

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 479 OF 2001 WITH
CRIMINAL APPLICATION NO.6337/2015**

Rambhau S/o Ratanrao Solunke
Age 27 years, Occu.Labour
R/o Sirsi (Bk) Tq. Sonpeth
Dist.Parbhani.

.. APPELLANT
[ORI.ACCUSED]

VERSUS

The State of Maharashtra
Through Police Station
Sonpeth Tq. Sonpeth
Dist.Parbhani.

.. RESPONDENT
[ORI.COMPLAINANT]

...

Shri S.J.Salunke,Advocate for appellant
Shri N.T.Bhagat,APP for respondent State

...

CORAM : M.T.JOSHI,J.
DATED : 3RD DECEMBER, 2015

ORAL JUDGMENT :-

Heard learned counsel for appellant as well as learned APP for respondent complainant.

2] Aggrieved by recording of conviction for the offences punishable u/s 498-A and 307 of IPC, original accused has filed

present appeal. He was sentenced to suffer rigorous imprisonment for one year and pay fine of Rs.1000/- for the offence punishable u/s 498-A of IPC. Further he was sentenced to suffer rigorous imprisonment of five years and to pay fine of Rs.1000/- for the offence punishable u/s 307 of IPC.

3] The prosecution case in nutshell is as under :

That the victim is the wife of the appellant. They had resided together for four years after marriage. On 22/4/2000 while they were residing at village Shrisi (Bk) at about 8.30 a.m. in the morning the appellant asked the injured victim to accompany him to collect fire wood from the field of his master. In the field, she collected cotton sticks. The appellant however, asked her not to collect the cotton sticks and to collect the wooden fuel therefore, she went near a well for collecting fuel wood. However, the appellant suddenly lifted her and threw her in the well. She sank upto the bottom of the well and came up of the water, caught the iron bar which was fixed in the steps of the well. She came out of the well. The appellant however, ran away from the spot. In the circumstances, complaint came to be filed on the very same day with police station, Sonpeth.

4] PSI Gaikwad (PW-5) had conducted the investigation. He sent the injured to the Government hospital where (PW-3) Dr.Vinayak Kuldeepak had examined the victim. Besides this, the mother of the victim (PW-2) Vatsalabai was also examined.

5] Deposition of (PW-3) as well as injury certificate issued by him at Exh.15 showed the following injuries on the person of the victim :

(1) CLW 6x3x2 cm. (Left) side of frontal bone of Skull; (2) Abrasion & Contusion 2x1 cm. Middle 1/3 of Right radio-ulna bone; (3) CLW 2x1x1/2 cm. Right hand; (4) Contusion left hand and (5) Contusion left tibia. All the injuries were simple.

6] The learned Sessions Court believed the testimony of the victim and the medical officer and the conviction came to be recorded.

7] Mr.S.J.Salunke, learned counsel for the appellant submits that without going into merits of the case, the appellant may be released as now since 2004 the couple is residing together as there was compromise between them. The affidavit by the complainant during the pendency of the present appeal to that effect is filed on record in Criminal Application No.6337 of 2015 . Mr.Sanjay Wakure for the complainant also supports the said statement of appellant.

8] Learned APP opposes the submission of learned counsel for appellant. He submits that the prosecution has proved beyond reasonable doubt that the present appellant has thrown his wife in the well. In the circumstances, it was an attempt to commit murder. Only due to providence, victim could come out of the well and in the circumstances, he submits that the Appeal be dismissed.

9] On the other hand, Mr.Salunke submits that during the trial, appellant was behind bars for 170 days and in the facts and circumstances of the case, the sentence already undergone during the course of appeal would be just and sufficient.

10] In my view, if all the facts and circumstances are taken into consideration, that the appellant and the injured wife are residing together since last 11 years, the injuries received by the victim as detailed supra, in my view though the conviction is required to be maintained, the period of imprisonment already undergone by the appellant would meet the ends of justice. In the circumstances, following order :

11] The appeal is hereby dismissed as regards recording of conviction for offence punishable u/s 498-A and 307 of IPC

12] The appeal however is allowed as regards the sentence. Order of the learned Sessions Judge sentencing appellant to suffer rigorous imprisonment of one year and to pay fine of Rs.1000/- for the offence punishable u/s 498-A and to suffer rigorous imprisonment of five years and to pay fine of Rs.2000/- for the offence punishable u/s 307 of IPC is hereby set aside.

13] Instead, the appellant is directed to suffer imprisonment already undergone by him and to pay the fine of Rs.1000/- on each of the counts. The fine amount is already deposited by the appellant in the trial Court.

14] Accordingly Appeal is disposed of.

15] In view of disposal of Appeal, Criminal Application No.6337/15 does not survive and the same is also disposed of.

(M.T.JOSHI,J.)

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