

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.308 OF 2016
WITH
CRIMINAL APPLICATION NO.313 OF 2017
IN
CRIMINAL APPEAL NO.308 OF 2016**

SUBHASH GOPAL JADHAV)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Shraddha Sawant, Appointed Advocate for the Appellant.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 20th APRIL 2017

ORAL JUDGMENT :

1 The application for suspension of sentence imposed on the appellant / accused and releasing him on bail came to be argued by the learned advocate appointed to represent the appellant / accused at the cost of the State. Upon arguing that

the application for suspension of sentence filed by the accused through jail, the learned appointed advocate submitted that arguments advanced by her should be treated as her final arguments in support of the appeal. The learned APP also advanced her arguments and submitted that appeal itself can be disposed of finally in terms of the arguments advanced by her. That is how the appeal itself is being decided finally.

2 By this appeal, the appellant / accused is challenging the judgment and order dated 21st July 2014 passed by the learned Additional Sessions Judge, Greater Bombay, Mumbai, in Sessions Case No.666 of 2012, thereby convicting him of offences punishable under Sections 307 and 498A of the Indian Penal Code, 1860, and sentencing him to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.10,000/- and in default to undergo further rigorous imprisonment for 1 year for the offence punishable under Section 307 of the IPC and to suffer rigorous imprisonment for 3 years for the offence punishable under Section 498A of the IPC.

3 Facts necessary for deciding the instant appeal are thus:

According to the prosecution case, victim of the crime in question is PW1 Chhaya Subhash Jadhav. She is the wife of the appellant / accused. The couple had two sons out of this wedlock. The appellant / accused was working as a watchman whereas PW1 Chhaya Jadhav was working as a maid servant. They were residing in a tenanted room owned by one Geeta Yadav. The appellant / accused was not providing any money to his wife PW1 Chhaya Jadhav for household expenses.

4 PW13 Shantabai is mother of PW1 Chhaya Jadhav. She had sold agricultural land owned by her and had received an amount of Rs.5,00,000/-. The appellant / accused was frequently asking PW1 Chhaya Jadhav to bring money from his mother-in-law PW13 Shantabai. Because of this demand of money, there used to be frequent quarrel between PW1 Chhaya Jadhav and her husband – appellant / accused Subhash Jadhav. It is case of the prosecution that PW1 Chhaya Jadhav lodged several complaints

against the appellant / accused with D.N.Nagar Police Station and started residing separately from the appellant / accused by joining company of her mother. The appellant / accused had threatened to kill her.

5 According to the prosecution case, on 10th July 2012 at about 9.50 p.m., PW1 Chhaya Jadhav was proceeding to the house of one Alpana by Juhu-Versova Link Road for discharging her duties as a maid servant. At bus stop no.56 on that road, the appellant / accused accosted her and assaulted her by means of a sharp edged weapon on her head. PW1 Chhaya Jadhav started bleeding profusely and cried for help. Passers-by from the road gathered. PW3 Abdul Patni intervened in the assault. PW6 Mahesh Patel had also seen the incident. PW8 Salim Khan also reached the spot of the incident. Information of the incident was immediately given to the police. PW7 Gajanan Yelve - Head Constable, PW9 Ravindra Salunkhe – Police Nayak, PW10 Ijaz Shaikh – Police Nayak and PW11 Madhukar Dhuri – Head Constable reached the spot of the incident. The FIR of the

incident came to be lodged by PW1 Chhaya Jadhav. Injured PW1 Chhaya Jadhav was sent to Cooper Hospital for medical treatment. PW14 Dr.Dale Rodricues treated her at that hospital. Investigation of this Crime No.222 of 2012 for offences punishable under Sections 307 and 341 of the IPC and Section 37 read with 135 of the Bombay Police Act registered with D.N.Nagar Police Station, was carried on by PW15 Sandeep Vedpathak – P.S.I. attached to that police station. On completion of investigation, he filed charge-sheet against the appellant / accused and accordingly Sessions Case No.666 of 2012 came to be registered.

6 Charges for offences punishable under Sections 307 and 498A of the IPC and under Section 37 read with 135 of the Bombay Police Act came to be framed against the appellant / accused. He abjured his guilt and claimed trial. In order to bring home the guilt to the appellant / accused, the prosecution has examined in all sixteen witnesses. After hearing the parties, the learned Additional Sessions Judge, Mumbai, by the impugned judgment and order was pleased to convict the appellant /

accused and sentenced him as indicated in the opening paragraph of this judgment.

7 I have heard the learned advocate appearing for the appellant / accused. She vehemently argued that the incident of assault itself is not proved by the prosecution because the evidence on record suggests that mother of PW1 Chhaya Jadhav namely PW13 Shantabai had received an amount of Rs.5,00,000/- out of sale of her agricultural land and one Mahesh Chorge was demanding his share out of that amount. Evidence on record coming from cross-examination of PW1 Chhaya Jadhav and PW2 Vishal Jadhav – her son, goes to show that there used to be frequent quarrels between Mahesh Chorge and PW1 Chhaya Jadhav as well as PW13 Shantabai on account of demand of money by Mahesh Chorge and in every probability Mahesh Chorge might have assaulted PW1 Chhaya Jadhav because of this quarrel. The learned advocate further argued that evidence of PW14 Dr.Dale Rodricues serving with Cooper Hospital goes to show that the victim of the crime in question has suffered contused lacerated

wounds and it is the case of the prosecution that she was assaulted by a sharp edged weapon called as chopper. The learned advocate for the appellant / accused argued that injuries found on the victim, as such, cannot be attributed to a sharp edged weapon like a chopper and therefore, evidence of PW1 Chhaya Jadhav as well as other witnesses examined by the prosecution is not believable. Therefore, benefit of doubt goes to the appellant / accused. It is further argued that even if it is assumed that the injured had suffered injuries as disclosed by PW14 Dr.Dale Rodricues, then also, the prosecution has failed to make out the offence punishable under Section 307 of the IPC, as for attracting this penal provision, the prosecution is required to establish that the act was done with an intention to commit murder of the victim. This ingredient of the offence is missing from the evidence of the prosecution and therefore, conviction of the appellant / accused for the offence punishable under Section 307 of the IPC is bad in law. It is further argued that evidence of the prosecution is scanty in order to infer commission of the offence punishable under Section 498A of the IPC.

8 As against this, the learned APP argued that evidence of eye witnesses present on the spot shows that the appellant / accused was uttering that he wants to kill the victim of the crime and same thing is reflected even from the evidence of PW13 Shantabai – mother of the victim of the crime. This, according to the learned APP, demonstrated intention of the appellant / accused to kill the injured PW1 Chhaya Jadhav. The learned APP further argued that successive blows were dealt by chopper on head of the injured witness which reflects intention of the appellant / accused. The learned APP further argued that the injured PW1 Chhaya Jadhav was subjected to cruelty by the appellant / accused as he was harassing injured victim PW1 Chhaya Jadhav – his wife for coercing her to bring money from her mother PW13 Shantabai which she had received from sale of her agricultural land. Ill-treatment to her is reflected from reports of non-cognizable offences proved by the prosecution which are at Exhibit 48 onwards. With this, the learned APP supported the impugned judgment and order of conviction.

9 At the outset, it is apposite to note reasonings given by the learned trial court in order to convict the appellant / accused of offences punishable under Sections 307 of the IPC and 498A of the IPC. Reasoning for coming to the conclusion that the appellant / accused has committed an attempt to commit murder of PW1 Chhaya Jadhav and subjected her to cruelty culled out from the impugned judgment reads thus :

“63 It is the case of prosecution that the accused, who is the husband of victim has assaulted on road, when she was going for her work. The assault was by weapon like Chopper. It was on vital part of victim. The victim herself has deposed that while she was going for her work, the accused assaulted on her head with Chopper.

71 All the witnesses deposed as per their statements. The evidence of all the witnesses is trustworthy. The prosecution has proved the offence under Section 307 of IPC against the accused beyond reasonable doubt. Hence, I answer Point Nos. 1 in affirmative.

72 The victim has deposed that the accused used to harass her, beat her, he was not giving money for household expenses, he tortured her for demand of money. The complaint lodged in Mahila Cell and the NCs lodged by the victim, proves the physical and mental torture. She has left the house, as the accused beat her mercilessly and thereafter, he tried to kill her by assaulting her by chopper on her head. The cruelty comes under the four corners of definition of Section 498A of IPC. Hence, offence under Section 498A is proved against accused and I answer Point No.2 in affirmative.”

10 Perusal of reasonings given in these paragraphs for convicting the appellant / accused for offences punishable under Sections 307 and 498A of the IPC are as such to the effect that assault was by a weapon like chopper, seat of the injury was on head of injured PW1 Chhaya Jadhav and the appellant / accused used to harass and beat PW1 Chhaya Jadhav by not giving money for household expenses and had tried to kill her. The question will be whether such reasons are sufficient to justify conviction under Sections 307 and 498A of the IPC.

11 Now let us examine whether the prosecution has established that assault on PW1 Chhaya Jadhav was infact caused by the appellant / accused. Therefore we will consider his intention for causing such assault, if assault by him is established. It is not in dispute that PW1 Chhaya Jadhav is wife of the appellant / accused and the couple was having two sons. In this backdrop it is in evidence of PW1 Chhaya Jadhav that her husband was working as a watchman and was not giving any money to her for household expenses. She further deposed that her mother sold agricultural land from the village and the appellant / accused was demanding Rs.10,00,000/- from her mother. PW1 Chhaya Jadhav was very specific in stating that on this count the appellant / accused started beating her and she was beaten by him on 30th and 31st June 2012. She has also stated that she lodged the report of this incident to police.

12 So far as incident of assault on her is concerned, PW1 Chhaya Jadhav has stated that on 10th July 2012 at about 10.00 p.m. she was going to attend her work as a maid servant at the

house of one Alpana. The appellant / accused accosted her on her way and started assaulting her on head with a weapon like knife. She stated that she raised shouts and became unconscious. She regained consciousness at Cooper Hospital, Mumbai, and found that there were 32 stitches on her head. Cross-examination of PW1 Chhaya Jadhav shows that one Mahesh Chorge was having share in agricultural land owned by her mother PW13 Shantabai and Mahesh was quarreling with her as well as her mother on that transaction of sale. The defence has elicited from cross-examination of injured witness PW1 Chhaya Jadhav that the appellant / accused had given an amount of Rs.1 Lakh to mother of this witness i.e. to PW13 Shantabai.

13 Exhibit 19 is the FIR lodged by PW1 Chhaya Jadhav. It is in tune with her evidence. Exhibit 48 is N.C.No.1124 of 2012 lodged by PW1 Chhaya Jadhav with Police Station Versova wherein she reported that the appellant / accused did not like food cooked by her and therefore he assaulted her by means of hands. Another NC report lodged by PW1 Chhaya Jadhav is dated

1st June 2012. It is also with Police Station Versova. Averments are to the effect that by calling her on her mobile phone, the appellant / accused gave abuses to her by questioning her as to why she had vacated the room. Third NC is dated 19th July 2012 lodged with Police Station Versova by PW13 Shantabai – mother of PW1 Chhaya Jadhav. Averments therein are to the effect that the appellant / accused had threatened to kill her as well as her daughter.

14 Evidence of PW14 Dr.Dale Rodricues which is duly corroborated by contemporaneous documents in the nature of medical certificate at Exhibit 39 shows that soon after the alleged incident, PW1 Chhaya Jadhav came to be admitted to Cooper Hospital where he was serving as a Senior Registrar and upon her examination he found in all five injuries on person of PW1 Chhaya Jadhav. It, thus, makes it clear that PW1 Chhaya Jadhav had suffered injuries in the incident in question which she attributes to the appellant / accused. PW1 Chhaya Jadhav as such, is an injured witness. It is well settled that injured witnesses are

stamped witnesses whose presence on the scene of occurrence, they being the victim of the crime in question, cannot be doubted. Being an injured witness, there is no possibility that PW1 Chhaya Jadhav will spare real culprit and would rope in an innocent person. In a case of single victim and single accused, the theory of false implication does not deserve consideration for a moment.

15 Though evidence of the injured witness does not require corroboration to come to the conclusion regarding assault on such witness, let us examine whether evidence of PW1 Chhaya Jadhav is corroborated by other evidence on record. The prosecution has examined Abdul Rehman Patni as PW3 in the instant case. His evidence is to the effect that on 10th July 2012 at about 9.45 p.m., he was proceeding by his scooter from Juhu-Versova Link Road when he saw one man stabbing a woman with a chopper. This witness deposed that said person was assaulting a woman on her head and he tried to save that lady. He further deposed that injured woman fell down bleeding from her head and other people also gathered on the spot. As per version of this

witness, his T-Shirt was stained with blood and the same came to be seized by the police at the time of preparation of the spot panchnama. This witness has duly identified his T-Shirt so also the appellant / accused while in the dock. There is nothing in cross-examination of this witness to doubt his version regarding the incident. This witness is totally disinterested witness, and therefore, his testimony cannot be discarded. I see no reason to disbelieve his version. T-Shirt of this witness was sent for forensic examination and the report of the Chemical Analyser shows that human blood of "A" group was found on his T-Shirt. This material duly corroborates version of this independent witness who was rather a natural witness to the incident.

16 PW6 Mahesh Patel is another eye witness to the incident in question and presence of this witness on the spot is reflected even from the spot panchnama Exhibit 26. It is in evidence of this witness that on 10th July 2012, at about 8.50 p.m., he was coming from Linking road towards Juhu and he heard a lady shouting "bachav bachav." He saw that lady was bleeding

and two persons were present on the spot. As per version of this witness, one person was having two wheeler vehicle and the another person was assaulting that lady. Hand of the assailant was held by the another person having the two wheeler vehicle. This witness has also identified the appellant / accused as the person who was assaulting the lady on the spot. Evidence of PW6 Mahesh Patel as such, duly corroborates version of injured PW1 Chhaya Jadhav and that of PW3 Abdul Patni.

17 PW7 Gajanan Yelve, Head Constable, was on patrolling duty at Juhu-Link Road. His evidence shows that one person told him about gathering of persons near the bus stop and therefore, he rushed to the spot to see persons gathered there assaulting one person who was holding a chopper. He had also seen a lady present on the spot bleeding from her head. This witness then asked name of the person holding the chopper and that person told his name as Subhash.

18 PW9 Ravindra Salunkhe - Police Nayak, PW10 Ijaz Shaikh – Police Nayak and PW11 Madhukar Dhuri – Head Constable are other police personnels who rushed to the spot soon after the incident. They saw presence of the appellant / accused on the spot and injuries caused to him because of beating by persons who gathered on the spot. PW15 Sandeep Vedpathak – Police Sub-Inspector had then taken the appellant / accused to the police station.

19 PW8 Salim Khan is also a witness, who visited the spot soon after the incident. He is knowing the appellant / accused as well as injured PW1 Chhaya Jadhav. This witness had seen people gathered on the spot assaulting the appellant / accused Subhash in presence of PW1 Chhaya Jadhav who was smeared with blood.

20 The spot of the incident came to be inspected soon after the incident in presence of PW5 Abbas Ansari – panch witness. Evidence of this witness as well as that of PW15 Sandeep Vedpathak – Police Sub-Inspector goes to show that his two

wheeler vehicle was present on the spot and it was having stains of blood on its seat. Those stains of blood were collected by police and spot panchnama Exhibit 26 was prepared. Similarly, the chopper allegedly used in commission of crime was also seized by preparing seizure panchnama Exhibit 27. Clothes of injured PW1 Chhaya Jadhav came to be seized in presence of PW4 Shamsuddin Khan vide seizure panchnama Exhibit 24. Clothes of accused Subhash were also seized and through PW12 Suresh Rahate, Police Nayak, seized articles were sent for chemical analysis. Report of Chemical Analyser shows that clothes of the injured PW1 Chhaya Jadhav, clothes seized from the appellant / accused soon after the incident, so also T-Shirt seized from PW3 Abdul Patni were stained with human blood of "A" origin.

21 All this evidence adduced by the prosecution unerringly points out that it was the appellant / accused who had assaulted the injured PW1 Chhaya Jadhav by giving blows of chopper on her head. However, for making out the offence punishable under Section 307 of the IPC, causing of wounds by

itself is not sufficient. Rather, causing hurt is not at all necessary for making out the offence punishable under Section 307 of the IPC. Nature of wounds suffered by the victim may give some assistance to the court for inferring intention of the appellant / accused in committing the assault. Let us, therefore, examine what were the injuries suffered by PW1 Chhaya Jadhav in the incident in question. PW14 Dr.Dale Rodricues has stated that injured Chhaya Jadhav had suffered following injuries :

- “1. Left Frontal region fresh injury.
2. Left Parietal region right and left
3. Two injuries on the occipital region.
4. All the injuries were fresh.
5. All were simple injuries.”

Medical certificate issued by this witness is at Exhibit 39. Version of this Medical Officer working with the Cooper Hospital shows that injured PW1 Chhaya Jadhav had suffered five contused lacerated wounds on her head. Nature of those injuries can be seen from the Medical Certificate at Exhibit 39. It shows that all injuries were caused by a blunt weapon. Nature of those injuries as stated in Medical Certificate at Exhibit 39 are simple. It is, thus, clear that injured PW1 Chhaya Jadhav had suffered five

simple injuries by blunt weapon on her head. This obviously makes it clear that assault was not from the sharp edged side of the chopper. She was assaulted on her head by blunt side of the chopper. Exhibit 27 is the seizure panchnama of that chopper. Perusal of that seizure panchnama shows that it was a big weapon having total length of 46.5 cm. It was having sharp edge with a pointed end. However, this weapon was used from its blunt side by the appellant / accused in assault on his wife – PW1 Chhaya Jadhav.

22 At the cost of repetition, it is stated that to justify conviction under Section 307 of the IPC, it is not necessary that bodily injury capable of causing death should have been inflicted. If intention coupled with an overt act is established, then the offence punishable under Section 307 of the IPC can be made out. Such intention can be gathered from nature of weapon used, seat of the injury inflicted on the victim, force of blows, number of injuries etc. In the case in hand, though the appellant / accused was armed with a weapon having 46.5 cms. length with a sharp edge

on one side, injuries inflicted were by blunt side of the weapon. Though, blows were given by such a heavy weapon, no fracture injury to skull was caused. Resultant injuries were simple in nature. This implies that blows were not given with force. As such, it is seen that injuries were not inflicted on PW1 Chhaya Jadhav by the appellant / accused with requisite intention as well as knowledge. Therefore, considering the nature of injuries though those were caused by a heavy sharp edged weapon, it is difficult to conclude that the assault was with an intention to commit murder of PW1 Chhaya Jadhav. Therefore, though it is proved by the prosecution that the appellant / accused had assaulted PW1 Chhaya Jadhav on her head by means of a chopper, the offence is not falling under the purview of Section 307 of the IPC. Similarly, it is not falling under any of the category described in Section 320 of the IPC. Wounds suffered by PW1 Chhaya Jadhav were simple in nature as seen from the evidence of the Medical Officer and the injury certificate. Therefore, it is not possible to conclude that those wounds were endangering her life. Even PW14 Dr.Dale Rodricues has not spoken about this. There is

no other evidence to infer that hurt caused to PW1 Chhaya Jadhav falls under category 8 of Section 320 of the IPC. However, hurt was caused to PW1 Chhaya Jadhav by a chopper which is an instrument of stabbing or cutting. It is an instrument which if used as a weapon for offence can certainly cause death of a person. As such, the offence which the prosecution establishes from the evidence adduced by it falls under Section 324 of the IPC.

23 Now let us examine whether the injured wife was subjected to cruelty by the appellant / accused. Explanation to Section 498A of IPC defines the term “cruelty” and it reads thus :

“For the purpose of this section, “cruelty” means

– (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such

harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

24 The prosecution has founded its case on the accusation that the appellant / accused used to demand money which mother of the injured PW1 Chhaya Jadhav had received on account of sale of her agricultural land and due to failure to give such money, he used to subject his wife PW1 Chhaya Jadhav to cruelty. Very substratum of the prosecution case is collapsing because of version of PW13 Shantabai – mother-in-law of the appellant / accused and mother of injured PW1 Chhaya Jadhav. PW13 Shantabai has not spoken that the appellant / accused used to demand money from her through her daughter PW1 Chhaya Jadhav. Moreover, it is seen from cross-examination of PW1 Chhaya Jadhav that it was the appellant / accused who had given an amount of Rs.1 lakh to PW13 Shantabai. PW13 Shantabai has not stated in her evidence

that the appellant / accused had ever demanded back this amount of Rs.1 lakh given by him to her. PW1 Chhaya Jadhav is also not stating anything on this aspect. In the teeth of this fact situation, it is not possible to hold that there used to be demand of money by the appellant / accused to his wife PW1 Chhaya Jadhav as her mother had received Rs.5 lakh because of sale of her agricultural land. As such, it cannot be said that there was harassment of PW1 Chhaya Jadhav for coercing her to meet illegal demand of money by the appellant / accused. In this view of the matter, there is no evidence to infer “cruelty” as postulated in Clause (b) of Section 498A of the IPC.

25 Now let us examine whether the appellant / accused had subjected PW1 Chhaya Jadhav – his wife with willful conduct of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to her life, limb or health. On this aspect, what is stated by PW1 Chhaya Jadhav is to the effect that the appellant / accused was beating her and she was beaten on 30th and 31st June 2012. Though she attributed for this beating,

his demand of Rs.10 lakh from her mother, the evidence as discussed in foregoing paragraphs does not indicate this reason for the alleged beating. Moreover, PW1 Chhaya Jadhav is falsified on this aspect by her own reports which were registered as non-cognizable cases by police. Her first NC lodged with Versova Police station, as stated in foregoing paragraphs, shows assault by hand by the appellant / accused for the reason that he did not like food cooked by her. This indicates “domestic cruelty” rather than “legal cruelty” as defined by Explanation to Section 498A of the IPC. Other NCs lodged by PW1 Chhaya Jadhav are also not reflecting “cruelty” to her as defined by Explanation to Section 498A of the IPC. Those are regarding abuses by calling her telephonically and threatening to her mother. In the result, the charge under Section 498A of the IPC also fails. However, the learned trial court has recorded conviction on this count without keeping in mind ingredients of alleged offences and evidence required to prove them. Therefore, the impugned judgment and order is totally unsustainable.

26 In the result, I proceed to pass the following order :

- i) The appeal is partly allowed.
- ii) Conviction and resultant sentence imposed on the appellant / accused for the offence punishable under Sections 307 and 498A of the IPC recorded by the learned Additional Sessions Judge, Mumbai, in Sessions Case No.666 of 2012 is quashed and set aside.
- iii) The appellant / accused is acquitted of offences punishable under Sections 307 and 498A of the IPC.
- iv) The appellant / accused is convicted of the offence punishable under Section 324 of the IPC and he is sentenced to suffer rigorous imprisonment for a period of 3 years and to pay a fine of Rs.100, and in default, to undergo further rigorous imprisonment for a period of one month.

- v) The appeal is disposed of accordingly.
- vi) A copy of this judgment and order be sent to the concerned prison where the appellant / accused is reportedly undergoing the jail sentence. If the appellant / accused has undergone the sentence imposed on him by this judgment and order, he be released forthwith, if not required in any other case.
- vii) With disposal of this appeal, pending Criminal Application No.313 of 2017 stands disposed of.

(A. M. BADAR, J.)