

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 58 OF 2002

1. Bharat s/o Fakirchand Khillare,
Age : 26 years, Occu. Labour,
R/o Lakkadkot Area, Sambhaji Nagar,
Jalna, District Jalna

(2.) Sushila w/o Sopanrao Salve, (ABATED)
Age : 34 years, Occu. Labour,
R/o Lakkadkot Area, Sambhaji Nagar, **APPELLANTS**
Jalna, District Jalna **(ORIG. ACCUSED**
NOS. 3 AND 4)

VERSUS

The State of Maharashtra

RESPONDENT

Mr. S.S. Kazi, Advocate for Appellant No.1
Ms. R.P. Gaur, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 4th AUGUST, 2017

ORAL JUDGMENT :

Heard the learned counsel for appellant No.1
and the learned A.P.P.

2. The original accused Nos. 3 and 4 have
challenged their conviction and sentence for the offence
punishable under Section 307 read with Section 34 of the
Indian Penal Code ("IPC", for short), recorded by the

learned 1st Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 39 of 2000 on 30th November, 2001.

3. The informant Ranjana Ashok Khillare is the wife of original accused No.1 Ashok. Appellant No.1 Bharat is the brother, while appellant No.2 Sushila was the sister of original accused No.1. One Vijay (original accused No. 2) is the elder brother, while Kaushalyabai (original accused No. 5) is the mother of original accused No.1.

4. It is the case of the prosecution that all the accused, in furtherance of their common intention, subjected the informant Ranjana to cruelty and further attempted to commit her murder by setting her on fire. After receiving the report from the informant, the investigation was conducted and all the five accused came to be chargesheeted for the offences punishable under Sections 498-A and 307 read with Section 34 of the IPC.

5. The prosecution examined three witnesses, including the informant before the Trial Court. After evaluating the evidence of those witnesses, the Trial Court came to hold that the prosecution failed to

establish the guilt of accused Nos. 1, 2 and 5 for the above mentioned offences. Therefore, they came to be acquitted of those offences. The learned Trial Judge found sufficient evidence on record to establish guilt of the present appellants for the offence punishable under Section 307 read with Section 34 of the IPC only and not for the offence punishable under Section 498-A of the IPC and sentenced each of them to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default to suffer rigorous imprisonment for three months. The appellants deposited the fine amount before the Trial Court.

6. During pendency of the appeal, appellant No. 2 - Sushila expired. The appeal stood abated against her as per order dated 21st October, 2016.

7. The learned counsel for appellant No.1 submits that the FIR was lodged by the informant in the heat of anger because there were some family disputes. There had been amicable settlement considering the close relationship of the informant and appellant No.1. He submits that even when the evidence of the informant was recorded, she specifically stated that there has been compromise between the appellants and herself as she did

not wish to see them convicted. She further stated that she was residing with accused No.1 and that she has no trouble of any kind from the appellants. He submits that only because the offence punishable under Section 307 of the IPC was non-compoundable, the learned Trial Judge proceeded with the trial and ultimately convicted the appellants.

8. The learned counsel for appellant No.1, on instructions, submits that appellant No. 1 is not pressing the grounds of objections raised against his conviction and sentence in the appeal memo. He submits that appellant No. 1 was in jail from 22nd May, 1997 to 18th June, 1997 as an under-trial prisoner and further, he is in jail from 27th June, 2017 onwards after he came to be arrested in execution of the non-bailable warrant issued by this Court for securing his presence. He submits that considering the fact that there has been amicable settlement between appellant No. 1 and the informant and that their relations are now cordial, appellant No.1 may be shown leniency and sentenced to the period of imprisonment which he has already undergone.

9. The learned A.P.P. opposes this submission made on behalf of appellant No.1.

10. The incident has taken place in the year 2000. The period of about seventeen years has been elapsed after the date of the incident. Appellant No. 1 is the brother-in-law of the informant. The informant is happily residing with the brother of appellant No.1. The relations between appellant No.1 and the informant are cordial. In the circumstances, I am of the view that no good purpose would be served by sending appellant No. 1 behind the bars for a period longer than that has already undergone by him. Even this punishment would, remind him to refrain from indulging into any criminal activities. In the circumstances, I accept the prayer made on behalf of appellant No.1 and allow the appeal partly with the following order:-

O R D E R

- (i) The Criminal Appeal is partly allowed.
- (ii) The impugned judgment and order dated 30th November, 2001 passed by the 1st Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 39 of 2000, convicting appellant

No.1 of the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, is maintained as it is.

- (iii) The impugned order of sentence passed against appellant No.1 is modified and he is sentenced to suffer the imprisonment for the period which he has already undergone.
- (iv) Appellant No. 1 be released forthwith, if not required in any other case.
- (v) The appeal stands disposed of accordingly.
- (vi) The authenticated copy of this judgment and order be supplied to the learned counsel for appellant No.1, at his request.

[SANGITRAO S. PATIL]
JUDGE