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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 252 OF 1998

Sangeeta Raju Shinde

..Applicant.

Vs.

(1)The State of Maharashtra
(2) Khurshid Yakub Shaikh

...Respondents.

Mr. S.V. Kotwal for Appellant.

Ms. Anamika Malhotra for Respondent-State.

CORAM: A.S. GADKARI, J.

DATE : 23rd June 2016.

ORAL JUDGMENT:-

1 The appellant has been convicted under Section 307 of the Indian Penal Code by the Judgment and Order dated 29.11.1997 passed by the 6th Additional Sessions Judge, Pune in Sessions Case No.76 of 1995, and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo rigorous imprisonment for one year. The said Judgment and Order dated 29.11.1997 is impugned in the present appeal.

2 The facts which can be enumerated from the record and are necessary for deciding the present appeal can briefly be stated as under:

(i) The date of incident is 24.10.1994. The appellant was suspecting that her husband namely Raju Shinde was having illicit relations with the first informant, Smt. Khurshid Y. Shaikh and on that count the appellant used to abuse the victim in filthy language. In the morning of the said day, the appellant had a quarrel with the victim on the ground that the victim was having illicit relations with her husband. The husband of the victim was in the house at that time. He intervened in the quarrel and pacified the same. In the afternoon, the victim was alone in her house. She had brought meat/mutton and it was placed on the kitchen platform. The victim was proceeding to bring edible oil for the purpose of cooking. The victim was passing through the house of the appellant. At that time the appellant gave a call to the victim and told her that, she will not quarrel with the victim and said that they will live happily. The husband of the appellant was standing near the house of the appellant. The appellant thereafter asked the victim to enter inside the house. By saying so the appellant immediately went inside her house and brought kerosene and sprinkled it on the person of the victim and set her on fire. The victim was

wearing tericot saree which caught fire immediately. Due to burns, the victim raised hue and cry.

(ii) Kisan Bhise (PW-2), the neighbour of the appellant and victim rushed to the spot and extinguished the fire with a blanket. The husband of the victim came at the spot. The victim informed her husband about the incident. The victim was taken to the hospital by her husband and her brother who reached at the spot. After admitting the victim to the hospital namely, Priyadarshani at Yerwada, Pune, the said fact was informed to the Police. Dr. Kiran Bhatewara (PW-4) gave medical treatment to the victim. After the intimation was received by the Judicial Magistrate Mr. Vasant Pise (PW-6) attended the hospital and recorded dying declaration of the victim. The victim got herself discharged from the said hospital of Dr. Kiran Bhatewara (PW-4) on 26.10.2014 against the medical advise. The victim had suffered 35% to 38% burn injuries.

(iii) After the alleged incident of burning, the appellant immediately rushed to the Police Station at about 7.15 p.m. and informed Police Sub-Inspector Shri Dattaji Tope (PW-7) that the victim had set herself on fire and prior to the said incident the victim had also quarreled with the appellant. PSI Shri Dattaji Tope with a view to ascertain the truthfulness of the version of the appellant, deputed the Constable to the

spot. On 24.10.1994 at about 8.45 p.m. PSI Shri Dattaji Tope received a message from the Priyadarshani hospital, that the appellant tried to burn the victim and in that attempt the victim suffered injuries and was admitted to the said hospital.

(iv) PSI Shri Dattaji Tope immediately rushed to the hospital and on enquiry, the victim informed him that the appellant who was her neighbour had poured kerosene on her person and ignited the fire. The victim disclosed the reason for the said act by the appellant, that the appellant was suspecting about illicit relations between the victim and the husband of the appellant. The statement of the complainant/victim was recorded by the said PSI Shri Dattaji Tope (PW-7). As the informant/victim was unable to sign due to burn injuries to her both hands, her thumb impression on the complaint was not taken. Dr. Bhatewara (PW-4) had put an endorsement to that effect on medical papers. The statement of the complainant was treated as a First Information Report. PSI Shri Dattaji Tope thereafter registered crime bearing CR No.282/1994 with Yerawada Police Station, Pune under Section 307 of the Indian Penal Code. During the course of investigation, Police Constable Kashinath Salvi (PW-5) sent the seized articles to the Chemical Analyser. After completion of the investigation and after receipt of Chemical Analyser's report PSI Shri

Dattaji Tope (PW-7) submitted chargesheet in the Court of Judicial Magistrate First Class, Pune.

(v) As the offence under Section 307 is exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class, Pune committed the said case to the Court of Sessions by its Order dated 27.1.1995 as contemplated under Section 209 of Cr. P.C. The learned Trial Court framed charge below Exhibit 12. The said charge was read over and explained to the appellant in vernacular language, to which she denied and claimed to be tried. It is the specific case/defence of the appellant that the victim tried to commit suicide on the ground that the appellant was suspecting her fidelity and was having suspicion that the victim was having illicit relations with her husband. The prosecution in support of its case, examined in all seven witnesses. The learned Trial Court after recording evidence and after hearing the parties to the said case, was pleased to convict the appellant by the impugned Judgment and Order dated 29th November 1997.

3 Heard Mr. S.V. Kotwal, the learned counsel for the appellant and Ms. Anamika Malhotra, the learned APP for the State and with their able assistance, I have perused the entire record pertaining to the present case.

4 The learned counsel for the appellant submitted that it is the specific defence of the appellant that the victim attempted to commit suicide as the bottle which was allegedly containing kerosene was not found at the spot but found outside the house of the appellant in proper condition. He further submitted that the victim did not try to leave/escape from the spot after appellant allegedly poured/sprinkled kerosene on her person and this is the unnatural conduct of the victim which leads to only inference that the victim tried to commit suicide. He submitted that during the course of recording statement under Section 313 of Cr. P.C., the appellant has specifically and in particular to answer Question No.35, has stated that her husband used to go to the house of the complainant/victim to which she objected and due to which in collusion with her husband the complainant has lodged the present false case against her. He further submitted that immediately after the occurrence of the incident, the victim herself informed the police about the incident. He submitted that the evidence on record shows that on the date of incident the minor son of the appellant was admitted to the hospital and the appellant was not in a proper state of mind to commit such a ghastly act. He therefore submitted that after taking into consideration the totality of the circumstances, it may be

held that the present case do not fall within the purview of Section 307, but falls within the purview of Section 309 of the Indian Penal Code. According to him the victim tried to commit suicide. He further submitted that if the Court is not inclined to accept his submission, after taking into consideration the evidence on record at least benefit of doubt may be extended to the appellant. He lastly submitted that the present appeal may be allowed and the appellant may be acquitted from charges levelled against her.

5 The learned APP per contra submitted that the burn injuries received by the victim Smt. Khurshid demonstrates that the present case cannot be termed as an attempt to commit suicide, as it is not possible for the victim to sprinkle kerosene on selected places of her body such as stomach, thighs and hands and thereafter ignite herself. She submitted that the victim Smt. Khurshid received burn injuries in the house of the appellant and not in her own house. She submitted that the evidence of victim Smt. Khurshid inspires confidence and same can not be disbelieved. She submitted that the appellant herein was having motive to commit the present crime as the appellant was having strong suspicion that her husband Raju was having illicit relations with the victim Smt. Khurshid and that is the precise motive against the present crime. She further submitted that the

prosecution has proved beyond reasonable doubt the charges levelled against the appellant. She lastly submitted that the impugned Judgment and Order passed by the Trial Court is a well reasoned Order and there is no need to interfere with it and the present appeal may be dismissed.

6 As stated above, the prosecution in support of its case has examined in all seven witnesses.

PW-1 Smt. Khurshid, is the injured witness. PW-1 in her testimony has categorically stated that the appellant herein was having suspicion about the illicit relations between the husband of the appellant and the victim and therefore the appellant used to quarrel on that count with the victim, Smt. Khurshid. That the appellant was her neighbour. That on the day of incident, when she was proceeding to bring edible oil and was crossing the house of the appellant, the appellant called her and told that, she will not quarrel with the victim and they should live happily. The husband of the appellant was standing near the house. The appellant thereafter told the victim to come inside her house. The appellant immediately went inside her house and brought kerosene and sprinkled it on the person of the victim, Smt. Khurshid and set her on fire. She has further narrated the incident and facts which took place after she was set ablaze. In her cross-examination an admission that her house was located

in a hutment area and there were several hutments was elicited. No other fruitful material is elicited from her cross-examination. PW-1 denied the fact that due to the quarrel which took place in the morning between the appellant and her, she tried to commit suicide. She has further denied the suggestion that she was having relations with the husband of the appellant. She has also stated in her cross-examination that after kerosene was sprinkled on her, she got fumbled and therefore could not run away from the spot. Certain other omissions of inconsequential nature are also brought on record during her cross-examination.

PW-2 Kisan Bhise is the neighbour of the victim Smt. Khurshid and appellant. PW-2 in his testimony has stated that at about 7.p.m on the date of incident he heard hue and cry and therefore he came out of his house and saw that the victim Smt. Khurshid was in flames. She was shouting for help. That the appellant and her husband were standing near the house. That the victim had received burn injuries on stomach and thighs. That the brother of the victim came at the spot and there was quarrel between the said brother and Raju i.e. husband of the appellant. That there was scuffle between Raju and the brother of the victim and thereafter Raju left the spot with appellant. That, he extinguished fire with the help of a blanket. He thereafter took victim to the hospital. In his cross-examination,

an admission to the effect that the spot of incident was located at a side of the road and there was hospital in front of the house. No other material which is beneficial for the appellant has been elicited from the said cross-examination.

PW-3 Yakub A. Shaikh is the husband of the victim. This witness has deposed about the fact of admitting the victim to the hospital and the information given by the victim to him about the incident in question. This witness has specifically denied the suggestion that people gathered at the spot, were discussing that victim Smt. Khurshid herself set her on fire.

PW-4 Mr. Kiran Bhatewara was working as a Doctor/Medical Practitioner. In his testimony he has deposed that the victim Smt. Khurshid was admitted in his hospital on 24.10.1994 and he gave medical treatment to her. He has stated that on 24.10.1994 the victim suffered 35% to 38% burn injuries. That the victim got herself discharged from the hospital against medical advice on 26.10.1994. That the statement of the victim was recorded by the Judicial Magistrate when victim was in hospital.

PW-5 Kashinath Salvi is a Police Officer who sent seized articles in the crime to the Chemical Analyser and collected the report from it.

PW-6 Mr. Vasant Pise was the Judicial Magistrate First Class at Ahmednagar, on the date of incident and he recorded the dying declaration of the victim after he received intimation from PSI Shri Dattaji Tope (PW-7). As the victim has survived from the injuries, the evidence of PW-6 does not assume much importance.

PW-7 is Mr. Dattaji Tope, the Investigating Officer. PW-7 in his testimony has deposed that on 24.10.1994 at about 7.17 p.m the appellant had been to the police station and informed him that the victim has set herself on fire. The appellant also informed him that, the said Smt. Khurshid quarreled with her before the incident. That at about 8.45 p.m he received a message from Priyadarshani Hospital that the appellant tried to burn the victim, Smt. Khurshid and in that attempt Smt. Khurshid had suffered burn injuries. He made enquiry with the hospital and it was informed to him that the victim Smt. Khurshid had received about 35% to 38% burn injuries. During the course of investigation, it was informed to him by the victim that the appellant was suspecting her of having illicit relations with the husband of the appellant. After completion of investigation PW-7 had submitted chargesheet in the Court of Judicial Magistrate First Class, Pune. In the cross-examination except an admission that, saree which was on the person of the appellant was also attached

under the panchanama, no other material which is beneficial to the appellant has been elicited.

7 The learned counsel for the appellant submitted that PW-1 Smt. Khurshid in her cross-examination has admitted that after pouring kerosene the appellant threw the bottle inside the house, however, the spot panchanama, which is at Exhibit 17 mentions that the kerosene bottle was outside the house of the appellant. He submitted that if the glass bottle would have been thrown inside the house, it could not have remain in proper condition. That the spot panchanama discloses that the said bottle was intact and therefore it is the case of attempt to commit suicide and not the case of attempt to commit murder. He submitted that there are material contradictions in evidence of the prosecution and therefore it can be inferred that it is the case of attempt to commit suicide by the victim. He further submitted that the victim did not try to run away from the spot after kerosene was poured on the victim. That the said conduct of the the victim is unnatural which lends assurance to his submission that it was a predetermined case of attempt to commit suicide and not of attempt to murder. That the evidence on record discloses that the appellant immediately went to the police station and disclosed the fact to the PSI Shri Dattaji Tope (PW-7) about the incident and therefore the defence of the

appellant is well-founded.

8 It is to be noted here that though the PW-1 Smt. Khurshid has admitted that the appellant threw kerosene bottle inside the house, however, it was found outside the house of the appellant in proper condition, according to me is not a material contradiction but a minor discrepancy in the evidence of PW-1. As far as the submission of the learned counsel for the appellant that the victim did not try to run away from the spot after the kerosene was poured on her person is concerned, PW-1 Smt. Khurshid in her cross-examination has categorically stated that she did not try to run as she was fumbled. It is natural that when the appellant poured kerosene on the person of victim, she must have got fumbled and could not take immediate steps either to escape from the spot or any other remedial measures. The evidence of PW-2 Kisan Bhise and Dr. Bhatewara (PW-4) clearly discloses that the victim received burn injuries on her stomach, thighs and both hands and therefore I find substance in the submission of learned APP that the appellant had poured/sprinkled kerosene on the person of the victim from front side. If the victim Smt. Khurshid had a desire to commit suicide due to quarrel which took place in the morning, she would have committed the said act at her house and would not have gone to the house of the appellant for

committing the same. Smt. Khurshid (PW-1) on being called by the appellant, went to her house and appellant thereafter poured kerosene on her person and ignited fire. The spot panchanama which is at Exhibit 17 corroborates the version of PW-1 Smt. Khurshid to the effect that the bottle having smell of kerosene and burnt pieces of saree, blanket and other articles were found at the spot. The evidence available on record do suggest that the son of the appellant was admitted in hospital, however, the said fact is not sufficient to prove that the appellant was not present at the spot at the time of commission of the said offence. I am of the considered opinion that the evidence of PW-1 Smt. Khurshid is wholly reliable and is corroborated by other evidence on record as stated earlier.

9 PW-4 Dr. Bhatewara in his testimony has stated that the burn injuries received by the victim Smt. Khurshid were to the extent of 35% to 38%. The evidence of PW-1 Smt. Khurshid the victim clearly suggests that the appellant called the victim at her house with a view to have talks to settle the quarrel. The husband of the appellant who was the cause of suspicion was present at the the spot at the time of the incident in question. It appears from the record that some quarrel took place at the said place and in pursuance thereof the appellant committed the present crime. Thus after taking into consideration the entire evidence available on record, I am

of the considered opinion that the prosecution has proved beyond reasonable doubt the offence as contemplated under Section 307 of the Indian Penal Code.

10 In view of the fact that the victim suffered injuries to the extent of 35% to 38%, and against the medical advise of Dr. Bhatewara (PW-4), she got discharged herself from the hospital and therefore a safe inference can be drawn that the victim did not receive life threatening injuries and therefore according to me the sentence imposed upon the appellant by the Trial Court for 10 years is excessive. In view of the same, I am of the considered opinion that the sentence of five years of rigorous imprisonment be imposed upon the appellant which would subserve the ends of justice.

11. Hence, the following Order:

- (i) Appeal is partly allowed.
- (ii) The conviction of the appellant under Section 307 of the Indian Penal Code is maintained.
- (iii) The sentence imposed upon the appellant by the learned Trial Court by the impugned Judgment and Order dated 29.11.1997 is hereby altered and the appellant is sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo simple imprisonment for three months.

(iv) Fine amount be paid to the complainant by way of compensation.

(v) The appellant to surrender her bail bonds within a period of eight weeks from today.

(A.S. GADKARI,J.)