

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.80 OF 2013

Shri Sahebrao Govind Patil,
Age-57 years, Occu:Service,
R/o-Plot No.18, Vidyavihar Colony,
Amalner, Tq-Amalner,
Dist-Jalgaon.

...APPELLANT
(Ori. Complainant)

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Pachora Police Station,
Tq-Pachora, Dist-Jalgaon
- 2) Murlidhar Rajaram Patil,
Age-73 years,
- 3) Sau. Sushilabai w/o Murlidhar Patil,
Age-69 years,
- 4) Manohar s/o Murlidhar Patil,
Age-48 years,
- 5) Pramod s/o Murlidhar Patil,
Age-40 years,
- 6) Sau. Alkabai @ Abai Yuvraj Patil,
Age-45 years,
(Proceeding dismissed as against
Respondent No.6 as per Hon'ble
Court's Order dated 18/11/2014),

Respondent Nos.2 to 6 are
R/o-Pimpri Bk. Tq-Pachora,
Dist-Jalgaon,

7) Sau. Surekha Suresh Chavan (Patil),
Age-43 years,
R/o-Hiswal, Tq-Malegaon,
Dist-Nashik,

8) Yuvraj Jagannath Patil,
Age-54 years,
R/o-Shivshakti Nagar, CIDCO,
Nashik, Dist-Nashik,
(Respondent No.8 deleted as per
Court's Order dated 10/12/2014),

9) Suresh Walmik Chavan,
Age-53 years,
R/o-Hiswal, Tq-Hiswal,
Tq-Malegaon, Dist-Nashik.

**...RESPONDENTS
(Ori. Accused)**

...

Mr. S.U. Chaudhari Advocate for Appellant.
Mr. K.S. Patil, A.P.P. for Respondent No.1.
Mr. R.A. Jaiswal Advocate h/f. Mr. N.S.
Ghanekar Advocate for Respondent Nos. 2 to 5
and 7 and 9.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 14TH JANUARY, 2015

ORAL ORDER :

1. Heard learned counsel for the Appellant,

learned A.P.P. and learned counsel for Respondents, finally at admission stage.

2. Learned counsel for the Appellant submits that the trial Court Judgment of acquittal needs to be interfered with, as according to him the Judgment is not based on the correct appreciation of the evidence which was brought on record. The learned counsel submitted that the trial Court wrongly gave weightage to the earlier accident report which was registered, ignoring the F.I.R. which was filed by the complainant later on. The trial Court should have ignored the delay looking to the facts brought on record. The learned counsel has taken me through the evidence of the complainant to submit that there was evidence to show that victim Vaishali was subjected to cruelty and the accused persons were responsible for offence under Section 498-A of the Indian Penal Code. According to the learned counsel, due to the conduct of the Respondents-accused persons,

Vaishali died with her family in an incident what was suicide and that the accused persons are responsible for the same. Learned counsel pointed out evidence to show that the accused persons wanted money from the parents side of Vaishali and when the same was not received, Vaishali was subjected to cruelty. According to the counsel, there is evidence to show that the accused persons used to take loan and deceased Sharad, husband of Vaishali was required to repay the same and this led to the friction in the family of Vaishali. Learned counsel wants that the Appeal should be admitted and the Respondents-accused should be convicted.

3. Learned counsel for the Respondents-accused submitted that in the incident in which the death of Vaishali took place, even the accused persons lost their son and grand child Krishna. It was an incident of short circuit leading to fire in the concerned room in which the unfortunate

incident took place. According to the learned counsel the accused persons would not have gained anything by sacrificing their own son and grand child also. Learned counsel referred to the reasonings recorded by the trial Court to say that the trial Court has taken view of the evidence which is possible and the acquittal recorded should not be disturbed.

4. I have heard learned counsel for both sides and perused record. The evidence concerned is also looked into. Learned counsel for the Appellant other than referring to the evidence of the complainant, also referred to the evidence of PW-5 Dr. Teli who had done the postmortem of Vaishali and who gave opinion that the burns of Vaishali were like those suffered by a person on whom kerosene is poured. Learned counsel also referred to the evidence of PW-6 - Engineer Pawar to submit that the witness had seen the spot after the incident and had given opinion that fire

could not have been taken place by short circuit.

5. Going through the material on record, it is apparent that the incident took place in the night of 7th November 2007. Fire took place in which Vaishali, the daughter of complainant as well as son-in-law Sharad and their child Krishna expired. After the incident, A.D. No.65 of 2007 was recorded at which time the same complainant had stated that he did not have grievance against anyone in respect of the incident and that the incident has occurred out of short circuit. No offence was registered. After a few months, on 11th March 2008 complainant filed complaint Exhibit 47 before the J.M.F.C. under Section 156(3) of Code of Criminal Procedure leading to the investigation and the trial. The trial Court took note of this and also discussed the evidence of the complainant where he claims that he smelled kerosene in the house and observed the same as material improvement. The trial Court considered

the fact that the allegations of harassment were quite vague, general and omnibus in nature.

6. Learned counsel for the Appellant has taken me through the evidence of the complainant where certain instances are referred and then it is deposed that because of the said instances Vaishali was subjected to cruelty. What cruelty does not appear to have been stated. Looking to the evidence pointed out, it cannot be said that the observations of the trial Court are not correct that the allegations of harassment are vague. The trial Court considered that there used to be dispute in the family on account of finance and partition of the joint family and Vaishali perceived that injustice or unfair attitude was shown towards her husband because of which she had to suffer financial crisis. Trial Court discussed that it cannot be termed as cruelty, since it is a daily wear and tear of a routine household. Trial Court considered that under Section 107 of I.P.C.,

no specific instance had come on record. The evidence of the Doctor Teli to say that the burns were like those suffered by a person on whom kerosene is poured, has no specific basis for referring to the kerosene. Regarding the same incident, it has to be kept in mind that earlier A.D. was registered that due to short circuit fire had taken place in the concerned room. Given injury may be caused by various ways.

7. The trial Court considered that the Junior Engineer examined was not Electrical Engineer. The evidence of PW-6 Junior Engineer Pawar shows that he was concerned to depose that Maharashtra State Electricity Distribution Company was not responsible for the incident. He admitted that he had learnt only basic subject of electricity and was knowing the fundamentals. The trial Court looked into this evidence and did not rely on this witness. The trial Court took note of the evidence of DW-1 and DW-2 who had recorded

statements of deceased Sharad that the incident occurred due to accidental fire by short circuit. Considering all this, the trial Court had come to the conclusion that the offence was not established against the accused persons and acquitted the accused persons.

8. For the given evidence, the view taken by the trial Court is a possible view. There is no reason to admit this Appeal. The Appeal is dismissed at the stage of admission.

[A.I.S.CHEEMA,J.]