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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.727 OF 2008

Shivanand Bhagawan Kambale,
Age : 24 years, Occ.: Labouror,
R/o.Huljanti, Tal. Mangalwedha,
Dist. Solapur.
(Presently in Sub-Jail Pandharpur)

...Appellant

Versus

The State of Maharashtra
(Through Mangalwedha Police Station)
Notice to be served on Public Prosecutor,
High Court, Mumbai.)

...Respondent

Ms.Farhana Shah, Advocate Appointed for the Appellant.

Mr.A.R.Kapadnis, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.
DATE : 5th DECEMBER, 2016***

ORAL JUDGMENT :

1. By this appeal, the appellant has impugned the Judgment and Order dated 17th June, 2008, passed by the learned Sessions Judge, Pandharpur, in Sessions Case No.14 of 2008, convicting and sentencing him, for the offences stated hereinunder:-

- for the offence punishable under Section 307 of the Indian Penal Code, to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.500/-, in default of payment of fine, to suffer further rigorous imprisonment for 15 days;
- for the offence punishable under Section 323 of the Indian Penal Code. However, no separate sentence was awarded for the offence punishable under Section 323 of the Indian Penal Code.

2. The prosecution case is as under:-

The appellant is the husband of PW.3 – Rajakka@ Rajashree Shivanand Kambale, (complainant). 3 months prior to the incident, the appellant got married to Rajakka@ Rajashree. On 8th October, 2007, the appellant is alleged to have come home after consuming liquor and is stated to have asked Rajakka for her ear-tops (karnafule). According to the prosecution, the appellant assaulted Rajakka from 10 a.m. to 3 p.m and thereafter, set her on fire by throwing a lit matchstick on her person. Rajakka's mother-in-law and neighbours are stated to have extinguished the fire, on hearing her cries for help. Rajakka was taken to a Hospital at Jat, where she was treated and thereafter to Bharati Hospital at Pune. Rajakka had sustained burn injuries on her lower extremities i.e. thigh and

some parts of her waist. PW.4 – Shivaji Baburao Waghmode recorded the statement of PW.3 – Rajakka, which is at Exhibit – 26. The said statement bears the certificate of Dr.Pawar, who has stated that the patient was conscious and in a fit condition to give her statement. PW.1 –Dr.Baban Shivaji Pawar, after examining Rajakka found, that she had sustained 35% to 40% burns, which were infected and were superficial to deep burns over both thighs, buttocks and left upper extremities. Pursuant to PW.3's statement, investigation commenced. After investigation, charge-sheet was filed as against the appellant for the offences punishable under Sections 307 and 323 of the IPC. As the offence under Section 307 was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions for trial.

The accused/appellant pleaded not guilty and claimed to be tried.

The prosecution in support of its case examined 8 witnesses, PW.1 – Dr.Baban Shivaji Pawar, Medical Officer of Bharati Hospital & Research Centre, Dhankawadi, Pune; PW.2-Shivamma Satyappa Gadekar, mother of the complainant, PW.3-Rajakka Shivanand Kambale, (complainant and injured witness); PW.4 – Shivaji Baburao Waghmode,

Police Head Constable who recorded the statement of PW.3-Rajakka at the hospital; PW.5-Harishchandra Krishna Pawar, Police Head Constable, who registered crime on the basis of the statement of PW.3-Rajakka; PW.6-Rajendra Ravppa Henale, panch to the spot panchanama and seizure of the matchstick box. The said witness was declared hostile; PW.7 –Shivaji Ransing Chavan, Police Head Constable, who investigated the case and PW.8 – Saifan Karim Mujawar, Police Inspector, Mangalwedha Police Station, who recorded the statement of the witnesses, sent the muddemal property to the C.A., and who after completion of investigation filed charge-sheet as against the appellant.

3. Learned Advocate for the appellant assailed the impugned Judgment on the following grounds; (i) she submitted that the appellant has been falsely implicated in the said case by PW.3-Rajakka, as she was married of to the appellant against her wish. She submitted that the possibility of PW.3-Rajakka setting herself on fire cannot be ruled out. She further submitted that PW.3-Rajakka was not conversant with Marathi language, and was acquainted only with Kannada language and as such her statement recorded by PW.4 – Shivaji Baburao Waghmode, Police Head

Constable in Marathi, is doubtful and cannot be relied upon. According to the learned advocate for the appellant, seizure of the matchstick, at the instance of the appellant cannot be said to be incriminating, as the said article is a common article, found in every house.

4. Learned APP supported the impugned Judgment and Order. He submitted that the appellant has rightly been convicted for the alleged offences and no interference whatsoever was warranted. He submitted that there is nothing on record to show that PW.3-Rajakka, has falsely implicated the appellant or that there was any reason to do so. He submitted that had the fire not been extinguished, PW.3-Rajakka would have certainly succumbed to her injuries.

5. Perused the papers with the assistance of the learned Advocate appointed for the appellant and the learned APP. PW.4 – Shivaji Baburao Waghmode, Police Head Constable was attached to the Jat Police Station on the said day. He has stated that Police Head Constable-Bhosale directed him to record the statement of one patient, who was admitted in Dr.Pawar's Hospital. He has stated that after receiving the said order, he went to the

hospital and made enquiry with the doctor, as to in which ward the patient – Rajakka was admitted. He has stated that the doctor took him to the said patient, pursuant to which he enquired with the doctor, as to whether the patient was in a fit condition to give the statement. He has stated that the doctor opined that the patient was in a fit condition to give the statement, pursuant to which, he made an endorsement of the said fact on the paper. He has identified the signature of the doctor, as it appears on the said endorsement. He has further stated that he requested the doctor to stay there till the statement of the patient was recorded. According to PW.4 – Shivaji, the patient had knowledge of little Marathi and was speaking in both, Marathi as well as Kannada language. He has stated that he recorded the statement of PW.3-Rajakka, according to her narration and thereafter explained the said statement to PW.3-Rajakka, in Kannada language, pursuant to which, Rajakka, signed on the said statement. He has identified the statement recorded by him and the same is exhibited at Exhibit – 26.

6. In the cross-examination of the said witness, certain suggestions were put to the said witness that he was falsely deposing that he had gone to the hospital of Dr.Pawar and asked Dr.Pawar about the

patient; that the patient was not in a fit mental condition to give the statement, that the doctor was not present with the patient, when the statement was recorded; that he was falsely deposing that the patient was speaking in both languages i.e. Marathi and Kannada; and that he did not explained the statement to the patient in Kannada language. All the said suggestions put to the said witness have been denied by him.

7. PW.3-Rajakka Shivanand Kambale, is the injured witness. An interpreter viz Mr.A.S.Bendake, Junior Clerk of the Court was given to the said witness – Rajakka (complainant) for recording her evidence. He has deposed that although he did not know to read and write Kannada language, but he could speak and understand the said language correctly and has stated that he will truthfully and correctly interpret and translate the evidence of PW.3-Rajakka, from Kannada language to Marathi language, before the Court.

8. PW.3-Rajakka, in her evidence had stated that the appellant was her husband and that the marriage between her and the appellant was solemnized 3 months prior to the incident. She has stated that after marriage

she had gone to cohabit at her matrimonial home and was residing with the appellant and her mother-in-law. She has stated that she cohabited with her husband for about 5 days. On being questioned as to how the appellant had treated her after marriage, the said witness has deposed that the appellant used to consume liquor and would assault and quarrel with her. She has stated that after 5 days, she went to her parents home for a festival and that she returned back to her matrimonial home, after 5 days. She has stated that on the day of the incident, the appellant demanded ear-tops from her and started assaulting her from 10 a.m. to 3 p.m, tied her hands and legs and set her on fire. She has stated that thereafter she ran away and that she herself tried to extinguish the fire. She has further deposed that her mother-in-law and others had taken her to the hospital. She had stated that as a result of the burn injuries, she was unable to sit and walk.

9. In her cross examination, PW.3-Rajakka has stated that when she was in the hospital she had not spoken to any person, as she as in grief. She has denied the suggestion that she was married of to the appellant, against her wish and that she disliked her husband. She has also denied the suggestion that on the day of the incident she had gone to ease herself at 3

p.m. away in the field and that she had set herself on fire and had come running to the house, after which the appellant and the neighbours extinguished the fire. Nothing substantial had come in her cross examination to discredit the testimony of the said witness.

10. PW.3-Rajakka's evidence is corroborated by the evidence of PW.2-Shivamma, Rajakka's mother. According to PW.2-Shivamma, her daughter Rajakka has disclosed to her, when she had come home, during the Panchami festival that her husband consumes liquor. She has stated that on 8th October, 2007, she learnt that her daughter had sustained burn injuries, pursuant to which she went to the hospital, at Jat. She has stated that when she asked her daughter as to how she had sustained the burn injuries on her person, her daughter disclosed that her husband had consumed liquor and demanded ear-tops and had assaulted her from 10 a.m. to 3. p.m. She has further stated that her daughter had also disclosed to her, that the appellant had thereafter, set her on fire and absconded from there; and that she herself had extinguished the fire on her person and on hearing her shouts, her neighbours and mother-in-law had brought her to the hospital.

11. Several suggestions were made to the said witness, however, the suggestions were denied by her.

12. PW.1-Dr.Baban Shivaji Pawar, Medical Officer of Bharati Hospital, Dhankawadi, Pune, has deposed that on 21st October, 2007, when he was on duty as the Casualty Medical Officer, a patient by the name of Rajakka, was admitted to the hospital. He has stated that the said patient gave him history of burns on 8th October, 2007 and disclosed that she was admitted in a hospital at Jat from 8th October, 2007 to 21st October, 2007. He has deposed that on examining the patient, he found that the patient had sustained burn injuries to the extent of 35% to 40%. He has stated that the said injuries were infected and were superficial deep burns over both buttocks and on left upper extremities. He has stated that the patient was admitted in his hospital i.e. Bharati Hospital from 21st October to 7th December, 2007. He has produced on record the case papers, which are exhibited at Exhibit – 14. The said witness has categorically deposed that if treatment was not given on time, the patient would have died due to complications on account of burn injuries.

13. There is absolutely no cross of the said witness, except as under :-

“A person sustaining burn to the extent of 30% to 35% may survive”.

14. As far as PW.6-Rajendra Ravppa Henale, is concerned, he has been declared hostile and as such his evidence is not of much use.

15. PW.5-Harishchandra Krishna Pawar, was the Police Head Constable, who was on duty at the Mangalwedha Police Station, at the relevant time as PSO. The said officer on receiving the statement of the complainant i.e Rajakka has registered C.R.No.174 of 2007, as against the appellant for the offences punishable under Sections 323 and 307 of the Indian Penal Code. PW.5-Harishchandra, thereafter, handed over the investigation to PW.7-Shivaji Ransing Chavan.

16. PW.7-Shivaji Ransing Chavan, was the Police Head Constable and was on duty at the Huljanti out post. He has stated that the investigation of the said case was handed over to him, by PW.5-

Harishchandra, pursuant to which he visited the spot, conducted the spot panchanama, arrested the appellant and thereafter recorded the statement of the appellant under Section 27 of the Indian Evidence Act. Several suggestions were made to the said witness, however, nothing substantial had come on record to discredit his testimony.

17. PW.8 – Saifan Karim Mujawar, Police Inspector, was attached to the Mangalwedha Police Station, at the relevant time. The said witness sent the muddemal property to the CA, prepared the map of the place of the incident, obtained the injury certificate of the injured- Rajakka from the medical officer and thereafter submitted the charge-sheet. Certain minor omissions were brought on record through the said witness.

18. A perusal of the entire evidence shows, that PW.3-Rajakka is a true and reliable witness. The evidence of the said witness is credible and there is nothing in her cross examination, to discredit her testimony. It is evident from the evidence of PW.3-Rajakka, that the appellant was habituated to consuming liquor and on the day of the incident had consumed liquor and had quarrelled and assaulted Rajakka from 10 a.m.

to 3 p.m. and thereafter had thrown a lit matchstick on her person, as a result of which, PW.3-Rajakka sustained 30% to 35% burn injuries. There is nothing in the cross examination to show that there was any reason for PW.3-Rajakka to falsely implicate the appellant. The statement of PW.3-Rajakka recorded by PW4 – Shivaji, is at Exhibit-26. The said statement also corroborates the statement made by her before the Court. The said statement was recorded at 17.15 hrs., by PW.4 – Shivaji, in the presence of Dr.Pawar, who has certified that PW.3-Rajakka was in a fit mental condition to make the statement. It is also evident that PW.4 - Shivaji had speaking knowledge of Kannada and had although written the said statement in Marathi, had explained the contents thereof, in Kannada to PW.3-Rajakka. The statement recorded by PW4 - Shivaji of PW.3-Rajakka i.e. Exhibit – 26, is consistent with the statement made by PW.3-Rajakka in Court. The said statement of PW.3-Rajakka is also corroborated by the statement of PW.2-Shivamma Satyappa Gadekar, Rajakka's mother. She has categorically stated that PW.3-Rajakka, on being asked had disclosed to her, that the appellant had consumed alcohol and quarreled with her and assaulted her, and at 3.00 p.m. had thrown a lit matchstick on her person and set her on fire, as a result of which she sustained burn injuries.

19. PW.1 –Dr.Baban Shivaji Pawar's, evidence shows that the nature of injuries were such that if the patient would not have been treated, the same would have resulted in her death. PW.1-Dr.Baban Pawar has stated that PW.3-Rajakka, had sustained as much as 35% to 40% burn injuries over both buttocks and left upper extremities. The medical certificate has also been placed on record.

20. It is also evident from the evidence, that the appellant had not taken PW.3-Rajakka to the hospital. The appellant was arrested only on 13th October, 2007. The evidence that has come on record is sufficient to show the complicity of the appellant, that he assaulted PW.3-Rajakka and thereafter attempted to commit her murder by setting her ablaze, by throwing a lit matchstick on her person.

21. The Judgment and order of conviction cannot be faulted and there is no infirmity in the same.

22. Learned APP informs that the Appellant is on bail. Accordingly, the bail bonds of the appellant, stands cancelled. The appellant be taken into custody forthwith, to undergo the remaining period of sentence.

23. Registry to communicate the above Judgment to the concerned Police Station i.e. Mangalwedha Police Station, Solapur.

24. The appeal being sans merit, is dismissed and disposed of as such.

25. The Court expresses a word of gratitude for the able assistance rendered by the Advocate Appointed for the Appellant. The High Court Legal Services Committee to pay the legal fees to Ms.Farhana Shah, Advocate Appointed for the Appellant, as per Rules.

REVATI MOHITE DERE, J.