

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 449 OF 1994

Suresh Dnyandeo Wagh
R/o Bohri Compound, Manmad,
District : Nashik

.....Appellant

V/s.

The State of Maharashtra

....Respondent

Ms. Rupali M. Shinde appointed for Appellant

Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 22, 2015.

JUDGMENT:-

Appellant herein has been convicted for offence punishable under section 307 & 498 (A) of Indian Penal Code. Appellant herein is sentenced to suffer rigorous imprisonment for three years and fine of Rs. 500/- in default to suffer rigorous imprisonment for one month for offence punishable under section 307 of Indian Penal Code. Appellant herein is sentenced to suffer rigorous imprisonment for one year and fine of Rs. 500/- in default to suffer rigorous imprisonment for one month for offence punishable under section

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498 (A) of Indian Penal Code by Additional Sessions Judge, Malegaon, in Sessions Case No. 6 of 1994 vide Judgment and Order dated 27/07/1994. Hence, this appeal.

2) Such of the facts which are necessary for the decision of this appeal are as follows.

3) That appellant herein was married to Shobha 9 years prior to the date of lodging of F.I.R. They were residing in a joint family for 6 years and thereafter, they started residing separately. It is the case of prosecution that appellant had illicit relations with one Shakuntalabai. On that count, he used to harass his wife and ill-treat her.

4) It is alleged that on 01/10/1993, appellant herein had abused his wife in the afternoon at about 1.30 p.m. That at about 8.00 p.m., on the same day, he had assaulted her, since she did not oblige him when he demanded money. It is further alleged that while cooking food, appellant herein had poured kerosene on her person and had set her ablaze. His wife/complainant had rolled on the ground and extinguished the flames. The landlord of the said house namely Gandhi Seth had taken her to the hospital. Her statement was recorded when she was in civil hospital, Nashik. She had sustained 29% burn

injuries. She was discharged on 10/10/1993. In her statement, which was recorded while she was in the hospital, she has stated before the police that on 01/10/1993, she had returned home after fetching vegetables at about 1.30 p.m. She had gone to the room of Shakubai (Shakuntalabai). She found her husband sleeping in the said room. She tried to wake him up. He was annoyed due to her arrival in the said room. Her husband and Shakuntala abused her and thereafter, her husband assaulted her. On the same day, at about 7.00 p.m., she had again followed her husband and Shakubai. He had got enraged. He had levelled allegations of infidelity against his wife. He had demanded Rs. 15/- for consuming alcohol. She had told him that she would give him the said amount, after he reaches home. That when she had lit the stove for cooking, he had poured kerosene on her person and hit her with a burning log and had fled from the house. On the basis of her statement, crime no. 191 of 1993 was registered against the accused for offence punishable under section 307 and 498 (A) of Indian Penal Code. Investigation was completed and charge-sheet was filed. Case was committed to the Court of Sessions and registered as Sessions Case No. 6 of 1994. Prosecution examined 10 witnesses to bring home the guilt of accused.

5) P. W. 1 is the complainant Shobha, who happens to be wife of appellant. She has deposed before the Court that after marriage, initially she was treated well for the period of 4 to 5 years. Thereafter, her husband had brought Shakuntala to their house and since then she was being meted with cruelty. That her in-laws had joined hands with Shakuntala and her husband. After 5 years, she had started residing separately with her husband. That Shakuntala had conceived pregnancy. Her mother-in-law had brought Shakuntala for delivery and the complainant was driven out of the house. She started residing with her husband near brick kiln. Shakuntala used to raise quarrels with her near the brick kiln and she also used to assault her. She used to call her husband. She has further deposed that her husband used to reside with her and Shakuntala on alternative days. According to her, on the date of incident, he had assaulted her since he disliked her. At about 9.30 p.m., he had poured kerosene on her person and set her ablaze. He had taken burning log of wood from the oven set her ablaze and then fled away. She had extinguished the fire by herself. Both her hands and legs were burnt. Gandhi Seth had taken her to the hospital. She was treated in the hospital at Manmad. She had narrated the incident to the police. She has proved the contents of her

statement recorded by the police which is at Exhibit 16.

6) She has further stated that on one occasion, she had also written letter to her father and conveyed to him that she is being harassed and ill-treated in her matrimonial house. The letter is at Exhibit 17.

7) In the cross-examination it is elicited that once she had conceived pregnancy, however, foetus was aborted naturally. She has evaded to answer that her husband had got married to Shakuntala in 1991. When she was confronted with the group photograph along with Shakuntala, she has stated that she was forced to take the said photograph. Sh has denied the suggestion that her husband had got married to Shakuntala at her instance. She has admitted in the cross-examination that at the time when her husband got married to Shakuntala, she and her husband were residing in Nagar Chowky. She has admitted that it did not so happen that she had disclosed everything to the police. According to her, police had reduced her statement into writing at the time when it was being recorded. There are inherent omissions and contradictions in her deposition which go to the root of the matter. She has admitted in the cross-examination that when her husband returned home, she was in the process of cooking. She was not cooking on clay furnace. She has

admitted that her house consist of only one room. She has denied the suggestion of accidental burns. She has also admitted that when she sustained burn injuries, Shakuntala rushed to her house and given her clothes to wear. She has also admitted that Shakuntala was with her in the hospital for about 7 to 8 days and had looked after her. The letter at Exhibit 17 was given to the police by her father since he had received the letter.

8) P. W. 2 Gandhi Shinde is the owner of brick Kiln. He had constructed three rooms. He has deposed before the Court that on the day of incident, he had returned at about 9.00 p.m. from Manmad city. He had seen Shobha lying in front of her house in burning condition. He had telephonically called upon the police, brought a rickshaw and made her to sit in rickshaw and sent her to the hospital. He has deposed that he did not accompany her.

9) P. W. 3 Gajanan Dusing is the police patil of the said village. He happens to be well acquainted with father of Shobhabai and according to him, her father had informed him that he had received a letter from his daughter stating therein that she was harassed and ill-treated in her matrimonial house. However, he had not seen the letter which was written by Shobhabai to her father. He had gone to see her in the hospital on 02/10/1993.

10) P. W. 4 is the father of Shobhabai. He has deposed before the Court. That he has received a letter at Exhibit 17. On the day of incident, his elder son-in-law Shivaji Lokhande called him up from Kopargaon and told him that Shobhabai had got burnt and admitted in the Civil Hospital, Nashik. He had rushed to the hospital. Upon enquiry, she had disclosed to him that she was set ablaze by her husband while she was cooking. The disclosure to P. W. 4 about the incident by Shobha is a material omission elicited in the cross-examination. He has admitted in the cross-examination that he has a weak eye sight and would not be able to read Exhibit 17. He has further admitted that said letter is not signed, nor it bears the date. He has also admitted that he had not shown letter Exhibit 17 to anybody. It is also admitted that when he visited the hospital, Shakuntala was present in the hospital.

11) P. W. 5 Dr. Rajendra Pagare was working as Medical Officer in Nashik Civil Hospital. On 02/10/1993, when he was in the casualty department, Shobha was referred by Manmad Hospital at about 5.30 a.m. He had examined the patient and enquired with her. She had personally given the history that she had sustained accidental burns at about 10.30 p.m. on 01/10/1993. He has proved the injury certificate which is at Exhibit 22. He

has further deposed that on 10/10/19923, patient left the hospital against medical advise. In the cross-examination, he has admitted that he had not noticed any smell of kerosene on the person of the patient. According to him, if a person who has sustained 29% burn injuries, is not attended immediately, then the said patient would die. He has admitted to have mentioned in the certificate that burn injuries were superficial and not extensive injuries. The percentage of burns were as follows.

- (i) Left upper limb 9%
- (ii) Back 2%
- (iii) Both Legs 16%
- (iv) Buttocks 2%.

12) That on 10/10/1993 Shobha had left the hospital as she did not wish to stay in the hospital. There is an endorsement to that effect in the case papers. That the patient was conscious throughout the period of her treatment. She did not receive any shock. That during the period 02/10/1993 to 10/10/1993, she had no difficulty in following her daily pursuits.

13) P. W. 6 Shamrao Shewale was attached to Manmad Police Station on 01/10/1993. At about 10.00 p.m. he had received a phone call from one

Gandhi Seth who informed him that one lady has got burnt near brick kiln and that they are taking her to the hospital. He had sent a requisition to the Special Executive Magistrate for recording her dying declaration. Special Executive Magistrate had recorded dying declaration and given a copy of the same to the police station. P. W. 6 had also recorded the statement of complainant in his hand writing. The said statement is at Exhibit 16. It is elicited in the cross-examination that on the report, crime no. is 200 of 1993 and the date is mentioned as 01/10/1993. He has not stated the station diary no. on Exhibit 16. According to him, in fact, crime no. was 191 of 1993, but by mistake he had written 200 of 1993.

14) P. W. 7 Dr. Lalchand Jadhav was attached to Manmad Rural Hospital as Medical Officer. On 01/10/1993, some relative or neighbour had brought Shobha in an autorickshaw. He had informed the police about the same. He had given her first aid and Titanus injection. He had also applied Soframicine on the burn injuries. The dead skin was removed and thereafter, she was referred to Civil Hospital, Nashik. In the cross-examination, he has admitted that the patient had given history of burns at about 10.30 p.m. He had enquired the names of the persons who brought her to the hospital.

15) P. W. 8 Nilkanth Patil is police officer who was attached to Manmad Police Station. He had taken the case papers on 191 of 1993 for further investigation from P.S.I. Chaudhari on 19/12/1993. He had obtained medical certificate of the complainant and filed charge-sheet. According to him, P.S.O. might have made scoring in respect of crime no. at complaint Exhibit 16.

16) P. W. 9 Punji Kumbhar is the panch for spot panchanama. He has proved the contents of Exhibit 31. In the cross-examination, he has expressed inability to depose as to whether empty bottle which was seized was ever containing kerosene or not. He has further stated that he did not know the purpose for which the police called him. The house was shown by the police. In the house, he had not seen any burn piece of Saree.

17) P. W. 10 Kailas Gawade was working as P.S.I. attached to Manmad Police Station. According to him, Head Constable Shevale had registered crime no. 191 of 1993. He had arrested the accused on 02/10/1993. He had taken all necessary steps in the course of investigation, P. W. 10 has admitted in the cross-examination that it had transpired in the investigation that accused Suresh had extinguished the fire by putting a quilt on the person of Shobha and Shakuntala had helped her to wear new clothes. It was also

transpired that Shakuntala was with Shobha when she was taken to the hospital.

18) The Chemical Analyser report which is at Exhibit 36 would show that the result of the test for detection of kerosene residues on the clothes of accused as well as complainant were positive. The specific defence of the accused is that complainant had sustained accidental burns and he had extinguished the flames. The same has been admitted by P. W. 10. It prima facie appears that the dispute between the couple was due to second marriage of the accused/appellant as he had got married to Sakhubai subsequently. That the contention of the complainant that she was being harassed and ill-treated by the members of family deserve to be considered and to that extent, it can be said that the testimony of the complainant is a sterling testimony. That the evidence of the doctor P. W. 5 Dr. Rajendra Pagare needs to be considered as he has deposed before the Court that he had examined the patient and recorded the history of patient wherein she had given history to the effect that she had sustained accidental burns at 10.30 p.m. on 01/10/1993. The said injuries were superficial in nature. The omissions and contradictions in evidence of complainant also needs to be considered as far as the prelude to

the incident is concerned. There is a positive evidence that appellant and Shakuntala were at home when the incident occurred. That he had extinguished the flames and Shakuntala had given her new clothes to wear. Shakuntala had attended her in the hospital throughout. In the eventuality that the appellant had attempted to cause murder, he would not have made any attempts to save her. Appellant was tried for offence punishable under section 307 of Indian Penal Code which reads as follows.

“Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

19) The fact that it had transpired in the investigation that accused/appellant had saved the complainant needs to be appreciated. It would show that he had not committed any act with an intention or knowledge that the said act would cause death. The injuries were superficial in nature. The situs of the injuries would show that no attempt was made by the accused/appellant to cause

homicidal death of his wife. She has sustained injuries on her legs and hands. She had disclosed to the medical officer that she had sustained accidental burns. It cannot be presumed that because of absence of accused/appellant, she had made an incorrect disclosure as even according to her, there was no pressure or coercion from the accused/appellant upon her to disclose to that effect.

20) The case of prosecution is that by writing a letter to her father, she had disclosed that she is harassed and ill-treated at the hands of accused person. Irrespective of the fact that the letter at Exhibit 17 did not appear any date, month or year, the contents of the said letter inspire confidence of this Court and hence, appellant deserves to be convicted for offence punishable under section 498 (A) of Indian Penal Code and sentenced to the period already undergone.

21) Before parting with the Judgment, this Court appreciates the efforts taken by learned appointed counsel for the appellant to espouse the cause of the appellant. Her professional fees are quantified to the tune of Rs. 3000/- to be paid to her within three months from today.

ORDER

- (i) Appeal is partly allowed.
- (ii) The conviction and sentence of the appellant for offence punishable under section 307 of Indian Penal Code passed by Additional District and Sessions Judge, Malegaon in Sessions Case No. 6 of 1994 vide Judgment and Order dated 27/07/1994 is hereby quashed and set aside.
- (iii) Appellant herein is acquitted of the offence under section 307 of Indian Penal Code.
- (iv) The conviction and sentence of the appellant for offence punishable under section 498 (A) of Indian Penal Code passed by Additional District and Sessions Judge, Malegaon in Sessions Case No. 6 of 1994 vide Judgment and Order dated 27/07/1994 is hereby confirmed.
- (v) Appellant is sentenced to the period already undergone.
- (vi) Appellant has undergone substantive sentence imposed upon and him and fine amount is paid. Fine amount paid for offence punishable under section 307 of Indian Penal Code be refunded to the appellant.

- (vii) Bail bonds of the appellant stand cancelled.
- (viii) The professional fees of learned counsel appointed for appellant is quantified to the tune of Rs. 3,000/- to be paid to her within three months from today.
- (ix) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)