

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 409 OF 2010

1. Sanjay Jalinder Dawari)
age 35 years, Occ: Service)
R/o. Behind Lucky Cycle Mart,)
Opp. CME Gate, Dapodi, Pune -12.)
2. Sunil Jalinder Dawari)
Age 30 years, Occ: Service,)
R/at PWD Office, in front of Sassoon)
Hospital, Pune.)
(At present lodged in Yerwada Central)
Prison, District Pune).).. Appellants
(Orig. accused Nos. 1 & 2)

vs.

1. The State of Maharashtra)
2. Kalawati Sanjay Dawari).. Respondents

Mr. Abhyakumar Apte, Advocate for the appellants.

Ms. P.P. Shinde, APP, for the respondent-State.

CORAM: SMT. SADHANA S. JADHAV, J.

DATE : 2nd March, 2015.

JUDGMENT:

The appellants herein are convicted for the offence punishable under Section 307 of Indian Penal Code and are sentenced to undergo rigorous imprisonment for a period of five years each and fine of Rs.3,000/- each in

default to suffer simple imprisonment for three months each by Addl. Sessions Judge, Pune, in Sessions Case No. 463 of 2006 vide judgment and order dated 12.5.2010. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows :-

The appellants herein are brothers inter-se. Appellant No.1 is married to Kalawati sometime in the year 1995. The couple is blessed with a son named Swapnil. There used to be intermittent quarrel between the couple and therefore, Kalawati started staying separately at Khed along with her son. She was staying with a friend i.e. Pinky Shahajan Shaikh. Kalawati filed an application seeking maintenance from her husband. She had withdrawn the said complaint. Subsequently, she filed a fresh application seeking maintenance. On 21.11.2005, it is alleged, that when Kalawati was at home at about 9 a.m., the appellant No.1 came to her house and raised a dispute over filing of a fresh case for maintenance. It is alleged that accused No.1 i.e. appellant No.1 had caught hold of her and appellant No.2 had poured kerosene on her person. That appellant No.2 had ignited a match stick and set her ablaze and thereafter they had fled from the spot. Her friend Pinky had extinguished the flames by pouring water on her person. The injured was taken to Primary Health Centre, Khed. From there

she was referred to Sassoon General Hospital at Pune from 22.11.2005. The injured had sustained 25% superficial burns. While she was in the Primary Health Centre at Khed, her statement was recorded by a police constable and the same was treated as a first information report. On the basis of her statement, Crime No.172 of 2005 was registered at Khed Police Station against both the appellants. The statement of the injured was also recorded by the Tahsildar i.e. Executive Magistrate. Investigation was set in motion. After completion of investigation, charge-sheet was filed on 28.2.2006. The case was committed to the Court of Sessions and registered as Sessions Case No. 463 of 2006. The prosecution examined seven witnesses to bring home the guilt of the accused.

3. PW-1 Kalawati Dawari is the wife of appellant No.1. She is injured first informant in the present case. She has deposed before the Court in consonance with the first information report which is marked as Exhibit 7. It is elicited in the cross-examination that she resided with the accused No.1 for about 10 years and that she had left his house about 8 – 9 years ago. That her son Swapnil was taking education in a school at Dapodi. The witness could not give the name of the school. She had admitted that since her relations with her husband were not cordial, she had kept her son Swapnil at the house of her mother at Sankeshwari, District Belgaum. He was staying there since 4 – 5 years

i.e. since he was in 4th Std. However, at the time of incident, Swapnil was with the first informant. She has further admitted that her brother-in-law i.e. appellant No.2 was in service of Public Works Department (PWD). She has further admitted that appellant No.2 was transferred to Pune on 15.4.2000. The construction of his house at Kalawati was not completed and, therefore, he resided with the first informant for about 4 – 5 months at Dapodi. She has also admitted that in 2001, appellant No.2 had shifted to his newly constructed house at Kalewadi. She has also admitted that except for her husband, she has no cordial relations with other members of her matrimonial family. She has further admitted that her husband as well as her mother had opposed her decision to keep Swapnil with her mother and, therefore, she quarreled with her husband and went to reside at Khed. It is also admitted that Pinky with whom she was staying was the sister of Sunita Ughade Chairperson of Mahila Mandal of Khed. The room in which she resided belonged to one Sandbhor. The first room in the chawl belongs to Mr. Sandbhor. That the location of the four rooms is such that conversation taking place in one room can be heard in the adjacent room. The visitors are also visible. It is also admitted that it takes about 2 – 2 1/2 hour to reach at Khed from Kalewadi. She has reiterated that she was residing separately from her husband for about 9 years. The material omissions are elicited in the cross-examination. She has also admitted that although she had raised hue and cry at the time of

incident, nobody from the neighbourhood had chased the accused after they had left her house since there was nobody to take action. It is pertinent to note that PW-1 has categorically admitted in the cross-examination that she met appellant No.2 and accordingly requested him to provide a job to her husband i.e. appellant No.1 and that appellant No.2 did not pay any heed to her request.

4. Since the injured had survived, the statement on the basis of which cognizable offence was registered was no more a dying declaration because it was *res gestae*.

5. PW-2 Pinky Shaikh is the friend with whom PW-1 was residing at the time of incident. PW-2 Pinky Shaikh has deposed before the Court that at the time of incident, Swapnil son of PW-1 was with mother Kalawati. That all neighbours go to work early in the morning and therefore there was nobody to help her to take Kalawati to Hospital. It appears that there are inherent inconsistencies in the deposition of PW-2.

6. PW-3 Babasaheb Sandbhor has acted as a panch for the spot panchnama. That according to her, the police station is at a distance of 10 minutes from the house of PW-3.

7. PW-4 Dr. Suresh Gore, Medical Officer who was attached to Primary Health Centre at Rajgurunagar on 21.11.2005. According to him, Kalawati had sustained about 24% burn injuries. She went to Sassoon Hospital on the next day i.e. 22.11.2005. According to him, the statement of the victim at Exhibit 25 bears the right hand thumb impression of Kalawati. Since she had sustained burn injuries to her left hand and thumb. He has admitted in the cross-examination that the MLC papers filed on record bears the title (Out-Patient Department). That the injuries as described in Exhibit 25 are burns to head and scalp is stated about 9%.

8. PW-5 Mahadeo Chandane was the Head Constable attached to Khed Police Station. He had recorded the statement of Kalawati. He had addressed a letter to the Executive Magistrate. According to PW-5, nobody had accompanied Kalawati to the hospital. The witness has not stated about the contents of the two statements recorded by him and, therefore, all that he has proved is that he has recorded the statement and nothing beyond that.

9. PW-6 is Dr. Mayuresh Pradhan. He has deposed that Kalawati had sustained 25% superficial burns. He had recorded the history given by the patient

at the time of admission. That she had alleged that she was set on fire by the present appellants.

10. PW-7 Tukaram Gaud is the investigating officer. It is elicited in the cross-examination that in the course of investigation, he had seen the certificate issued by the office of accused No.2 with a photocopy of muster roll which would show that at the relevant time appellant No.2 was on duty. The certificate is at Exhibit 40.

11. Certain glaring facts are necessary to be considered in the present matter. On 21.10.2013, the complainant Kalawati Sanjay Dawari had affirmed an affidavit before the Assistant Registrar, High Court, Appellate Side, Mumbai. She had on solemn affirmation stated that she had started visiting the house of appellant No.1 after the incident and started cohabiting with him from 20.3.2012 as the couple had resolved the disputes between them amicably. She had prayed for setting aside the conviction recorded against her husband and her brother-in-law. It was further contended that appellant No.2 was employed with Public Works Department and was taking care of her son since last few years. She had therefore, prayed that she does not wish to continue with the prosecution of the appellants. It appears from the affidavit that the contents of the affidavit were

explained to her in vernacular.

12. On 6th May, 2014, the mediator Advocate Mrs. Shubhangi Barve had filed the mediation report before the Co-ordinator Main Mediation Centre as the matter had been referred for mediation. Both parties had executed terms of settlement. The complainant had contended before the mediator that in the interest of welfare of their son, the appellant No.1 and the complainant had started cohabiting and had reserved the rights to have freedom to work for their livelihood. It was specifically contended that at the time of filing of affidavit, the appellants had given Rs.1,25,000/- to the original complainant by demand draft. Appellant No.2 and his three sisters had furnished no objection affidavit in favour of the complainant in respect of Hut No.J-19, Sidhharth Nagar, Dapodi, Pune which was in the name of their late father Jalinder Dawari. Appellant No.2 had handed over a demand draft of Rs.50,000/- to the original complainant for the education of her son. The appellants and the original complainant had agreed that in future they would not raise any allegations or legal actions against each other and that the appellant No.1 – original complainant and their son will not claim any property rights against appellant No.2 and their 3 sisters. In view of this, this Court is of the opinion that the complainant had been compensated fairly by appellant No.2. As far as the conviction under Section 307 is concerned, the

very contention of the complainant in the form of an affidavit needs to be taken into consideration. Although an offence under Section 307 of IPC is a non-compoundable offence in the interest of society as well as welfare of the parties and for the purpose of smooth sailing of matrimonial relations, it will be necessary to permit the parties to compound the offence.

13. The learned counsel for the appellants has placed reliance upon the Judgment of this Court in the case of **B.S. Joshi and others vs. State of Haryana and another** s2003 ALL MR (Cri) 1162, wherein the Hon'ble Apex Court had observed that it is the duty of the Court to encourage genuine settlements of matrimonial disputes. In the present case, the learned counsel for the appellants has submitted that in fact the complainant had attempted to set herself ablaze only to threaten the appellant No.1 and, therefore, she had sustained 25% superficial burn injuries. As far as appellant No.2 is concerned, the learned counsel has submitted that he is in no way connected with the said offence and has been falsely implicated only because the complainant was of the view that he should help the appellant No.1 to secure a good job and that he should bear the expenses for the education of their son. In any case, taking into consideration of the affidavit, it can be said that the appellant No.1 is residing with the complainant. The appellant No.2 has paid a substantial amount to the

complainant and her son and has also passed on the title of the hut. Hence, in view of this, the appellants deserve to be acquitted of the charges levelled against them.

14. The appellant No.2 has not been convicted for the offence punishable under Section 498A of IPC. However, the appellant No.1 has undergone the total period of 136 days.

15. In view of this, the appeal deserves to be allowed. The conviction recorded by the Addl. Sessions Judge, Pune, vide judgment and order dated 12.5.2010 deserves to be quashed and set aside. Appellant No.1 is acquitted by granting him benefit of doubt.

ORDER

- (i) The appeal is allowed.
- (ii) The conviction and sentence recorded by the Addl. Sessions Judge, Pune, vide judgment and order dated 12.5.2010 is hereby quashed and set aside.
- (iii) The appellants are acquitted of the charges levelled against them.
- (iv) Appellant No.1 is acquitted by granting him benefit of doubt.

- (v) Bail bonds stand cancelled.
- (vi) During the pendency of this appeal, the appellants have given the amount of Rs.1,25,000/- and Rs.50,000/- by demand drafts. Hence, the sentence of fine is also set aside.

Appeal stands disposed of.

(SMT.SADHANA S.JADHAV, J.)