

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.448 OF 2013

1) BHARAT GOVIND BHOSALE)
2) ANIL APPA DHENDE)
3) BALU TUKARAM DHENDE)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.V.V.Purwant i/b. Mr.Sachin Deokar, Advocate for the Appellant.

Mr.Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 21st AUGUST 2015.

ORAL JUDGMENT :

1 This appeal is directed against the judgment and order dated 5th April 2013, passed by the Additional Sessions Judge, Solapur, convicting the appellants who were the accused nos.1, 2 and 3 respectively in the said case, of the offences punishable under Section 306 IPC read with Section 34 IPC, Section 452 IPC

read with Section 34 IPC, Section 354 IPC read with Section 34 IPC and Section 504 IPC read with Section 34 IPC. The learned Additional Sessions Judge sentenced the appellants to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.500/- with respect to offence punishable under Section 306 IPC read with Section 34 IPC, to suffer Rigorous Imprisonment for 5 years and to pay a fine of Rs.500/- with respect to offence punishable under Section 452 IPC read with Section 34 IPC, to suffer Rigorous Imprisonment for 2 years with respect to offence punishable under Section 354 IPC read with Section 34 IPC, and to suffer Rigorous Imprisonment for 1 year with respect to offence punishable under Section 504 IPC read with Section 34 IPC. Being aggrieved by their conviction and the sentences imposed upon them, the appellants have approached this court by filing the present appeal.

2 The case of the prosecution, in brief, is stated thus :

 Kanta, the deceased, used to have frequent quarrels with her neighbour Smt.Shobha, wife of appellant no.2. A day

before the incident, appellant no.3 had assaulted the mother-in-law of Kanta. On 25th November 2003, Shobha had also given two blows to Kanta. On 25th November 2003, at about 4.00 p.m., the appellants entered in the house of Kanta. They asked her as to why she picked up quarrels with their womenfolk. Appellant no.1 pulled her and dragged her out of the house. The other appellants instigated him. They abused Kanta. They outraged her modesty. Kanta could not bear the harassment at their hands. She, therefore, poured kerosene, that was contained in a plastic can on her person, and set herself on fire. Her son, Lakhan (PW6) extinguished the fire and took her to hospital. Kanta had sustained 75 % burn injuries. She succumbed to the injuries on the next day.

3 Before her death, four statements of Kanta were recorded. These statements are admissible under Section 32(1) of the Evidence Act. On the basis of the second dying declaration, which was recorded by Anurath Mukte, A.S.I., (PW5), which was treated as the First Information Report (FIR) a case in respect of

the offences punishable under Sections 452 IPC and 354 IPC read with Section 34 IPC came to be registered against appellant nos.1 and 3, as in this statement, Kanta had not named appellant no.2. In her subsequent two statements, she named appellant no.2 also, and hence he also came to be arrested in the course of investigation. On completion of investigation, charge-sheet came to be filed against the appellants. The appellants were tried and convicted as aforesaid.

4 The case of the prosecution was based mainly on the dying declarations made by Kanta and the testimony of her son Lakhan (PW6), who claimed to be an eye witness to the incident.

5 There are indeed some discrepancies in the dying declarations, in as much as, in the first two dying declarations, Kanta had not mentioned about appellant no.2. In the next two dying declarations, she had implicated appellant no.2 also, but in the last one, she had not mentioned anything about anybody outraging her modesty. What is significant is that no reason for

recording repeated dying declarations has been found in the evidence. Nevertheless, Mr. Purwant, the learned counsel for the appellants submitted that in the facts and circumstances of the case, he would not advance any arguments with respect to the conviction of the appellants in respect of the offences punishable under Section 452 IPC, Section 354 IPC and Section 504 IPC, and would confine his arguments with respect to the offences punishable under Section 306 of the IPC, which according to him was not made out at all, even if the prosecution case is accepted as true. He also submitted that the sentence awarded with respect to the offence punishable under Section 452 IPC read with Section 34 IPC is too harsh, particularly if the appellants cannot be said to have committed an offence punishable under Section 306 of IPC.

6 In view of this concession made by the learned counsel for the appellants, I have not examined the evidence on record meticulously, with the object of finding out whether the appellants had indeed entered inside the house of Kanta, and whether they

had assaulted her, abused her, and outraged her modesty. I have confined the examination of the matter only from the point of view as to whether the prosecution case, as made out, disclosed the commission of an offence punishable under Section 306 of IPC read with Section 34 IPC.

7 That, Kanta committed suicide is not in dispute. The reasoning given by her is that she did so because of the torments caused to her by the appellants. Even accepting this position, I do not think that a case for holding the appellants guilty of an offence punishable under Section 306 IPC read with Section 34 IPC was made out.

8 It is not the case of the prosecution that while abusing or assaulting Kanta, or while outraging her modesty, the appellants intended that Kanta should commit suicide. Infact, it cannot even be suggested that they were aware of the possibility of Kanta committing suicide because of their acts.

9 Under the circumstances, even if it is accepted that Kanta committed suicide because of the torments caused to her on account of the acts of the appellants, still, in the absence of the requisite *mens rea*, the appellants cannot be said to have abetted the commission of suicide by her.

10 I have gone through the impugned judgment. The learned Additional Sessions Judge did not address himself to the question as to what would constitute abetment to commit suicide. He has simply taken it for granted that once it was held that Kanta committed suicide because of the acts of the appellants, the appellants would automatically be guilty of abetting her suicide. This is not in accordance with law. The conviction of the appellants punishable under Section 306 IPC read with Section 34 IPC, is, therefore, not maintainable. The same needs to be set aside.

11 I am in agreement with the learned counsel for the appellants that the sentence of Rigorous Imprisonment for 5 years,

as imposed by the learned Additional Sessions Judge with respect to the offences punishable under Section 452 IPC read with Section 34 IPC is rather harsh. This is particularly so, because, the appellants cannot be held guilty of the most severe offence that was said to have been committed by them, viz., the offence punishable under Section 306 IPC read with Section 34 IPC. In my opinion, while maintaining the conviction of the appellants with respect to the other offences, the substantive sentence imposed upon them with respect to the offence punishable under Section 452 IPC read with Section 34 IPC, should be reduced.

12 In the result, the appeal is partly allowed.

13 The conviction of the appellants with respect to the offence punishable under Section 306 IPC read with Section 34 IPC and the sentences imposed upon them therefor, are set aside.

14 The appellants are acquitted of the said charge.

15 The conviction of the appellants with respect to the offences punishable under Section 452 IPC read with Section 34 IPC, Section 354 IPC read with Section 34 IPC, and Section 504 IPC read with Section 34 IPC is maintained.

 However, the substantive sentence imposed in respect of the offence punishable under Section 452 IPC read with Section 34 IPC is reduced to Rigorous Imprisonment for a period of 2 years.

16 Save and except as aforesaid, no other order in this appeal, which stands disposed of accordingly.

(ABHAY M. THIPSAY, J.)