

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 265 OF 2002

- (1) Shaikh Aifaz s/o Shaikh Mannan,
age 20 years, Occu. Labour,
R/o. Anand Nagar, Parbhani,
District Parbhani.
- (2) Shaikh Altaf s/o Shaikh Mannan,
age 22 years, Occu. Labour,
R/o. as above.
- (3) Nazirabee w/o Shaikh Mannan,
age 45 years, Occu. Household,
R/o. as above.
- (4) Nasim Begum w/o Shaikh Altaf,
age 20 years, Occu. Household,
R/o. as above.

... APPELLANTS
(ORIG. ACCUSED)

VERSUS

The State of Maharashtra,
Through Nalanpeth Police Station,
Parbhani.

... RESPONDENT

...

Mrs. A. N. Ansari, Advocate for Appellants.

Mrs. R. K. Ladda, APP for Respondent / State.

...

CORAM : INDIRA K. JAIN, J.

DATE : 16th April, 2016.

ORAL JUDGMENT:

. This appeal is preferred by original Accused Nos.1 to 4 against the judgment and order dated 17th April, 2002 passed by the learned Additional Sessions Judge, Parbhani in Sessions Case No.205 of 2001. By the said judgment and order learned Additional Sessions Judge convicted the Accused / Appellants under Section 307 and 498-A read with 34 of the Indian Penal Code as under:

<u>Conviction under Section</u>	<u>Sentence</u>
307	Rigorous Imprisonment for three years and fine of Rs.1,000/- in default Simple Imprisonment for two months.
498-A	Rigorous Imprisonment for one year and fine of Rs.500/- in default Simple Imprisonment for one month.

2 For the sake of convenience Appellants shall be referred in their original status as Accused as they were referred before the Trial Court.

3 The gist of prosecution case as necessary to decide present appeal may be stated as under :

Complainant Mehrunissa is wife of Accused No.1 Shaikh Aifaz. They were married before three months of incident. Incident took place on 29th June, 2000. Accused No.2 Shaikh Altaf is brother-in-law, Accused No.3 Nazirabi is mother-in-law of Complainant and Accused No.4 Nasimbegum is wife of Accused No.2.

4 It is the case of prosecution that initially for few days Mehrunissa was treated well in her matrimonial house. After some days Accused started ill-treating her on the grounds that she was not liked by them and she should bring Rs.5,000/- from her parents. Before eight days of incident Accused No.2 had beaten Complainant stating that she was often going to her parents' house and residing with them for long time. Before 5-6 days of incident Accused Nos.2 and 4 attempted to beat Complainant. Since then Mehrunissa and Accused No.1 started residing in a separate room and Accused Nos.2 to 4 were residing in an adjoining room of the same house.

5 On 29th June, 2000 at around 09:30 p.m. Accused Nos.2 to 4 caught hold Mehrunissa and Accused No.1 poured kerosene on her person and set her on fire. After setting her ablaze Accused came

out of the house. Mehrunissa raised alarm so Accused entered the house. After hearing shouts raised by victim neighbourers assembled there. She was taken to Civil Hospital, Parbhani by Accused Nos.2 and 3.

6 Dr. Ashok Manikrao Janapurkar was the medical officer on duty at civil hospital. Mehrunissa was admitted in hospital. M.L.C. was sent to Police Chauki in the Civil Hospital, Parbhani. Head Constable Dilawarkhan Pathan was on duty. On receiving M.L.C. he summoned Special Executive Magistrate for recording statement of victim. Rajeshwar Ganpatrao Deshpande was Special Executive Magistrate. At about 12:30 midnight he recorded statement of Mehrunissa in hospital. Said statement was treated as FIR. Crime No.92 of 2000 was registered at Nanalpeth Police Station, Parbhani.

7 Police Inspector D. M. Rathod took over investigation. He visited spot and recorded spot Panchanama. Burnt clothes of victim were seized. Her supplementary statement was recorded. Investigating Officer also recorded statements of other witnesses. Seized clothes were sent to CA. After completing investigation charge-sheet was submitted before Chief Judicial Magistrate,

Parbhani who in turn committed the case for trial to the Court of Sessions.

8 On committal of case Trial Court framed charge against the Accused at Exhibit 8. Accused pleaded not guilty and claimed to be tried. Their defence was of total denial and false implication. Accused No.1 raised defence that while cooking Mehrunissa sustained burns due to accidental fire.

9 To bring home guilt of the Accused prosecution examined in all 10 witnesses. After going through the evidence adduced by prosecution learned Trial Judge convicted and sentenced the Appellants as stated hereinbefore. Hence this appeal.

10 Heard the learned counsel for parties. After giving anxious consideration to the facts and circumstances of case, submissions made on behalf of parties, reasonings recorded by Trial Court and evidence on record for the below mentioned reasons this Court is of the opinion that prosecution could not prove guilt of Accused beyond reasonable doubt and Accused ought to have been acquitted.

11 Prosecution case is based on ocular evidence of victim herself and circumstantial evidence brought on record through her parents and neighbourers. Reliance is also placed on medical evidence which indicates that at the time of occurrence of incident Complainant sustained 59% burns.

12 PW-6 Complainant Mehrunissa is the star witness in this case. She stated that her marriage with Accused No.1 was performed before three months of incident. It can be seen from the evidence of Mehrunissa that for one month after marriage she was treated well in the family of Accused. All the Accused were jointly residing. She stated that after one month of marriage Accused started ill-treating her stating that she was not liked by them and she should bring Rs.5,000/- from her parents. She then states that before eight days of incident her brother-in-law Shaikh Altaf / Accused No.2 had beaten her in her parents' house.

Regarding incident Complainant states that at about 09:00 to 09:30 p.m. all the Accused asked her to bring Rs.5,000/-. She expressed her inability to bring money from her parents. She says that initially she was beaten by her husband then Accused No.2 to 4 caught hold her, Accused No.1 poured kerosene on her person,

ignited a match stick and set her on fire. She received burn injuries. She shouted. Initially Accused Nos.2 to 4 went out of the house. Neighbourers rushed to spot. She informed neighbourers that Accused set her on fire. She stated that Accused Nos.2 and 3 took her to hospital. In the hospital her statement was recorded. This statement was treated as FIR and it was proved by witness at Exhibit 27.

13 It appears from cross-examination of victim that her father was a coolie. She had five sisters. Except one all were married. She admitted that Accused Nos.1 and 2 were doing business of hand pump. She was educated upto VIIth standard and her husband, brother-in-law and mother-in-law were illiterate. She admits that at the time of marriage Accused did not demand money and there was no dispute. It is also brought on record in the cross-examination of Mehrunissa that financial condition of her father was not sound. From the facts elicited in her cross-examination it can be gathered that financial position of Accused was comparatively good.

14 Regarding alleged demand of Rs.5,000/- Complainant did not give material particulars viz. when demand was made, for what

purpose money was demanded, where was the demand made etc. It is significant to note that incident occurred just after three months of marriage. On the say of Mehrunissa initially for one month she was treated well in the matrimonial house. It also appears from her evidence that often she was visiting her parents' house which was near her matrimonial house and dispute had taken place on that count. In this background it was necessary for Complainant to give details regarding instances of demand of Rs.5,000/- and in the absence of such details vague statement of Complainant and her parents that there was demand of Rs.5,000/- and she was ill-treated for non-fulfillment of demand, cannot be relied upon.

15 Further from the facts elicited in cross-examination of Complainant it is clear that place of incident was a cooking place in the same room in which husband and wife were residing. Admittedly Accused Nos.2 to 4 were not residing in that room but residing in an adjoining room. Their cooking place was separate. It is admitted by PW-6 Mehrunissa that she was preparing food by using wooden powder. For alighting fire place kerosene was required. A bottle of 180 ml. containing kerosene was used for igniting fire place and also as night lamp. Except this one bottle no article was kept in the room

containing kerosene. On going through spot Panchanama Exhibit 38 it can be seen that near fire place some utensils were found lying in disorderly manner. It was a small room of hardly 8 x 10 sq. ft. A sketch annexed to spot Panchanama shows that in the same room there was a cot, burnt pieces of clothes, bottle and bangles lying. It is admitted by Complainant that her bangles were not broken. Accused have raised a defence that for cooking food Mehrunissa was igniting fire place and that time she was caught by fire. Except evidence of Mehrunissa there is no other evidence to indicate that Accused set her on fire. Neighbourers have been examined. They do not support prosecution case.

16 So far as PW-8 Sk. Rasool father and PW-9 Pyarmbee mother of Mehrunissa are concerned, they have also not given details of instances regarding alleged demand of money. Prosecution has also placed reliance on the evidence of PW-7 Devaibai who is neighbourer of parents of Complainant. According to PW-7 Devaibai before eight days of incident hand pump was to be installed at the house of Zebunnisa. Accused Nos.1 and 2 were to install hand pump. She stated that Accused came to the house of Complainant. That time Accused Nos.1 and 2 have beaten Mehrunissa by iron rod

and she had seen that incident. She further states that as Mehrunissa stayed at her parents' house for 7-8 days she was beaten by Accused Nos.1 and 2. Mehrunissa had become unconscious after she was beaten by Accused. Neither Mehrunissa nor her parents have ever stated that she was beaten by Accused No.1 before eight days of incident nor they stated that iron rod was used for alleged beating. They have come with a case that Accused No.2 who is brother-in-law had beaten Mehrunissa on the count that she was often visiting her parents' house and not returning to her matrimonial home for longer time. It is thus apparent that PW-7 Devaibai had made material improvements and it would be risky to place reliance on her testimony.

17 Accused have not seriously disputed that Mehrunissa sustained 59% burns. Evidence of PW-1 Dr. Ashok Janapurkar indicates that injuries mentioned in Exhibit 19 were possible due to bursting of stove while sitting near the stove. From the certificate it can be seen that superficial deep burns were sustained by victim to her anterior and posterior trunk and right and left limbs. If at all Accused have attempted to set her on fire she would not have sustained burns on lower part of body but in normal course on upper

part of body. This also creates doubt regarding case of prosecution that Accused No.1 poured kerosene and with the aid of other Accused set her on fire.

18 Further it is significant to note that statement of victim Exhibit 27 was treated as dying declaration by the Trial Court and based on such statement conviction was recorded. Victim had survived in this case. So her statement recorded by Special Executive Magistrate cannot be treated as dying declaration under Section 32 of the Indian Evidence Act and at the most statement could be used as her previous statement for proving contradictions and omissions. The approach of the Trial Court in respect to Exhibit 27 statement is thus found contrary to law.

19 Be that as it may, from the evidence of victim, her parents, neighbours, medical evidence and facts elicited in cross-examination as well as factual position brought on record through scene of occurrence Panchanama this Court finds that prosecution could not prove the guilt of Accused beyond reasonable doubt. The conviction and sentence of Appellant is unsustainable in law. Hence the following order –

ORDER

- I. Criminal Appeal No.265 of 2002 is allowed.
- II. The judgment and order dated 17th April, 2002 passed by the learned Additional Sessions Judge, Parbhani in Sessions Case No.205 of 2001 convicting Appellants for the offences punishable under Sections 307 and 498-A read with 34 of the Indian Penal Code is set aside.
- III. Appellants are held not guilty of the offences punishable under Sections 307 and 498-A read with 34 of the Indian Penal Code and are acquitted of said charge.
- IV. Bail bonds of Appellant stand cancelled.
- V. Fine if paid shall be refunded to the Appellants.

[INDIRA K. JAIN, J.]