

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.329 OF 2002

Vishnu Dhondu Gavali,
Age 24 years, Occ. Milkman,
r/o. Plot No.33, Gajanan Colony,
Dhule ..Appellant

Versus

- 1] State of Maharashtra
- 2] Sau. Lalita Vishnu Gavali,
Age 32 years, Occu. Agri.,
Resident of Plot No.33,
Gajanan Colony, Dhule ..Respondents

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Mr.Mukul Kulkarni, advocate for appellant/accused

Mr.R.V.Dasalkar, APP for respondent – State

Mr.Amol Sawant, advocate for respondent no.2/
complainant

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 12, 2016

ORAL JUDGMENT :

Respondent no.2 – wife i.e. the victim of the
offence and her children, are present in the
court. Mr.Amol Sawant, learned counsel tenders
Vakilpatra on behalf of respondent no.2. The same

is accepted on record and marked as "X" for the purpose of identification. Respondent no.2 has also filed an affidavit-in-reply. The same is accepted and marked as "X-1" for the purpose of identification.

2] Heard Mr.Mukul Kulkarni, learned counsel for the appellant, Mr.R.V.Dasalkar, learned A.P.P. for respondent no.1 – State and Mr.Amol Sawant, learned counsel for respondent no.2/complainant.

3] Present appellant was convicted by learned 4th Addl. Sessions Judge, Dhule in Sessions Case No.16 of 2001 for the offences punishable under Section 498-A and 307 of Indian Penal Code. He was directed to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- for the offence punishable under Section 498-A of Indian Penal Code; and to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- for the

offence punishable under Section 307 of Indian Penal Code.

4] The prosecution case, in short, is as under :-

. That, the appellant was married to the respondent no.2/complainant (PW 1) Lalita about four months prior to the date of the incident, which has occurred on 16th July, 2000. During the cohabitation, she was subjected to cruelty by the appellant as well as his relatives on account of non providing a gold ring in the marriage. The appellant used to beat and abuse the complainant. In the circumstances, on 16th July, 2000, the present appellant set her on fire. Rest of the respondents were not present and they were in another room. Thereafter, however, the appellant tried to extinguish the fire.

. The complainant was admitted in the Civil Hospital at Dhule and her statement was recorded

by the Executive Magistrate Shri. Mansuri. On the basis the said statement, the crime came to be registered.

5] Before the learned Addl. Sessions Judge, in all eleven witnesses were examined. Those were the Investigating Officer, panch witnesses, Circle Officer, Executive Magistrate and the Medical Officer. PW 11 – Dr.Hemantkumar Borse has deposed that on 16th July, 2000, when the complainant was admitted in Civil Hospital at Dhule, he found 15% superficial to deep burn injuries on her person.

. Learned Addl. Sessions Judge believed the prosecution case and convicted the appellant, as detailed supra.

6] Mr.Mukul Kulkarni, learned counsel for the appellant and Mr.Amol Sawant, learned counsel for respondent no.2/complainant submitted before me that during the pendency of the present appeal,

the parties resumed cohabitation. While the incident has occurred in the year 2000, during cohabitation, three male children are born to respondent no.2/complainant. The "Aadhar Cards" issued by the Unique Identification Authority of India, copies of which are filed at Annexure R-3, would bear out this fact.

7] Further, when the application for releasing the appellant on bail was heard by this Court, respondent no.2/complainant had appeared in the Court and stated that she had no marks of serious injuries on her person and she was ready to live with the appellant and her bed-ridden mother-in-law and father-in-law. This court had, therefore, released the appellant on bail vide order dated 19th December, 2002 passed in Criminal Application No.1982 of 2002. Copy of that order is filed at Annexure R-2.

8] In the affidavit-in-reply, respondent no.2 has stated that for more than last 13 years, both of them are enjoying the marital life and there is no dispute between them during this period. Therefore, respondent no.2 submitted that if the appeal filed by the appellant/accused is allowed, she has no objection.

9] Learned A.P.P. for respondent no.1 – State submitted that the deposition of respondent no.2 as PW 1, would reveal that present appellant had set her on fire. The medical evidence would bear out this fact and he, therefore, submitted that no interference in the impugned judgment and order of learned Addl. Sessions Judge, is required.

10] On the basis of this material, following points arise for my determination :-

A] Whether the prosecution has proved that present appellant has subjected the

respondent no.2/complainant to cruelty during her cohabitation with her ?

B] Whether the prosecution has further proved that present appellant had attempted to commit murder of respondent no.2/complainant ?

. My findings to the point no.1, is in the affirmative and to point no.2, in the negative. The offence punishable under Section 307 of Indian Penal Code is not proved. However, the offence punishable under Section 324 of Indian Penal Code, is proved. The appeal is, therefore, partly allowed for the reasons to follow.

R E A S O N S

11] The deposition of the complainant PW 1 coupled with the deposition of the Executive Magistrate, would show that the complainant had stated to the Executive Magistrate that present appellant used

to illtreat her during their cohabitation over a demand of gold articles and on the day of the incident, he had, in fact, set her on fire.

12] PW 11 – Dr.Hemantkumar Borse has deposed that on the day of the incident, when he examined respondent no.2/complainant, he found 15% superficial deep burn injuries.

13] All these facts would clearly prove, beyond the reasonable doubt, that present appellant used to give cruel treatment to the complainant and on the day of the incident, he set her on fire.

14] The matter however does not rest here. The Medical Officer has candidly admitted that in the natural course, the death is not possible due to the burn injuries found by him on the person of the complainant. The injury certificate passed by this witness, which was proved at Exhibit 40, is

also vague as it is merely mentioned that the complainant has suffered 15% burn injuries. The specific part of the body of the complainant is not mentioned to find out as to whether, the injuries were on any vital part or not. In the circumstances, the offence punishable under Section 307 of Indian Penal Code, is not made out. The learned Addl. Sessions Judge did not advert to this fact.

. Considering the evidence on record, in my view, the offence punishable under Section 324 of Indian Penal Code is made out.

15] In the circumstances, the appeal deserves to be partly allowed and the conviction for the offences punishable under Section 498-A and 324 of Indian Penal Code is required to be awarded.

16] This takes us to the issue of awarding of the sentence. The record would show that present

appellant was behind the bars for four months prior to his release on bail before the trial and after his conviction by the sessions court, till he was released on bail by this court.

17] Taking into consideration the material on record and the affidavit-in-reply filed by respondent no.2/complainant, I am of the considered opinion that now sending the appellant behind the bars again, would be a punishment not only to the appellant but also to respondent no.2/complainant and their children.

18] In the circumstances, the following order :-

A] The appeal is hereby partly allowed.

B] The impugned judgment and order passed by learned 4th Addl. Sessions Judge, Dhule in Sessions Case No.16 of 2001, is hereby modified.

C] The conviction for the offence punishable under Section 498-A of Indian Penal Code, is hereby maintained. However, the conviction for the offence punishable under Section 307 of Indian Penal Code, is hereby set aside.

. Instead the appellant is hereby convicted for the offence punishable under Section 324 of Indian Penal Code.

D] The appellant on both the counts to suffer the imprisonment which he has already undergone.

E] Bail bonds of the appellant shall stand cancelled.

F] The appeal is disposed of accordingly.

[M.T. JOSHI, J.]