-law poured kerosene on my person and lit my stole. I pushed my husband and came out of house by shouting. Thereafter, my husband called my uncle Ambadas Jadhav and informed him that I tried to set myself ablaze by pouring kerosene on my person. Thereafter, my uncle came there and smelling kerosene on my person, he took me to ITI Police Chowky. Police issued medical yadi to me and directed me to Civil Hospital. Accordingly, my uncle admitted in Civil Hospital. At that time, I was pregnant.”

(Emphasis added)

9. Detailed cross-examination has been conducted of PW4-Uma Gaikwad by the learned counsel of the Accused, however, even

during said detailed cross-examination also whatever stated in the examination-in-chief as set out hereinabove has not been shaken. In the cross-examination no admission has been obtained to contradict about the above evidence. The most of the cross-examination is concerning role of Accused No.2- Subhadra Gaikwad, who has been acquitted.

10. The other material evidence is of PW6-Dr. Amruta Raghunath Wagavkar and PW8-Santosh Bhoi. PW-6 has stated that the victim sustained blunt trauma to abdomen, blunt trauma to mouth, superficial burn injury to right forearm, linear abrasion on both forearms, human bite on the forearms and accordingly issued the Certificate. In the cross-examination PW6 has admitted that the injuries may be self inflicting.

11. PW-8, Santosh Baburao Bhoi, who is also Doctor and Lecturer in Forensic Medicine, V. M. Medical College, Solapur has also examined the victim on 28th March 2014. He has mentioned that 15 injuries were found on the victim, as follows :-

“1 Superficial incisions 2 in number, adjacent and parallel to each other, present on inner aspect of right forearm, 2 cm in length each. There are

situated in lower 1/3" region. The edges can be easily separated.

2. *Epidermal burn injury present on inner aspect of right forearm, of size 5 x 3 cm, situated 10 cm proximal to wrist joint. Evidence of dry brown 10 crust formation present.*
3. *Contusion present on right arm, inner aspect of size 2 cm x 1 cm reddish brown. It is present in middle 1/3rd of right arm.*
4. *Epidermal burn injury present on left breast, inferior to the left nipple region, size 5 cm x 2 cm. Evidence of dry crust formation present.*
5. *Epidermal burn injury present on right breast, inferior to the right 5 nipple, size 3 cm x 2 cm. Evidence dry crust formation present.*
6. *Contusion present on left thoraco abdominal region, size 6 cm x 5 cm, reddish brown in colour*
7. *Contusion present on right thoraco abdominal region, size 5 cm x 3 cm, reddish brown in colour.*
8. *Lacerated wound present on lower lip inner aspect on left side, size 0.5 cm x 0.5 cm and muscle deep.*
9. *Multiple contusions 3 in number present on left arm inner aspects, sizes 0.5 cm x 0.5 cm to [1.cm](#)x 0.5 cm, reddish brown in colour.*
10. *Superficial incisions 5 in numbers, adjacent and parallel to each other, situated on left forearm in upper 1/3 region, inner aspect, of lengths varying from 1 cm to 1.5 cm. Edges can be easily separable.*

11. *Superficial incisions, 6 in number, situated adjacent and parallel to each other, on left forearm in middle 1/3rd region, inner aspect of lengths ranging of 1.5cmX 2.00 cm. Edges can be easily separable.*
12. *Superficial incisions, 3 in numbers, situated adjacent and parallel to each other, on left forearm in middle 1/3d regions, inner aspect of length of 1 cm each. Edges can be easily separable.*
13. *Superficial incisions, 6 in numbers, situated adjacent and parallel to each other on left forearm in lower 1/3'd region, inner aspect of length varying 2 cm to 2.5 cm. Edges can be easily separable.*
14. *Superficial incisions 8 in numbers situated adjacent and parallel to each other on left forearm in lower 1/3'a region, outer aspect of length 10 varying from 1 cm to 1.5 cm. Edges can be easily separable.*
15. *Superficial incisions 7 in number, situated adjacent and parallel to each on left forearm, middle 1/3" region, outer aspect of length varying from 2 cm to 2.5 cm, edges can ta easily separable."*

12. PW8 has mentioned the age of injuries as of about 1 to 4 days. He has stated that superficial burn injuries are possible due to burning by kerosene. Injury Nos. 4 and 5 are possible by burning by hot turner. In the cross-examination, PW-8 has stated that he is M.B.B.S., MD (Forensic Sciences), the burn injuries was

not corresponding to self inflicted injuries, as generally self inflicted injuries are present on the exposed part of the body.

13. The other material evidence is of PW-3- Birajdar who is panch witness of seizure of cloths of the victim and PW-9, Shashikant Kale, who produced C.A. report at Exhibit 50 and 51. As far as CA report at Exhibit-50 is concerned, it has been found that partly burnt odhani with residues like kerosene is detected.

14. Thus, the evidence on record clearly shows the involvement of the Appellant in the offence under Section 324, 506(II) and under Section 498-A the IPC.

15. Thus, there is no substance in the contention of Mr. Kulkarni, learned Counsel for the Applicant that the Judgment of conviction and imposing sentence by the learned Sessions Court is without any evidence on record.

16. Mr. Kulkarni, learned Counsel has also raised certain contention regarding simple imprisonment imposed in default of payment of fine.

17. To appreciate the contention raised by Mr. Kulkarni, learned Counsel it is necessary to set out the relevant portion of operative part of the Judgment and Order of the learned Sessions Court, which is as follows :

“:OPERATIVE ORDER:

(1) Accused no.1 Rakesh Laxman Gaikwad is hereby convicted for the offence punishable under Sec.324 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 1(one) year and to pay fine of Rs.50,000/- (Rupees Fifty Thousand only), in default, to undergo simple imprisonment for 6 (six) months.

(2) Accused no.1 Rakesh Laxman Gaikwad is hereby convicted for the offence punishable under Sec. 506(II) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 (two) months and to pay fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo simple imprisonment for 2(two) months.

(3) Accused no.1 Rakesh Laxman Gaikwad is hereby convicted for the offence punishable under Sec. 498-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 1 (one) year and to pay fine of Rs.1,00,000/- (Rupees One Lakh only), in default, to undergo simple imprisonment for 6(six) months.

Substantive sentence for all the offences shall run concurrently.”

18. Thus, it is clear that for default in payment of fine of Rs.1,00,000/- simple imprisonment for 6(six) months is granted

and as far as default in payment of fine of Rs.50,000/- is concerned, also simple imprisonment for 6 (six) months is granted, and for default of payment of fine, Rs.10,000/- is concerned, two months imprisonment is granted.

19. Although the learned APP is right in contending that it is the discretion of the Court to impose fine and also to impose punishment to be undergone for default in payment, however, the said discretion has to be exercised in judicious and reasonable manner.

20. Mr. Kulkarni, learned Counsel states that in fact the Appellant has completed two years, 1 month and 27 days of punishment. He therefore submits that in fact the Appellant is about to complete entire punishment including the punishment of imprisonment to be undergone for default of payment of fine and the same has also been substantially completed.

21. The learned Sessions Court has imposed fine of Rs.1,00,000/- under Section 498-A of the IPC and directed to undergo simple imprisonment for six months in default of the

same. It is significant to note that the learned Sessions Court also imposed fine of Rs.50,000/- under Section 324 of IPC and for that also in default, simple imprisonment for six months is granted. Thus, it is clear that for default in payment of fine of Rs.1,00,000/- and Rs.50,000/- same punishment is imposed. Thus, the discretion exercised is not judicious and reasonable. Although the Judgment and Order dated 19th December 2018 of the learned Sessions Judge of conviction is confirmed as far as sentence with respect to imprisonment in default of payment of fine the same is required to be modified. Accordingly, the Criminal Appeal is partly allowed by modifying the clause Nos. 1 and 2 of the operative part of the impugned order of learned Sessions Court as follows:

ORDER

1. The Criminal Appeal No.23 of 2019 is partly allowed. Clause Nos. (1) and (2) of the Judgment and Order dated 19th December 2018 passed by the learned Sessions Judge, Solapur in Sessions Case No. 323 of 2014 are modified as follows.

(1) Accused no.1- Rakesh Laxman Gaikwad is hereby convicted for the offence punishable under Sec.324 of the Indian Penal Code and sentenced to

suffer rigorous imprisonment for 1 (one) year and to pay fine of Rs.50,000/- (Rupees Fifty Thousand only), in default, to undergo simple imprisonment for **3 (three) months.**

(2) Accused no.1 Rakesh Laxman Gaikwad is hereby convicted for the offence punishable under Sec.506 (II) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 (two) months and to pay fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo simple imprisonment for **1 (one) month.**

(2). It is clarified that there is no change in Clause Nos. (3) to (11) of the Judgment and Order dated 19th December 2018 passed by the learned Sessions Judge, Solapur in Sessions Case No. 323 of 2014

22. Accordingly, the Criminal Appeal is partly allowed and disposed of as above.

(MADHAV J. JAMDAR, J.)