

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.457 OF 2001

The State of Maharashtra
Through Police Station,
Itwara, Nanded at the instance
of Sk. Amir S/o Sk. Chand,
R/o. Hivra, Tq. Mahagaon,
Dist. Yevatmal

..APPELLANT

VERSUS

- 1] Shaikh Shukur s/o Shaikh Ratanji,
age : 25 years, Occu.: Carpenter,
- 2] Shaikh Yousuf s/o Shaikh Ratanji,
age : 27 years, Occu.: Carpenter,
- 3] Sugarabee w/o Shaikh Ratanji,
age : 50 years, Occu.: Household,
- 4] Madinabegum w/o Sk. Karim,
age : 30 years, Occu. Household,
- 5] Shaikh Maheboob s/o Sk. Ratanji,
age : 35 years, Occu.: Labour,
All r/o Madinanagar,
Nanded

..RESPONDENTS
(Ori.Accused)

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Mr.R.B.Bagul, A.P.P. for the appellant/State

Smt.A.N.Ansari, Advocate for the Respondents

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 18, 2016

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by grant of benefit as per the provisions contained under Section 360 of the Code of Criminal Procedure to present respondent nos.3 and 4; and the provisions under Section 4 and 5 of the Probation of Offenders Act, 1958 to respondent nos.1, 2 and 5, present appeal is preferred by the State.

3] All the respondents were convicted by the learned IInd Ad-hoc Assistant Sessions Judge, Nanded in Sessions Case No.48 of 1998 for the offences punishable under Section 306 and 498-A read with 34 of Indian Penal Code. However, at the time of awarding the sentences, IInd Ad-hoc Assistant Sessions Judge took into consideration various factors and considered that putting the

respondents behind the bar would cause injustice for the reasons given by each of the respondents.

4] Present respondent no.3 – Sugarabee had submitted that she was about 65 years of age and was suffering from the heart disease. She had also submitted that if her sons i.e. present respondent nos.1 and 2 are punished, then everything would be ruined. Present respondent no.1 – husband of the deceased had made a plea that his parents, two children and his second wife upon death of deceased, are dependent upon him. The learned IInd Ad-hoc Assistant Sessions Judge had put a query as to why, he was in hurry to marry for the second time before completion of the trial, respondent no.1 explained that he was alone and nobody was there to provide food. The learned IInd Ad-hoc Assistant Sessions Judge has accepted the said plea and extended benefit under Sections 4 and 5 of the Probation of Offenders Act.

5] Learned A.P.P. for the appellant submitted before me that the learned IInd Ad-hoc Assistant Sessions Judge has come to the conclusion that the prosecution has proved that all the present respondents, in furtherance of common intention, had treated cruelly deceased Hasina, wife of respondent no.2. The facts would show that just within five weeks from the date of death of deceased Hasina, the marriage between present appellant no.1 and deceased Hasina had taken place. After marriage, however, deceased Hasina was illtreated over a demand of Rs.50,000/- on the ground that the respondent no.1 - husband and his brother i.e. respondent no.2 had purchased a truck and they were in financial difficulties. He further submitted that though the learned IInd Ad-hoc Assistant Sessions Judge took into consideration that the offence committed was a social offence, yet, on the untenable pleas of the respondents, has granted benefit under the

provisions of the Probation of Offenders Act and of Section 360 of the Criminal Procedure Code, as detailed supra.

6] On the other hand, Mrs.Ansari, learned counsel for the respondents, has supported the reasons of the learned IInd Ad-hoc Assistant Sessions Judge and submitted that the appeal may be dismissed.

7] On the basis of this material, following point arises for my determination :-

Whether the sentences awarded to the present respondents/accused are legal and proper ?

. My findings are in the affirmative as regards respondent nos.3 and 4, however, in the negative as regards respondent nos.1, 2 and 5. The appeal is, therefore, partly allowed for the reasons to follow.

R E A S O N S

8] The IInd Ad-hoc Assistant Sessions Judge has recorded conviction against the present respondents for the offences punishable under Section 306 and 498-A read with 34 of Indian Penal Code. The facts, as detailed supra, would show that just within five weeks from the date of marriage, a young lady (wife) has committed suicide and present respondents have abetted commission of the suicide.

9] The plea of respondent no.1 – Shaikh Shukur husband of deceased, that during the pendency of the trial, he has married second time and got children from the said marriage and he has to maintain them, was ridiculous. The learned IInd Ad-hoc Assistant Sessions Judge ought not have extended benefit under the provisions of the

Probation of Offenders Act to him. The same is the case regarding respondent no.2 – Shaikh Yousuf i.e. brother of respondent no.1 and respondent no.5 – Shaikh Maheboob.

10] Even as regards respondent no.3 – Sugarabae and respondent no.4 – Madinabegum, their plea that they were not involved in any other crime, out not have considered by the learned IInd Ad-hoc Assistant Sessions Judge.

11] However, due to lapse of time after the impugned judgment and order passed on 24th July, 2001, since respondent nos.3 and 4 are women and finding that the sword of present appeal was hanging on their head for fourteen years, no interference in the impugned judgment and order as regards them, is called for.

12] In the circumstances, the following order :-

A] The appeal is hereby partly allowed as regards the sentence passed against present respondent nos.1, 2 and 5 and is hereby dismissed as regards respondent nos.3 and 4.

B] The impugned judgment and order passed by the learned IInd Ad-hoc Assistant Sessions Judge, Nanded in Sessions Case No.48 of 1998 granting benefit of the provisions of Sections 4 and 5 of the Probation of Offenders Act to respondent nos.1 – Shaikh Shukur, respondent no.2 – Shaikh Yousuf and respondent no.5 – Shaikh Maheboob, is hereby set aside.

. Instead, each of them are sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- each, in default to suffer further rigorous imprisonment for fifteen days, on each count for the offence punishable under Section 306 and 498-A read with 34 of Indian Penal Code.

C] Learned IInd Ad-hoc Assistant Sessions Judge, Nanded to take steps for securing presence of respondent nos.1, 2 and 5 to serve the sentences as directed above.

D] The order regarding payment of compensation is, however, maintained.

E] Benefit of set-off under Section 428 of the Code of Criminal Procedure be given to the respondent nos.1, 2 and 5.

[M.T. JOSHI, J.]

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