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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 555 OF 2002

The State of Maharashtra

.. Appellant

Vs.

Uttam Eknath Mali
age 37 years,
Occ. Stove Repairing, R/o Dawari
Vasahat, Yadav Nagar, Kolhapur

.. Respondent

Mrs. S. D. Shinde, APP for appellant-State.
None for the respondent-accused.

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

JANUARY 08, 2015.

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

1. The State being aggrieved by the judgment of the 3rd Ad-hoc Additional Sessions Judge, Kolhapur, dated 11/01/2002, in Sessions Case No. 65 of 1999, acquitting the respondent for offence punishable under Sections 498-A and 307 of the IPC, has filed the present appeal.

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

PW 7 – PSI Sampat Shinde, who, on 19/12/1998, was attached to the Rajarampuri Police Station was entrusted with the investigation of Crime No. 135 of 1998, which was registered on the basis of the report of PW 1 – Kalpana at Exh. 13. PW 7 – PSI Shinde thereafter proceeded to the scene of the incident and in the presence of the panchas, drew the scene of the incident panchanama at Exh. 15. From the scene of the incident, he seized one half filled plastic bottle, containing petrol, partly burnt saree and blouse and one match-box. Statements of about 12 witnesses were recorded. On the same day, the accused was arrested. The seized property was then referred to the Chemical Analyzer on 1/2/1999 under requisition at Exh. 23. Further to the completion of investigation, a charge-sheet against the accused was submitted.

Injured Kalpana had been examined by PW 5 – Dr. Vilas Deshmukh, who had noticed that Kalpana had sustained 40% superficial to deep burns. Kalpana had been admitted for further treatment. History of Kalpana was recorded by PW 5 – Dr. Deshmukh. The injury certificate of

Kalpana is at Exh. 21.

3. On the case being committed to the Court of Sessions, trial court framed charge against the accused for offence punishable under Sections 498-A and 307 of the IPC. Prosecution has examined seven witnesses, but PW 2 – Anil, PW 3 – Subhash, PW 4 – Shivaji did not support the prosecution and were declared hostile. The prosecution thus primarily relied upon the testimony of PW 1 – Kalpana.

4. We have heard the learned APP for the appellant-State. In order to effectively deal with the submissions advanced before us by the learned APP, it would be useful to refer to the evidence of PW 1 – Kalpana.

5. PW 1 – Kalpana, wife of respondent/accused, deposes that she was married to the respondent about 15 to 16 years prior to the incident. Kalpana had given birth to four children, who were aged between 16 to 10 years. According to her, the accused treated her well for about 10 years, but thereafter started ill-treating her as he was suspecting the character / chastity of PW 1 – Kalpana. Kalpana deposes that about 15 days prior to the incident she had stayed at the house of her father at Hatkanangale and

thereafter had brought to the house of the accused at the insistence of the accused, who had promised not to ill-treat Kalpana. According to Kalpana even thereafter the accused was ill-treating her as he was suspecting her character and about two days prior to the incident, she had stayed at the house of one Sushila Jagtap as she apprehended that the accused might assault her. Accused had brought back Kalpana to the house and on the day of the incident at about 7.30 in the morning when Kalpana was sleeping, the accused pulled the bed cover and poured petrol on Kalpana and set her ablaze. Kalpana had cried out for help and the flames had been extinguished by the neighbour. Kalpana was admitted in the CPR Hospital at Kolhapur where her FIR was recorded.

6. In cross-examination, she has admitted that out of fear she was reluctant to go back and stay with the accused. She has also admitted that when she was staying at the house of her father, she was reluctant to go back to the house of the accused as she was afraid of him. She has admitted that she was residing in the slums and was residing in one room tenement. She has admitted that the accused used to go in search of the work in the morning. She has also admitted that her children were school going and though the incident was on Saturday, her children had not

attended the school. She has denied the suggestion that the accused had rebuked her as she was seen roaming around in an Ambassador car. She has also denied the suggestion that the accused had warned her not to freely roam around with the people in the car.

7. Prosecution has not examined the parents of Kalpana and have also not examined Sushila Jagtap with whom Kalpana had stayed for a day just before the incident. The trial Judge came to the conclusion that the accused would not have suspected the character of Kalpana that too after more than 10 years of the marriage, had there been no occasion. From the nature of the cross-examination, it appears that the accused had seen Kalpana roaming around with strangers in an Ambassador car and had rebuked her. The aforesaid suggestion is denied by Kalpana. Kalpana was reluctant to go to the house of the accused as possibly she apprehended that the accused would chastise her for her behaviour. The relations, thus, between Kalpana and the accused were strained to that extent. The neighbour who has been examined by the prosecution also did not support the evidence of Kalpana. The trial Judge also came to the conclusion that the plastic bottle, which had been seized and from which Kalpana alleges that the petrol had been poured, had a tube attached to its

nozzle thus rendered pouring of the petrol a virtual impossibility. The said plastic bottle could only be used for sprinkling or spraying of petrol. The trial Judge, therefore, came to the conclusion that the possibility of Kalpana committing suicide could not be ruled out as Kalpana possibly harboured an intention of teaching a lesson to the accused for his behaviour. The trial Judge, therefore, found that implicit reliance could not be placed on the evidence of Kalpana without the evidence of Kalpana being corroborated. Since no other evidence was available, which would corroborate the evidence of Kalpana, the trial court extended the benefit of doubt to the accused and acquit him. During the pendency of this appeal, a communication was received purportedly bearing a thumb impression of PW 1 – Kalpana in which Kalpana had expressed that she was living a happy married life with the accused and did not desire to proceed further with the appeal.

8. The report of the Chemical Analyzer indicates that the clothes of Kalpana tested positive for the presence of petrol. The bottle which was seized from the scene of the incident also contained petrol. However, the learned Judge came to the conclusion that in the absence of proper evidence relating to the sealing of the articles not much reliance could be

placed on the C.A. report. The C.A. report at the most would indicate that petrol had been used as a substance for setting Kalpana ablaze. However, in the absence of any other corroborative evidence to indicate that Kalpana had been set ablaze by the accused, the report of the C.A. would not be of any assistance. The prosecution also did not examine the children of the accused, who were said to be present in the house and who would have been the best witnesses to depose about the incident.

9. With the assistance of the learned APP, we have examined the findings arrived at by the trial court. The view taken by the trial court is a possible view to be taken on the basis of the evidence on record. We do not notice any perversity in the reasoning of the trial court to warrant any interference in this appeal against acquittal.

10. Since we do not find any merit in the present appeal, the appeal filed by the State is dismissed, confirming the acquittal of the respondent. Bail bonds of respondent-accused stand cancelled.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)