

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 767 OF 1997

Sanjay Devram Pathre
Residing at Indira Nagar, Kalwa,
Thane, Dist. Thane.

.....Appellant

V/s.

The State of Maharashtra

....Respondent

Ms. Priyanka Joshi Advocate appointed for Appellant
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : FEBRUARY 9, 2015

JUDGMENT:

1) None for the appellant. Appeal is of the year 1997. Hence, this Court had requested Ms. Priyanka Joshi to espouse the cause of the appellant. She has graciously accepted to do so. Vakalatnama of Advocate Tarun Kumar Sinha is hereby cancelled.

2) Appellant herein is convicted for offence punishable under section 498 (A) of Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 200/- in default to suffer further rigorous imprisonment for a period of one month. Appellant is also convicted for offence punishable under section 306 of Indian Penal Code and sentenced to

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suffer rigorous imprisonment for three years and to pay fine of Rs. 500/- in default to suffer further rigorous imprisonment for a period of two months by Additional Sessions Judge, Thane in Sessions Case No. 164 of 1993 vide Judgment and Order dated 19/11/1997.

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

4) Appellant herein was married to Fulabai three years prior to the date of incident. The couple was blessed with one son. On 15/03/1992, Fulabai was admitted in Civil Hospital Thane with history of burn injuries. Since it was medico legal case, statement of Fulabai was recorded by Special Judicial Magistrate Shri. Ratnakar Aher. He had obtained the opinion of the doctor and had recorded the statement of the injured. She disclosed that she was residing along with her mother-in-law, husband and two year old son. Her husband is unemployed. He is alcoholic. On 15/03/1992, at about 1.00 pm, in the afternoon, her husband i.e. present appellant had assured her that he would not consume alcohol in future and asked her to cook food. He thereafter, left

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the house. She was fed up with alcoholic nature of her husband, coupled with the fact that he used to assault her under the influence of alcohol. When she was alone at home, she latched the door from inside and immolated herself. She raised cries as she could not bear the burn injuries. Neighbours broke open the door, extinguished the flames and had taken her to the hospital. She has reiterated that she was fed up with the alcoholic nature of her husband and has committed suicide. She succumbed to the burn injuries on the same day. It also appears that hospital authorities had sent a message about the admission of burn patient. Police officer had sent Shri. Maleka, P.S.I., to Civil Hospital, Thane for recording statement of burnt lady. Shri. Maleka had recorded the statement of injured at about 6.10 pm and on the basis of said statement, crime no. 126 of 1992 was registered at Rabale Police Station. Offence was initially registered under section 498 (A) of Indian Penal Code, however, subsequently since victim had succumbed to the burn injuries, section 306 of Indian Penal Code was added. It appears from the record that appellant was arrested on 15/03/1992 in crime no. 126 of 1992. After investigation was completed and charge-sheet was filed. Case was committed to the Court of Sessions and registered as Sessions Case No. 164 of 1993. Prosecution has

recorded evidence of 7 witnesses to bring home the guilt of accused.

5) P. W. 1 Rahibai w/o Ramba Saatbhai happens to be mother of the deceased Fulabai. She has deposed before the Court that accused and Fulabai were residing at Kalwa by the side of railway station. Whenever, she met her daughter, her daughter informed her that her husband was ill-treating her under the influence of alcohol and he also used to beat her. She had been to Civil Hospital, Thane after she learnt about the occurrence. However, by the time she had reached the hospital, Fulabai had succumbed to the burn injuries. P. W. 1 had not made any inquiries with anybody as to how Fulabai had sustained burn injuries. She has deposed that she had learnt from reliable sources that appellant had committed murder of Fulabai by setting her ablaze. It is elicited in the cross-examination that there used to be intermittent quarrels between the couple.

6) P. W. 2 Hangu Borke is the maternal uncle of deceased Fulabai. He has also reiterated that Fulabai had complained on various occasions that she was subjected to ill-treatment and cruelty at the hands of her husband. There are

material omissions in the evidence of P. W. 2. He has clearly stated that he does not know the reason/cause of Fulabai committing suicide.

7) P. W. 3 Ramabai Pujari happens to be the neighbour of deceased Fulabai. She has also deposed before the Court that accused used to abuse his wife and used to quarrel with her. On the day of incident at about 1.00 pm, Fulabai had committed suicide inside her house by pouring kerosene on her person. People from locality had gathered, they broke open the door, extinguished the fire and had taken her to the hospital. This would clearly indicate that present appellant was not at home at the relevant time. It is elicited in the cross-examination that cause of quarrels between the couple was that the son of Fulabai was not going to school and there was no other issue for quarrel.

8) P. W. 4 Pandit Sonawane was the A.S.I. attached to Thane City Police Station. He had received a message from Civil Hospital, Thane about admission of burn patient and had deputed Mr. Malekar for recording the statement of injured. Message received by the police station was that husband

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of the injured was addicted to alcohol and had assaulted her under the influence of alcohol and on the basis of the said information, crime no. 126 of 1992 was registered under section 498 (A) of Indian Penal Code.

9) P. W. 5 Shravan Govari was P.S.I. attached to Rabale Police Station. He is the Investigating Officer of crime no. 126 of 1992. Investigating Officer had recorded statement of neighbours. He has arrested accused on 15/03/1992. Injured had succumbed to the burn injury on 16/03/1992. Hence, he added section 306 of Indian Penal Code.

10) P. W. 6 Balwant Patil is the Medical Officer who has given the endorsement on the dying declaration which is marked at exhibit 19. According to him, injured was fully conscious and oriented at the time of recording of the statement.

11) P. W. 7 Ratnakar Aher is the Special Executive Magistrate who had recorded dying declaration of the injured which is at exhibit 25. Upon perusing the recitals of the dying declaration, it prima facie appears that

Fulabai was fed up with alcoholic tendency of her husband and moreover, he was unemployed. In all probabilities, she could not take the economic stringency any further and therefore, had committed suicide. It is pertinent to note that P. W. 7 has not referred to contents of dying declaration. His evidence would only prove that he had recorded the statement of the deceased in the hospital and nothing more.

12) Upon perusal of the evidence adduced by the prosecution, it is amply clear that Fulabai was subjected to cruelty and ill-treatment at the hands of appellant while he was under the influence of alcohol. In fact, she has stated in the dying declaration that on the day of incident, he had assured her that he would not consume alcohol henceforth. He had left the house. She must have presumed that he was also fed up and therefore, had left the house. She had been a victim of her own emotions and could not face the hardships of life and therefore, has committed the suicide. Prosecution has proved the guilt of the accused under section 498 (A) of Indian Penal Code.

13) It does not appear that appellant could be held guilty for offence

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punishable under section 306 of Indian Penal Code as it cannot be said that he had instigated or abetted the commission of suicide, that he had any knowledge that his conduct would lead to such an inevitable circumstance that she would commit suicide. The conduct of assuring the wife that he would not consume alcohol any further, cannot be ignored. There is no evidence that the appellant had intentionally aided the commission of suicide. Complicity of the accused, which is the gist of offence, has not been proved by the prosecution.

14) Learned APP submits that Fulabai had died within three years of marriage and therefore, a presumption ought to be raised under section 113 (A) of Indian Evidence Act. Learned counsel appointed for the appellant submits that the said presumption can be raised in cases of dowry death, where death is in suspicious circumstances or unnatural circumstances. In the present case, dying declaration appears to be voluntary and truthful and inspires confidence of the Court. She has specifically stated that she was fed up with harassment. Hence, appellant deserves to be acquitted for offence punishable under section 306 of Indian Penal Code. Conviction of appellant

under section 498 (A) of Indian Penal Code deserves to be upheld. There is sufficient evidence to prove the guilt of the accused under section 498 (A) of Indian Penal Code.

15) Learned counsel appointed for appellant has extended her co-operation and her fees are quantified to the tune of Rs. 1000/- to be paid to her within three months from today.

ORDER

- (i) Appeal is partly allowed.
- (ii) Conviction of the appellant for offence punishable under section 306 of Indian Penal Code is hereby quashed and set aside.
- (iii) Fine amount deposited by the appellant for offence punishable under section 306 of Indian Penal Code be refunded.
- (iv) Conviction of the appellant for offence punishable under section 498 (A) of Indian Penal Code is hereby upheld. Fine amount is maintained.
- (v) Appellant was in jail from 15/03/1992 to 24/04/1992. Appellant had then surrendered on 19/11/1997 and was enlarged on bail by an

order dated 31/12/1997. In all probabilities, he was enlarged sometime in January 1998. Appellant was in jail for about more than 3 months. Hence, he is sentenced to the period already undergone.

(vi) Bail bonds of the appellant stand cancelled.

Appeal is partly allowed and disposed of.

(SMT. SADHANA S. JADHAV, J.)