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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL APPEAL NO. 126 OF 1993**

Subhash Gorakh Khankal  
Aged Adult, residing at  
Anjandon, Taluka – Karmala  
Dist. Solapur.

.. Appellant  
(Org. Accd. No. 1)

Vs.

The State of Maharashtra

.. Respondent

Mr. Prakash Naik, Appointed Advocate for appellant.  
Mrs. Sangeeta D. Shinde, APP for State.

CORAM: P. V. HARDAS &  
DR. SHALINI PHANSALKAR-JOSHI, JJ.

APRIL 10, 2015.

**ORAL JUDGMENT [ Per P. V. Hardas, J.] :**

1. The appellant/Original Accused No.1, who stands convicted for offence punishable under Sections 302 and 498-A of the Indian Penal Code and sentenced to imprisonment for life and RI for one year respectively, by the IV Additional Sessions Judge, Solapur, by judgment dated 29/01/1993, in Sessions Case No. 86 of 1991, by this appeal challenges his conviction and sentence.

2. Facts in brief as are necessary for the decision of this appeal may be stated thus:-

PW 9 – Head Constable Bhaskar Gaikwad, who was attached to the Karmala Police Station, was entrusted with the investigation of Accidental Death No. 5390, which was registered by Head Constable Kamble on the basis of the report at Exh. 6. Accordingly, PW 9 – Head Constable Gaikwad went to the house of the appellant and in the presence of panchas, held the inquest of the dead body of deceased Savita @ Sadhana at Exh. 7. The dead body was thereafter handed over to Police Constable Hotkar for taking it to the Municipal Dispensary, Karmala for conducting postmortem examination. In the presence of panchas, the scene of the incident panchanama was drawn at Exh. 15. Statements of PW 4 - Devrao and others were recorded. At about 9 p.m., the dead body was sent to Karmala for conducting postmortem examination. On the next day, PW 3 – Babu, father of deceased Savita @ Sadhana lodged his report at Exh. 27. On the basis of the report at Exh. 27, an offence vide Crime No.97 of 1990 was registered. Statements of witnesses were recorded and on 12/8/1990, the appellant and Original Accused No.2 were arrested. On

13/8/1990, in the presence of panchas, the house of the appellant was searched and partly burnt clothes, post-cards were seized under panchanama at Exh. 17. On 14/8/1990 further investigation was handed over to PSI Khilari.

PW 2 – PSI Balasaheb, who was attached to the Karmala Police Station, took up the investigation and on 31/10/1990 filed the charge-sheet against the accused.

Postmortem on the dead body of deceased Savita @ Sadhana was performed by PW 7 – Dr. Saroj Khot, who noticed that deceased Savita @ Sadhana had sustained 100% superficial to deep burns. He, therefore, opined that deceased had died due to 100% superficial to deep burns. The postmortem report is at Exh. 14.

2. On the case being committed to the Court of Sessions, trial court vide Exh.1 framed charge against the appellant and accused no.2 for offence punishable under Sections 498-A and 302 read with Section 34 of the Indian Penal Code. The accused denied their guilt and claimed to be tried. Prosecution, in support of its case examined nine witnesses. The

trial court accepted the evidence of the prosecution witnesses and convicted and sentenced the appellant as afore-stated, while acquitting Original Accused No.2.

3. We have heard Mr. Prakash Naik, learned counsel appointed for the appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

4. Prosecution has examined PW 3 – Babu, PW 6 – Dattatray, father and brother of deceased Savita @ Sadhana. According to PW 3 – Babu, his daughter Sadhana was married to the appellant about one and half years prior to the incident. According to PW 3 – Babu, after a year of marriage, the appellant and Sadhana had stayed at his house for about 7 to 8 days and during that period the appellant had informed him that he was indebted to the extent of Rs.5000/- on account of the marriage. The appellant, therefore, requested Babu to advance Rs.5000/- to him. Babu expressed his inability to pay the appellant an amount of Rs.5000/-, but promised that he would pay the appellant some money as soon as he could raise the funds. After about 4 to 8 days thereafter, deceased Sadhana had

come to the house of PW 3 – Babu and in the evening Sadhana informed PW 3 - Babu that the appellant had assaulted her as Babu had not paid Rs.5000/- to the appellant. Sadhana had informed PW 3 – Babu that PW 4 – Devrao had brought Sadhana upto the Bus Stop at Khed and thereafter PW 6 – Dattatray had brought Sadhana to the house of PW 3 – Babu. PW 3 – Babu, therefore, took Sadhana for medical treatment to a private doctor at Khed. Thereafter, he sent a letter at Exh. 22 to the appellant, which was scribed by PW 6 – Dattatray. After receipt of the said letter, the appellant came to the house of Babu and stayed for about 2 to 4 days. After about 15 days, Sadhana gave birth to a daughter and accordingly PW 3 – Babu sent a letter on 19/3/1990 at Exh. 24. Since no reply was received to the letter at Exh. 24, PW 3 – Babu sent another letter at Exh. 25. After receipt of the said letter, the appellant came to the house of PW 3 – Babu and resided for about 2 to 3 days and expressed his remorse at having ill-treated Sadhana and promised that he would not ill-treat Sadhana in future. The appellant and Sadhana thereafter went to reside at the house of the appellant. On 10/8/1990 PW 3 – Babu received information that his daughter Sadhana had expired. He had accordingly gone to the village, where the appellant was residing and noticed the dead body of deceased Sadhana. He thereafter had lodged his report at Exh. 27. PW 3 – Babu has been

extensively cross-examined, but in the cross-examination nothing of substance has been elicited to affect his credibility that Sadhana had informed him that she was assaulted by the appellant on account of failure of PW 3 – Babau to pay the amount. The evidence of PW 3 – Babu that the appellant had expressed his remorse at the ill-treatment given to Sadhana is also not affected.

5. The evidence of PW 3 – Babu is further corroborated by the evidence of PW 6 – Dattatray, brother of deceased Sadhana, who also deposes on similar lines. Despite cross-examination, the evidence of PW 6 – Dattatray is also not affected. The evidence of PW 4 – Devrao, a neighbour of the appellant indicates that it was accused no. 2 who had told Devrao to take Sadhana to the house of her father as she was ill-treated and assaulted by the appellant. Accordingly, PW 4 – Devrao, accompanied by accused no.2 – Gorakh, had taken Sadhana by a Bus to Khed. At Khed they had met PW 6 – Dattatray, who had then taken Sadhana to the house of PW 3 – Babu. The evidence of PW 5 – Jankabai also indicates that she had heard the cries of Sadhana imploring the appellant not to assault her and she had also heard the cries of sister of the appellant, who had also implored the appellant not to assault Sadhana.

6. The evidence of these witnesses, therefore, in our opinion, proves the offence under Section 498-A of the IPC beyond reasonable doubt. The appellant had ill-treated Sadhana as PW 3 – Babu had not given money to the appellant for repaying the loan taken by the appellant from PW 8 – Chandrakan, who was his employer.

7. In respect of the offence under Section 302 of the IPC, we find that the prosecution has not been able to establish the time of death of deceased Sadhana. The prosecution has also not established the presence of the appellant at the scene of the incident at about the time when the offence is alleged to have been committed. There is no evidence on record which would indicate that it was the appellant who had set his wife Sadhana ablaze. Merely because the dead body of Sadhana was found in the house of the appellant and the evidence that Sadhana had died due to burns would not be sufficient to infer that it was the appellant who had set Sadhana ablaze. There is no evidence at all on record which would prove the offence against the appellant beyond reasonable doubt. In our opinion, therefore, the appellant is entitled to be given the benefit of doubt in respect of the offence punishable under Section 302 of the IPC.

8. It appears that the appellant was an under-trial prisoner for about one month and thereafter he was released on bail. The appellant has undergone about two months of imprisonment after his conviction till he was released on bail by this court. The appellant has further undergone imprisonment for about one month when his bail was cancelled by this court and he was directed to be taken into custody. The appellant has, thus, undergone imprisonment of about four months. The offence alleged against the appellant is of the year 1990. On account of passage of time, in our opinion, the sentence of imprisonment of four months which has been undergone by the appellant would meet the ends of justice in respect of the offence punishable under Section 498-A of the IPC.

9. Accordingly, Criminal Appeal is partly allowed and the conviction and sentence of the appellant for offence punishable under Section 302 of IPC is quashed and set aside and he is acquitted of the said offence. Fine, if paid by the appellant, be refunded to him. The conviction of the appellant for offence punishable under Section 498-A of IPC is confirmed, however, the sentence of imprisonment of RI for one year is modified and the appellant is sentenced to the period of

imprisonment already undergone by him. Since the appellant has undergone the sentence for offence punishable under Section 498-A of IPC, the appellant be released forthwith, if not required in any other case.

Fees payable to Mr. Prakash Naik, learned counsel appointed for the appellant quantified at Rs.5000/-.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)