

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 700 OF 1998
WITH
CRIMINAL APPEAL NO. 742 OF 1998

The State of MaharashtraAppellant

V/s.

Mohan Dattatraya TangadeRespondent

R/o House No. 257, Guruwar Peth,
Pune

Ms. V. S. Mhaispurkar APP for the State

Mr. Surel S. Shah for respondent no. 1

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 18, 2016.

JUDGMENT:

Heard.

2) State of Maharashtra, being aggrieved by the Judgment and Order dated 25/03/1998 passed by Additional Sessions Judge Pune in Criminal Appeal No. 188 of 1997 thereby acquitting the accused for offence punishable under section 306 of Indian Penal Code and modifying his sentence for offence punishable under section 498 (A) of Indian Penal Code has filed present appeal against acquittal.

3) It is a matter of record that respondent herein was convicted by

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Assistant Sessions Judge, Pune in Sessions Case no. 290 of 1997 for offence punishable under section 306 of Indian Penal Code and sentenced to undergo simple imprisonment for 5 years and fine of Rs. 500/- in default to suffer simple imprisonment for 3 months, respondent was also convicted for offence punishable under section 498 (A) of Indian Penal Code and sentenced to suffer simple imprisonment for 2 years and fine of Rs. 500/- in default to suffer simple imprisonment for 3 months vide Judgment and Order dated 24/10/1997. Being aggrieved by the Judgment and Order delivered by the Assistant Sessions Judge, Pune in Sessions case no. 290 of 1997, respondent herein had filed criminal appeal no. 188 of 1997.

4) Such of the facts necessary for the decision of this appeal are as follows.

5) Respondent herein was married to Manisha in the year 1987. That she had committed suicide by setting herself ablaze on 30/05/1997. That Manisha was admitted in Sasoon Hospital, Pune on 30/05/1998. She had sustained burn injuries. Her statement was recorded by P.S.I. of Khadki Police Station wherein she had disclosed

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that she was being harassed and ill-treated by her husband i.e. present respondent. That she was physically assaulted by him when he was under the influence of alcohol. That he was coercing her to fetch dowry and golden ornaments from her parental house. She has further stated that on 30/05/1997, she could not take ill-treatment any more and therefore she had set herself ablaze in the toilet of the house. She had further stated that she had no complaints against any other member of the family. She succumbed to the burn injuries on 30/05/1997 itself. On the basis of her statement crime no. 95 of 1997 was registered against accused/respondent for offence punishable under section 498 (A) and 304 (B) of Indian Penal Code. After completion of investigation, charge-sheet was filed. Case was committed to the court of sessions and registered as Sessions Case No. 290 of 1997. Learned Assistant Sessions Judge had held respondent guilty for offence punishable under section 306 and 498 (A) of Indian Penal Code.

6) Learned APP submits that judgment delivered by Assistant Sessions Judge was further modified by the Sessions Judge whereby learned Sessions Judge acquitted the respondent for offence punishable

under section 306 of Indian Penal Code without appreciating the evidence adduced by the prosecution in its proper perspective.

7) Learned counsel for the respondent submits that upon perusal of the dying declaration, it would be clear that the dying declaration recorded under section 32 of the Indian Evidence Act is neither voluntary nor truthful and nor would inspire confidence of the court. Learned counsel for the respondent has drawn the attention of this court to the substantive evidence of P.W. 2 who happens to be brother of deceased Manisha. It is seen from his evidence that present respondent and his family had admitted Manisha in an Ashram at Asavali. She was in Sevashram for almost 2 years. It also appears from the evidence that she was undergoing a phase of mental disequilibrium. It is also seen from the records that immediately after the marriage, Manisha had left the venue of the marriage.

8) In any case, according to learned counsel for the respondent, respondent herein has undergone substantive sentence of one year. There is no ground to interfere with the judgment passed by the Sessions Court as respondent was convicted for offence punishable

under section 498 (A) of Indian Penal Code and was acquitted for offence punishable under section 306 of Indian Penal Code. Upon perusal of the dying declaration it would be clear that there is no proximate relation between cause and the commission of suicide of Manisha. The dying declaration also suffers from several lacunas. It appears that there was prolonged harassment and ill-treatment to Manisha and therefore, respondent was rightly convicted for offence punishable under section 498 (A) of Indian Penal Code. Since the respondent has already undergone substantive sentence, this court is of the opinion that there is no sufficient ground to interfere with the Judgment and Order delivered by Sessions Judge, Pune thereby acquitting the respondent for offence punishable under section 306 of Indian Penal Code. Hence, following order.

ORDER

- (i) Appeal, being sans merits, stands dismissed.

(SMT. SADHANA S. JADHAV, J.)