

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 292 OF 1996

Arun Barikrao Chavan,
Aged 32 years, Occ. Service,
Residing at Adhav Chawl, Jail Road,
Nashik Road, Nashik,
District-Nashik.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Ujwal R. Agandsurve, advocate appointed for Appellant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : FEBRUARY 29, 2016

JUDGMENT:

1 None appears for the appellant and hence, this Court had requested Advocate Shri Ujwal R. Agandsurve to espouse the cause of the appellant. He has graciously accepted the request made by the Court. Heard the learned Advocate appointed for the appellant and the learned APP for State.

2 The appellant herein is convicted for offence punishable under Section 306 of the Indian Penal Code and sentenced to suffer R.I. for 3 years and to pay fine of Rs. 500/- I.d. to suffer R.I. for 2 months. He is also convicted for offence punishable under Section 498A of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay fine of Rs. 500/- I.d. to suffer further R.I. for one month by the II Additional Sessions Judge, Nashik in Sessions Case No. 38 of 1996 vide Judgment and Order dated 12th April, 1996. Hence, this appeal.

3 Such of the facts necessary for the decision of this appeal are as follows :

The appellant herein was married to Tulsa/Kamal in the year 1994. On 20/2/1995 the police from Nashik Road Police Station received a telephonic message from Bitco Hospital, Nashik informing them that a lady having sustained 100% burn injuries had been admitted in the hospital. Shrikrishna Pandharinath Rajdeo, who was attached to Nashik Road Police Station as PSI has visited the hospital.

By then the patient had expired. He recorded inquest panchanama in the presence of panchas. He then went to matrimonial home of the injured at village Dasak and recorded spot panchanama which is at Exh. 15. Upon enquiry he had learnt that the maternal house of the deceased was village Mundkhed, Bk. of Chalisgaon. He therefore, telephonically requested the police of Chalisgaon Police Station to inform her parents and relatives about the death of Tulsa/Kamal.

4 On 21/2/1995 brother of deceased Tulsa/Kamal and other relatives came to Nashik Road Police Station. Gorakh Pandit Patil lodged FIR on 21/2/1995 alleging therein that his younger sister was initially married with one Parmeshwar of Karjal Tal. Chalisgaon, however her husband had expired 6 years ago and thereafter, she was re-married to Arun Barikrao Chavan(present appellant). At the time of marriage, he had given Rs. 10,000/- and the ornaments. After two months of the marriage Tulsa and her husband had come to the house of informant and had informed him that they wished to rent another house and therefore, they are in need of Rs. 4000/- to 5000/-. At that

time he had given Rs. 4,000/- to be paid towards deposit. Thereafter, Tulsa had visited house of informant alongwith her husband and had informed her brother that she is being harassed at the hands of her husband and that he is insisting upon her to fetch money. On the third visit, she had again complained of harassment at the hands of her husband and therefore, her brother had requested her to stay in the maternal house. However, she chose to join her husband in her matrimonial home.

5 It is alleged by the informant that on 20/2/1995 they had received a message that Tulsa/Kamal had sustained burn injuries and was admitted in the hospital. They rushed to the hospital. By then she had expired and the police were recording panchanama. According to the informant, Tulsa/Kamal could not take the harassment any more and therefore, she had committed suicide. She had sustained 100% burn injuries and therefore, her dying declaration could not be recorded. On the basis of the statement of Gorakh Pandit Patil Crime N. 38 of 1995 was registered against the accused

for offence punishable under Section 498A and 306 of the Indian Penal Code. After completion of investigation, charge-sheet was filed on 3rd March, 1995.

6 At the trial, the prosecution has examined six witnesses to bring home the guilt of the accused.

7 P.W. 1 Gorakh Pandit Patil happens to be the elder brother of deceased Tulsa/Kamal. He has deposed before the court that in the first visit to the maternal house, his sister had demanded money for procuring rented premises and that he had obliged her. He has also deposed before the Court that Tulsa had inherited certain property from her previous husband and the accused was insisting upon her to bring that property. She has also disclosed to her brother and other relatives that accused used to abuse and assault her under the influence of alcohol and that he was insisting upon her to fetch the property inherited by her from her previous husband. That she had intermittently informed her relatives that she was being harassed at

the hands of the accused. They had decided not to send her to the house of the accused. However, when he visited her, she decided to join him voluntarily. He has deposed inconsonance with the first information report lodged by him, which is at Exh. 17. It is admitted in the cross-examination by P.W. 1 that after death of her first husband Tulsa had inherited 5 Bigha land. They had sold the said land for a consideration of Rs. 52,000/- and according to P.W. 1, the said amount was deposited in her name in a bank. However, pass-book is not placed on record. In the cross-examination, P.w. 1 had feigned ignorance about sustaining burn injuries to Tulsa due to explosion of stove while cooking food.

8 P.W. 2 Ashok Krishna Patil happens to be the brother-in-law of the deceased Tulsa, i.e. he is the husband of the sister of deceased Tulsa. There are inherent omissions and contradictions in the deposition of P.W. 2.

9 P.W. 3 Babulal Patil happens to be the maternal uncle of
deceased Tulsa/Kamal. He had corroborated the evidence of P.W. 1
and 2.

10 P.W. 4 Seetaram Patil happens to be the cousin of deceased
Tulsa/Kamal. There are inherent omissions and contradictions in the
substantive evidence.

11 The relevant witness is P.W. 5 Fakira Kalu Adhav who resides in
the close neighbourhood of deceased Tulsa and appellant. He has
deposed before the court that there used to be intermittent altercation
between the spouses. On the date of incident i.e. 20/2/1995 at about
7.30 p.m. there was quarrel between the accused and his wife. He
had gone to the house of the accused to ascertain as to what has
happened. He saw that the wife of the accused had closed the door
from inside and flames were emanating from the house. The accused
and his brother had broken open the door from outside and then they
had taken her to Bytco hospital. He has admitted in the cross-

examination that on the date of incident he had not gone inside the house of the accused where the deceased had sustained burn injuries.

12 P.W. 6 Shrikrishna Pandharinath Rajdeo is the investigating officer who was officiating as PSI at Nashik Road Police Station and had registered Crime No. 38 of 1995 against the accused.

13 P.W. 1 in this deposition has specifically stated that in the first visit to her maternal house Tulsa had herself demanded Rs. 4000/- for procuring rented premises and thereafter, on two occasions, she had accompanied accused when the amount was demanded. It can be safely inferred that in fact, Tulsa/Kamal was demanding the amount, which she has inherited from her first husband. P.W. 1 has not placed on record any document to show that the amount received after selling 5 bigha land was actually deposited in the name of Tulsa.

14 Upon appreciation of evidence, it cannot be said for a moment that Tulsa was being harassed on account of demand for dowry. She

had lived with the appellant for less than a year. There is no reason to discard testimony of P.W. 1 only to the extent that the deceased had informed her brother that she was subjected to cruelty at the hands of her husband.

15 The learned Counsel appointed for the appellant submits that there is no corroboration to the fact that she was harassed and ill-treated. In fact, the victim could only disclose such incidents to her near and dear ones. In any case, P.W. 5 has also corroborated the evidence of P.W. 1 stating therein that there used to be intermittent quarrels between the spouses.

16 The prosecution has proved that the victim was being subjected to harassment and ill-treatment at the hands of the appellant. However, there is no cogent and convincing evidence, to even remotely indicate, that the appellant had abetted the commission of suicide. There is nothing on record to indicate that the appellant had been suspected that she would take things so far as to commit suicide.

He had no intention to eliminate his wife. It cannot be said that he had facilitated or abetted commission of suicide and hence, appellant deserves to be acquitted for offence punishable under Section 306 of the Indian Penal Code.

17 However, since, this Court has relied upon the evidence of P.W. 1 and P.W. 5, the accused appellant deserves to be convicted for the offence punishable under Section 498A of the Indian Penal Code. The appellant was in jail from 26/2/1995 till 25/3/1995. He was taken into custody on 12/4/1996 and was granted bail by this Court vide order dated 30/5/1996 and in all probabilities was enlarged from custody in the first week of June, 1996. Hence, it appears that the appellant has undergone approximately two months of imprisonment and he deserves to be sentenced to the period already undergone.

18 Before parting with the Judgment, this Court appreciates the efforts put in by the learned Advocate Mr. Agandsurve to espouse the

cause of the appellant. The professional fees is quantified at Rs. 2,000/- to be paid to him within 3 months from today.

19 Hence, following order is passed :

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The conviction under Section 306 of the Indian Penal Code against the appellant vide Judgment and Order dated 12/4/1996 in Sessions Case No. 38 of 1996 passed by the Additional Sessions Judge, Nashik is hereby quashed and set aside. The appellant is acquitted of the charge under Section 306 of the Indian Penal Code.
- (iii) The conviction under Section 498A of the Indian Penal Code against the appellant vide Judgment and Order dated 12/4/1996 in Sessions Case No. 38 of 1996 passed by the Additional Sessions

Judge, Nashik is hereby upheld. However, he is sentenced to the period already undergone.

(iv) The bail bonds of the appellant stand cancelled.

20 The Criminal Appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)