

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.712 OF 1992

Shahaji Tatoba Dhandore
Age 35 years, Resident of
Mahim, Taluka Sangola,
District Solapur

.. Appellant

Versus

The State of Maharashtra

.. Respondent

None for the appellant.

Mrs.S.Gajare-Dhumal, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 13th JULY, 2015

ORAL JUDGMENT :-

1 This Appeal is directed against the judgment and order dated 7th September 1992 delivered by the Addl. Sessions Judge, Solapur convicting the appellant who was the accused in the said case of an offence punishable under section 307 of the IPC, and sentencing him to suffer RI for 10 years, and to pay a fine of Rs.4,000/- in default to suffer RI for 6(six) months.

2 The Appeal has been appearing on board for final hearing since quite some time. On several occasions, nobody had appeared for the appellant and in order to secure the presence of the appellant, a bailable warrant was ordered to be issued on

atleast two occasions. The appellant thereafter remained present before this Court, got the warrants cancelled, and assured to remain present before the Court. Mr.R.R. Galange, Advocate appeared for him and he also assured that he would remain present before the Court at the time of final hearing of the Appeal. It also appears that thereafter, the appellant and his Advocate stated before the Court that the appellant had been residing with the victim i.e. his wife and apparently, it was suggested that the dispute between the parties had been settled. This statement was, however, found to be incorrect, or atleast could not be substantiated. The appellant and his counsel then started remaining absent again.

3 Under these circumstances, the Appeal is being decided after examining the record of the case, after going through the entire evidence and the impugned judgment, and after hearing the Adld. Public Prosecutor.

4 The appellant is alleged to have assaulted his own wife Nandabai (PW 6) by a chisel (पटाशी). The blows were given on the back, forehead and abdomen of Nandabai. The injuries caused to Nandabai were severe and the coils of the intestine came out from the wound on the abdomen. Nandabai was lying unconscious outside her house. Her father Mahadev Kamble (PW 5) learnt about the incident, came there and saw her lying outside her house. He took her to hospital. Mahadev Kamble lodged a report with the police which was treated as the First Information Report, and the case in respect of an offence punishable under section 307 of the IPC was registered against the appellant.

5 On the next day, the appellant was arrested. After the completion of investigation, he was prosecuted and the prosecution, as aforesaid, resulted in his conviction.

6 During the trial, the prosecution examined totally 17 witnesses. However, in view of the defence of the appellant, it is not necessary to discuss the entire evidence that was adduced during the trial. It is because the appellant does not dispute at all that he assaulted his wife Nandabai. The appellant admitted the same by way of suggestions given in the cross-examination to the prosecution witnesses, and also in his examination under section 313 of the Code of Criminal Procedure. His defence is that he acted on grave and sudden provocation that was caused to him on his noticing Nandabai sleeping with another person. Therefore, a reference may be made only to the evidence of Nandabai (PW 6), her father Mahadev Kamble (PW 5), Dr.Shankar Benare (PW 8) who had treated Nanda medically, Sadashiv Kamble (PW 9) brother of Nanda, Kerappa Karande (PW 10) who was present near the scene of the offence at the material time, and who had heard the cries of Nanda, the accused running away from the spot and Nandabai falling unconscious, and the evidence of Anil Patil – PSI who, in the course of investigation had recovered the weapon of assault i.e. a chisel (पटाशी).

7 In her evidence, Nandabai said that she had married the appellant about 10 years before the incident, and two sons and one daughter – were born out of the said wedlock. At the material time, the son was of 8 years, the daughter of 6 years and

the youngest son was of 4 years. On the fateful day, Nandabai and the appellant had gone to her parents for attending the *haldi* ceremony of the marriage of Nandabai's brother. The customary gifts (अहेर) had been purchased, and had been kept in the house of the appellant. The appellant and Nandabai came to their house to bring the customary gifts. The children of the appellant and Nandabai were left at the parents place only. While Nandabai was taking out the gifts articles, the appellant caught her, fell her down and started beating her with a chisel (पटाशी). Nandabai has stated that the appellant was a carpenter, had been ill-treating her and that he used to quarrel with her by alleging that she had illicit connections with others.

8 It appears that after the assault Nandabai was lying injured and when the information reached her father and brother, they came there and took her to hospital.

9 Since everything has been admitted by the appellant, the only question is whether the appellant assaulted Nandabai as a result of grave and sudden provocation that was caused to him by noticing Nandabai in a compromising position with another person. It would be, therefore, appropriate to precisely mention what the appellant has stated during his examination.

Question : Do you want to state anything else ?

Answer : On the day of incident, Nanda had gone to the house of her parents of the Haladi ceremony of her brother, and I had gone to village Mahul for

purchasing Aher. At about 5 to 5.30 p.m I returned to Mahim and went to my house. There is one dilapidated house in the back side of my house. I had seen Nanda sleeping along with Tanaji in that dilapidated house and after seeing to me, Tanaji ran away, and Nanda had come to my house and standing inside the house, and therefore, I assaulted to her in sudden provocation.

10 Thus, the case of the appellant is that actually he and Nandabai were not together and though they had returned from the house of Nandabai's parents together, the appellant had later on gone to village Mahul for purchasing the articles to be given as customary marriage gifts (अहेर). According to him, when he returned, he saw Nandabai sleeping with one Tanaji in a dilapidated house which is in the back side of the appellant's house. That Tanaji, on noticing the appellant ran away and Nandabai came inside the house and was standing there.

11 It is difficult to accept the case of the appellant. It is true that the appellant need not prove his defence – or anything for that matter – and that the burden of proving the charge against him, squarely lies on the prosecution. However, the defence taken by the appellant should appear to be plausible. Though a strict degree of proof is not required for accepting the defence version as probable or plausible, it cannot be accepted simply because the appellant says so.

12 In this case, the assault had admittedly taken place inside the house and not in any dilapidated house behind the appellant's house. It is difficult to accept the story of the appellant that after Nandabai was caught red handed by him, Tanaji ran away and Nandabai walked inside the house. Moreover, the evidence of Kerappa (PW 10) shows that he happened to be about 40 – 50 feet away from the house of the appellant when the incident took place, and that he heard the cries of Nandabai as 'मेले मेले' When he went there, he saw Nandabai lying in an injured condition, and the appellant present with stains of blood on his clothes. He also saw the appellant running away. He however, does not speak about Tanaji Chavan being there, or his having seen Tanaji Chavan running away. Such a suggestion i.e. about the presence of Tanaji Chavan at the material time on the spot was not even given to him.

13 Considering the version of the appellant as reproduced above, the appellant perhaps wants to suggest that there was some time gap between his actual noticing of the incident and the assault. He claims to have seen Nandabai and Tanaji Chavan in a compromising position, but the evidence shows that Nandabai was having clothes on her person. No attempt was made to show that there was some intimacy between Nandabai and Tanaji.

14 The trial Judge has rightly disbelieved the defence of the appellant. Though the observations made by the trial Judge in paragraph no.11 of his judgment, stating that 'mitigating factors would be available only in case of the offence of murder, offence

punishable under section 324 and 326 of the IPC, mitigating circumstances viz. of grave and sudden provocation would not be available to a case in respect of an offence punishable under section 307 of the IPC', are not correct, in the instant case, it is not possible to hold that there existed a reasonable possibility of the act of the appellant having been done by him on account of grave and sudden provocation supposedly caused to him by noticing his wife in a compromising position with one Tanaji Chavan.

15 Since the appellant admitted inflicting the injury, which even otherwise is satisfactorily proved by the evidence of Nandabai, the learned Judge was right in holding the appellant guilty of the offence of attempt to commit murder. The nature of weapon and the injuries caused to Nandabai leave no manner of doubt that had Nandabai died due to the injuries, the appellant would have been guilty of murder. As such, the appellant has been rightly held guilty of an offence punishable under section 307 of the IPC. The sentence imposed upon the appellant also does not seem to be unreasonable, keeping in mind the severity of the attack and other relevant circumstances.

16 No case for interference with the impugned judgment and order is made out.

17 Appeal is dismissed.

(ABHAY M.THIPSAY, J)