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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1175 OF 2012

Shivaji Pandurang Darne	)
Age. 27 years, Occ: Agriculturist	)
Residing at Kewad, Taluka Madha,	)
District Solapur,	)
(At present in Solapur Central Prison	)
Solapur)	)...Appellant
	(Org.Accused No.1)

Versus

1)	The State of Maharashtra	)
	(Notice to be served on A.P.P. High)	
	Court, A.S. Bombay)	)
2)	Vandana Shivaji Dharme	)
	Age Adult, Occ. Household,	)
	residing at Manekshwar,	)
	Taluka Bhoom, Dist. Osmanabad	)...Respondents

Mr. Aashish Satpute, Court Appointed Advocate for Appellant.

Mr. S.H.Yadav -APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : NOVEMBER 19, 2018

P.C.:

1. The Appellant herein challenges the judgment and order dated 20th September, 2012 passed by the Additional Sessions Judge-2, Solapur thereby convicting the Appellant for the offence punishable under section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment and fine of Rs.20,000/-, in default, rigorous imprisonment for one year in Sessions Case No. 87 of 2012.

2. The facts of the case for deciding the appeal are as follows:

. The Original Complainant – Vandana Bai happens to be the wife of the Appellant. The couple married seven years prior to 30th June, 2011. That the Appellant and his wife were working as sugar cutters on the date of the incident. On 1st September, 2011, Chitrabai, who happens to be the sister of Vandana Bai, lodged a report at the police station alleging therein that on 30th November, 2011 at about 6.00 p.m. after working hours, her sister Vandana was returning home along with other workers, the complainant Chitrabai was walking at some distance, suddenly they heard cries of Vandana. They realized that she had been assaulted and had fallen unconscious. Chitrabai was informed by others,

accompanying Vandana that it was the Appellant, who had assaulted Vandana on her face with blow of sickle and caused grievous injuries. That the Appellant had fled from the spot. That Chitrabai and her husband had taken Vandana to Ashwini Hospital at Akluj. Chitrabai had lodged the report at the police station of the said incident and on the basis of her statement, Crime No. 232 of 2011 was registered at Temburni Police Station against the Appellant. The police had made attempts to record the statement of Vandana. However, she was unconscious and, therefore, her statement could not be recorded. Vandana was treated as an indoor patient from 30th November, 2012 to 13th December, 2011. After her discharge, the statement of injured Vandana was recorded on 16th December, 2011. On the basis of the First Information Report which is at Exhibit '21', the Accused -Appellant was arrested on 1st December, 2011. The investigation was completed and the charge-sheet was filed on 28th February, 2012. The case was committed to the Court of Sessions and registered as Sessions Case No. 87 of 2012. The prosecution examined 10 witnesses to bring home the guilt of the accused.

3. PW-1 is the injured Vandana, who happens to be the wife of the Appellant. She deposed before the Court that she was married

to the Appellant 7 years prior to the incident. He was the original inhabitant of Village Kewad, whereas the parental house of the Vandana was from Village Mankeshwar, Taluka Bhoom, District Osmanabad. She further deposed before the Court that initially, for a short period she was treated properly by her husband but subsequently she was being harassed by her husband by mainly suspecting her character / faithfulness and objecting her talking with the neighbors. She has also stated before the Court that the Appellant has become an alcoholic and insisted upon her to sell herself and fetch money by whatever means she could. She was abused by her husband and he also assaulted her under the influence of alcohol. He was also indulging in gambling. According to her, the Original Accused Nos. 2 to 4 had subjected her to harassment. That there was a demand of Rs.50,000/- from her parents and since they could not pay the same, she was ill-treated by her husband and other members of her matrimonial family. She has further alleged that her husband had borrowed an amount of Rs.50,000/- from their labour contractor and since he could not repay the same, they were working on different sites as sugarcane cutters. That he suspected her character and used to keep vigilance on her activity by following her. It is further

alleged that two days' prior to the incident, when she had been to answer nature's call in the morning, her husband was in waiting in ambush with an intention to assault her, however, he could not, since she was accompanied by other lady. As far as the incident dated 30.11.2011 is concerned, she has deposed before the Court that the incident had occurred between 5.00 p.m. to 6.00 p.m. when she was accompanying her husband and they were returning to the hut. She had informed her husband that she would not go for work on the next day due to knee ache. Her husband had suspected that she wants to be in company of some other person and a quarrel had ensued and suddenly the accused inflicted blow of sickle on her face. She received injury on her left ear, nose, cheek and teeth. He had continued to assault her even after she had fallen down and she had become unconscious. The thumb of her left hand was severed. She had regained consciousness at the hospital of Dr. Inamdar at Akluj.

4. It is pertinent to note that as far as the incident is concerned and the role of the accused is concerned, PW-1 has not been shattered. She has admitted that after marriage she has resided with her husband for 16 days and then returned to her matrimonial house and stayed there for six months. In the cross

examination, suggestion is given that she was in relation with one Vilas Raut, who was neighbor of his parents. The said suggestion was denied. It was also suggested that there was some illicit relations with Rambhau Sawala. That she had intimate relation with Rambhau Sawala and, therefore, Vilas Raut was annoyed with her and there used to be quarrels between them. She has denied all the suggestions. A specific suggestion was given as to whether, after the incident, the clothes of the injured and the assailant were stained with blood and she had admitted the same. It is an admitted position that the blood stained clothes of the accused were seized in the course of investigation. There is no ground to disbelieve the testimony of PW-1.

5. PW-2 Chitra Hande, happens to be the sister of injured Vandana, as far as the incident dated 30th November, 2011 is concerned, she has deposed before the Court that at about 6.00 p.m. to 6.30 p.m. after completing the work at the sugarcane field, they all returned home. Vandana and her husband were in the field. They were accompanied by Kashibai. Suddenly one boy and Kashibai informed her about the assault by accused to Vandana. She rushed to the spot and saw bleeding injury sustained by Vandana and she was unconscious lying on the spot. The accused

had fled away from the spot before her arrival. Kashibai happens to be an eye witness to the incident. According to PW-2, the details of the incident were narrated to her by Kashibai. For the reasons best known to the prosecution, the substantive evidence of Kashibai has not been recorded. PW-2 has proved the contents of the FIR and same is marked at Exhibit '21'. The injured was taken to the hospital by PW-2 and her husband Bharat Hande.

6. In the course of investigation, blood stained clothes of the Accused were seized. Similarly a sickle was also seized. At the time of admission, the history of assault was given.

7. PW-3 and PW-4 are the panchas. PW-3 – Pandurang Devrao Ghadage has acted as a pancha for seizure of the blood stains soil and the ring of clothes which were carried out by the injured. PW-4 – Dattatraya Maruti Khatal is the panch for attachment of blood stained clothes of the injured. PW-5 is Niwas Pawar, who was ASI attached to Temburni Police Station on 30th November, 2011. He was deputed for recording the statement of Vandana Dharme. But since the injured was unconscious, her statement could not be recorded. He had registered Crime No. 243 of 2011 against the Accused-Appellant. The witness has not been shaken in his cross-examination. PW-6 – Saudagar Vitthal Waghmare has

acted as panch for seizure of clothes of the accused and said panchnama is marked as Exhibit '31'. PW-7 – Dr. Anant Manikrao Kulkarni was attached to Ashwini Hospital, Akluj. He has submitted the case papers of Vandana, which are at Exhibit '35'. He has proved the certificate issued by him. He has deposed before the Court that Vandana has sustained bone deep fracture of nasal bone and fracture premaxilla and left maxilla. Injury to left parotid gland-lower end and incised wound to both nasal cartilage and median septum. According to PW-7, her thumb was amputated and there was a fracture of 2nd and 3rd metacarpals. The nerves were cut. He has further opined that all injuries were grievous in nature and caused by sharp weapon. He has placed before the Court the photographs of Vandana which were taken prior to her treatment and after the injuries were sutured. He has admitted in the cross examination that he had given an intimation to the nearest police station about admission of Vandana in an injured state. He has admitted that the patient and the relatives had not disclosed the name of the assailant at the time of admission and, therefore, he has not named the accused in his report to the police.

8. PW-8 is the pancha, who seized the articles from the accused in the course of investigation.

9. PW-9 – PSI Sachin Vasantrya Saste, who was attached to Temburni Police Station. He has admitted that the investigation was carried out by P.I. Shinde. He had met with an accident and, therefore, the further investigation was carried out by PW-9. PW-9 had recorded the statement of Vandana and some other witnesses. On the basis of her statement, he had also charged the accused with an offence punishable under section 498A of the Indian Penal Code. PW-10- Prabhakar Shinde was working as a police inspector attached to Temburni Police Station. He had carried out initial investigation. In the cross examination, he has admitted that the accused -Appellant was apprehended at Village Takli where the incident had occurred. His address was furnished by Bharat Hande, who happens to be the husband of Chitrabai. According to him, it had transpired in the course of investigation that at the time of incident, Rameshwar Kale was one of the member of sugar cutter gang and he was working at some distance from Vandana. He has denied the suggestion that Vandana was assaulted by an unknown person.

10. Upon scrutinizing the substantive evidence recorded at the time of trial, it is more than clear that the present Appellant was the author of the injuries sustained by Vandana. That the First

Information Report was lodged soon after the incident. The incident was narrated to the first informant by Kashibai. However, she has not been examined by the prosecution.

11. The learned counsel appointed for the Appellant submits that the first information report has been lodged on the basis of hearsay evidence and, therefore, the same cannot be considered as gospel truth. However, the evidence of PW-1 would make it more than clear that she has actually seen her husband assaulting her and there was no reason to falsely implicate him as they were working together. That Vandana was not on cordial terms with any other person. She had candidly denied any relationship either with Vilas Raut or Rambhau Sawala. Moreover, Chitra was working at a short distance from Rameshwar Kale and, there is nothing on record to indicate that Vandana was assaulted by any other person other than the Appellant. This is a case of direct evidence. The injuries could be fatal in the eventuality that she had not received medical aid immediately.

12. The Appellant has undergone about 6 years, 6 months and 33 days in custody. In view of the above observations, the conviction deserves to be upheld. Although the sentence needs to be modified. Hence, the following order:

ORDER

- (i) The appeal is party allowed.
 - (ii) The conviction of the Appellant for the offence punishable under section 307 of the Indian Penal Code is upheld.
 - (iii) The sentence is modified to the extent that the Appellant shall undergo 8 years rigorous imprisonment .
 - (iv) The sentence of fine is upheld.
 - (v) In the eventuality that the Appellant has deposited the fine amount, the original complainant would be entitled to be receive an amount of Rs.15,000/- towards compensation.
 - (vi) The Additional Sessions Judge, Solapur shall issue notice to the injured Vandana and pay her an amount of Rs.15,000/-.
In the eventuality that the amount of fine is not deposited, the Appellant shall undergo further rigorous imprisonment for a period of 6 months.
13. The appeal stands disposed of in the aforesaid terms.

14. This Court had requested learned counsel Mr. Ashish Satpute to espouse the cause of the Appellant. He graciously accepted to espouse the cause of the Appellant and assisted the Court in a short period. His professional fees are quantified at Rs.2,000/- be paid within eight weeks.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam