

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO.639 OF 2014

Ganesh s/o. Dilip Joshi,
Age 32 years, occ. Nil,
r/o. Utkarsh Colony,
Sakri Road, Dhule,
Tq. and Dist. Dhule

..Appellant

Versus

1] The State of Maharashtra

2] Jyoti w/o. Ganesh Joshi,
Age 28 years, occ. Household,
r/o. Utkarsh Colony,
Near Boudh Samaj Mandir,
Sakri Road, Dhule

..Respondents

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Mr.C.R.Deshpande, advocate for appellant

Mr.S.R.Palnitkar, APP for respondent no.1

Mr.Joydeep Chatterji, advocate for respondent no.2

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CORAM : M.T. JOSHI, J.

DATE : APRIL 23, 2015

ORAL JUDGMENT :

Heard both sides.

2] Mr.Chatterji, learned counsel for respondent
no.2 – complainant, tenders an affidavit sworn by

respondent no.2 – complainant, along with photocopy of the settlement agreement the complainant and present appellant/accused. The same are accepted on record and collectively marked as "X" for the purpose of identification.

3] The affidavit of respondent no.2/complainant – Jyoti w/o. Ganesh Joshi i.e. wife of present appellant, would reveal that during pendency of present appeal, the appellant and the complainant have settled the dispute between them and the complainant wants that the appellant be "released from the offences".

4] The appellant/accused has married respondent no.2/complainant – Jyotibai on 22nd January, 2006. They have two issues of the marriage. The appellant used to beat the complainant and therefore, earlier also, offence punishable under Section 498-A of Indian Penal Code was registered

against him. In the situation, as per the prosecution case, on 7th August, 2013, the present appellant, at about 9:00 am. in the morning, assaulted the complainant in the house with a sickle over her head, hands and back. Therefore, the crime came to be registered against the appellant for the offences punishable under Section 307, 323, 504 read with 506 of Indian Penal Code.

5] Before the Sessions Court, besides the complainant and other witnesses, the Medical Officer PW 4 - Dr. Ravindra Sonawane was examined. His deposition as well as the injury certificate issued by him at Exhibit 23, would show the following injuries to respondent no.2/ complainant:-

1. Multiple abrasions present over face.
2. CLW present, 3 x 2 x 1 c.m. over face, right side zygomatic arch.
3. CLW 3 x 2 x 1 c.m. over occipital region.

4. CLW 3 x 2 x 1 c.m. over left fronto temporal parietal region of skull.

5. CLW 3 x 2 x 1 c.m. over right fronto temporal parietal region of skull.

6. Fracture to middle phalanx of second finger of left hand.

6] Considering the material on record, learned Sessions Judge has convicted the present appellant for the offence punishable under Section 307 of Indian Penal Code directing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default, to suffer simple imprisonment for two months. He was further directed to pay fine of Rs.10,000/- out of which Rs.5,000/- was directed to be paid to the complainant – respondent no. 2 as compensation. The appellant was not released on bail during pendency of the trial and as such, since 7th August, 2013, he is behind the bars.

7] Mr.Deshpande, learned counsel for the appellant as well as Mr.Chatterji, learned counsel for respondent no.2/complainant submit that both the parties have agreed to dissolve the marriage by way of a decree of divorce by mutual consent. A copy of the Kararnama in this regard, is also submitted on record. It is submitted that since the appellant is behind the bars, the application for obtaining the decree of divorce could not be filed in the competent court.

8] Learned A.P.P. for respondent no.1 – State, opposes the application. He submits that the offence punishable under Section 307 of Indian Penal Code cannot be compounded.

9] I have gone through the record and more particularly, the statement of PW 1 – Jyotibai, corroborated by the injuries found on her person, as detailed supra. In the circumstances,

the offence against the present appellant was proved beyond the reasonable doubt. The injuries on the person of the complainant, as detailed supra, coupled with the agreement between the parties, in my view, however, would be sufficient, to direct the present appellant to suffer the imprisonment which he has already undergone till today i.e. 1 year 8 months and 15 days.

10] Hence, the following order :-

a) The appeal is partly allowed.

b) The conviction recorded against the present appellant/accused vide judgment and order dated 9th October, 2014 passed by learned Addl. Sessions Judge, Dhule, in Sessions Case No.193 of 2013, for the offence punishable under Section 307 of Indian Penal Code, is hereby confirmed.

c) As regards the sentence, it is hereby directed that the appellant/accused shall suffer the

imprisonment for the period already undergone by him.

d) As regards the fine amount, the same is hereby reduced to Rs.5,000/-. It is, therefore, directed that the appellant/accused shall deposit a fine amount of Rs.5,000/-, if not deposited earlier and in default, he shall suffer additional imprisonment for 15 days.

e) The appellant/accused be released forthwith, if not required in any other case.

[M.T. JOSHI, J.]

kbp