

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****CRIMINAL APPEAL NO.449 OF 2002**

Siraj Abdul Kadar Momin.	]	
Age - 46 years, Occ. - Service,	]	
R/at - Shahir Anna Bhau Sathe Nagar,	]	
Colony No.6, Ganjpeth, Pune - 411 042.	]	... Appellant / (Orig. Accused)

Versus

The State of Maharashtra.	]	... Respondent
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Mr. Abhaykumar Apte for Appellant.
Mr. Rajan Salvi, APP for State.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 08 MAY, 2018

JUDGMENT :-

1. The Appellant has preferred this Appeal challenging the Judgment and Order dated 31/07/1999 passed by the Additional Sessions Judge, Pune, in Sessions Case No.464 of 1998. By the said impugned Judgment, the learned trial Judge has convicted the Appellant for commission of the offence punishable under Section 307 of the IPC and he was sentenced to suffer R.I. for seven years to pay fine of Rs.500/- and in default to suffer R.I. for three months. The

Appellant was also convicted for the offence punishable under Section 498A of the IPC and he was sentenced to suffer R.I. for three years and to pay fine of Rs.300/- and in default to suffer R.I. for two months. Both the sentences were directed to run concurrently and the Appellant was granted set off for the period already undergone in custody during trial.

2. The prosecution case pertains to the incident dated 05/08/1998 when the Appellant had poured sulphuric acid on the person of his wife Jahira. In the process, some acid was spilt on their two children Gufran and Asifa. The accused himself had suffered burn injuries in the process. This incident was a fallout of a strained relationship between the Appellant and his wife. They had got married in the year 1977 and had five children from their marriage. The Appellant was working with the Fire-Brigade at Pune. The Appellant got addicted to liquor and stopped attending his work since January 1998. The Appellant used to demand money from Jahira and there used to be frequent quarrels between them. The Appellant used to harass her and always used to demand money. This conduct of the Appellant had made her life miserable.

3. Since one month prior to August 1998, the Appellant had started residing separately. On 04/08/1998, the Appellant came to the house where Jahira and their children were residing in Colony No.6, Annabhau Sathe Nagar, Ganj Peth, Pune. He picked up quarrel and demanded money. On Jahira's refusal to make payment, he demanded Talaq and asked her to come to his Advocate's office. Jahira did not pay any heed to his demands. On 05/08/1998 at about 12.30 p.m., the Appellant again went to Jahira's house and picked up quarrel. The Appellant started abusing her. Jahira wanted to go to market to buy vegetables. As she bent down to pick up her bag, the Appellant poured concentrated sulphuric acid on her which he had brought in a plastic can. In the process, some portion of the acid was spilt on their children Gufran and Asifa and on the Appellant himself. Jahira started shouting. The Appellant ran away from the spot. Gufran went running to Khadak Police Station. PSI Mane who was on duty, immediately came to the spot of incident. By that time, Jahira was removed to Sassoon Hospital by the neighbours. PSI Mane sent Gufran and Asifa to the hospital with a yadi for treatment. PSI Mane went to Sassoon Hospital and recorded Jahira's statement which was treated as the FIR. The offence was registered vide C.R.No.147 of

1998 at Khadak Polilce Station under Sections 498A, 307, 323 and 506 of the IPC. Special Judicial Magistrate was requisitioned to recorded the statement of Jahira. Accordingly he recorded her statement. The Appellant was arrested on the same day at 3.30 p.m. He was also referred to Sassoon Hospital for treatment as he had suffered burn injuries. PSI Mane then conducted the spot panchanama. The clothes of the victims as well as the acid mixed earth from the spot were collected and seized. The articles were sent for chemical analysis. The clothes of the accused were sealed and they were also sent for chemical analysis. The statements of various witnesses were recorded and on completion of the investigation, the charge-sheet was filed.

4. After filing of the charge-sheet, the case was committed to the Court of Sessions for trial. The charges were framed on 13/04/1999 under Sections 498A and 307 of the IPC. In support of its case, the prosecution examined PW 1 Prakash Vinayak Pawar as the pancha who was present when the spot panchanama was carried out. PW 4 Laxman Nagurao Raot was examined as the superior officer of the Appellant and he has proved that the Appellant was

remaining absent since January 1998. This witness also deposed that the Appellant was addicted to liquor. PW 5 Vijayraj Bhormal Oswal had sold concentrated sulphuric acid to the Appellant in August 1998. PW 6 Dr. Prakashchandra Roopchand Desnani produced the injury certificate of the Appellant. PW 8 Dr. Manoj Shankat Todkar deposed about the nature of injuries suffered by Jahira. PW 9 Dr. Naryan Krishna Kamble deposed about the injuries suffered by Gufran and Asifa. PW 7 PSI Suresh Shankar Mane had conducted major part of the investigation. The main prosecution witnesses were PW 2 Jahira who was the wife of the Appellant and had suffered major injuries. PW 3 Asifa was the daughter of the Appellant who was an eye witness and herself an injured in the incident. The defence of the Appellant was that of the total denial. After recording the evidence, the statement of the Appellant under Section 313 of the Code of Criminal Procedure, 1973 was recorded and after hearing the arguments advanced on behalf of both the parties; the learned trial Judge was pleased to pass the Judgment and Order and convicted the Appellant as mentioned above.

5. I have heard Mr. Abhaykumar Apte, learned Counsel for the Appellant. I have also heard Mr. Rajan Salvi, learned APP for State. With their assistance, I have gone through the record and proceedings and have also read the impugned Judgment.

6. As mentioned earlier, the prosecution case mainly relies on the evidence of PW 2 Jahira and PW 3 Asifa. PW 2 Jahira Siraj Momin, in her deposition, has stated about the past history. She was married with the Appellant in the year 1977 and they had five children. She has further deposed as to how the Appellant was addicted to liquor and that he had stopped attending his work with the Fire-Brigade department of the Corporation. She has deposed that the Appellant used to demand money and on that count he used to pick up quarrels with her. According to her, the Appellant had started residing separately since one month prior to the incident dated 05/08/1998. PW 2 Jahira did not know where the Appellant was residing during that period. On 04/08/1998, the Appellant came to her and demanded money and when she refused to pay, the Appellant threatened that he would divorce her by giving Talaq. On 05/08/1998 at about 12.30 p.m., the Appellant returned to her with a

plastic bag containing a plastic can in his hand. At that time, PW 2 Jahira was about to go out of the house to purchase vegetables. The Appellant picked up quarrel with her and when she bent down to pick up a bag, he poured acid on her person from the can which he had brought with him. She suffered burn injuries on her chest, back, hands, ears, face, etc. Some part of the acid spilt on her children Gufran and Asifa. She has narrated further that the neighbours took her to Sassoon Hospital where the police and the Special Judicial Magistrate recorded her statement. The FIR lodged by this witness is produced by the prosecution at Exh.11. She has stated that she was in the hospital for about 10 days and that she has suffered permanent damage to her skin. This witness has identified the articles i.e. her clothes, quilt, bedsheets, plastic can etc. In her cross-examination, she has stated that the Appellant had poured acid from the plastic can in a white tin container and then threw it on her. She has deposed in her cross-examination regarding the complaint which she had made around May 1998 but the same complaint is not brought on record. The statement recorded by the Special Executive Magistrate is produced on record at Exh.12 but since Jahira had survived the attack, her evidence assumes importance and the statement recorded

by the Special Executive Magistrate is not as important at her deposition in Court. Even in her statement before the Special Executive Magistrate, she has categorically stated that the Appellant himself had poured acid on her.

7. PW 3 Asifa Siraj Momin, in her deposition, has corroborated the evidence of PW 2 Jahira in all material aspects. She has stated that the acid fell on her hands and legs. At the time of the incident, she was 13 years of age. She has further deposed that her brother Gufran was not in a proper mental state to depose before the Court.

8. Apart from these two important witnesses, the evidence of the other witnesses is also important in this case. PW 1 Prakash Pawar has proved the spot panchanama and has proved that the articles were properly sealed by the police in his presence from the spot. The articles were sent by the I.O. for chemical analysis. The CA reports are produced on record at Exh.31 which show that the clothes of the victims, hair of Jahira and the earth collected from the spot had presence of sulphuric acid.

9. PW 4 Laxman Raut was the superior officer of the Appellant. He has deposed that the Appellant was absent from the duty from January 1998. In the cross-examination, he has further stated that the Appellant was addicted to liquor.

10. PW 5 Vijayraj Oswal is another important witness who had sold acid to the Appellant in the first week of August 1998 i.e. just before the incident dated 05/08/1998. The Appellant was immediately arrested on that day. It means that the Appellant had purchased sulphuric acid before the incident dated 05/08/1998. This witness was knowing the Appellant as there were regular transactions of sale of sulphuric acid between them. The Appellant was carrying out a side business of polishing iron chains for which he needed sulphuric acid. This witness has admitted that he had not issued any receipt for this transaction.

11. PW 6 Dr. Prakashchandra Desnani has produced the medical certificate in respect of the injuries suffered by the Appellant. He has deposed that the Appellant had suffered the following injuries.

- (i) Superficial burn marks on right dorsom of the hand posterior aspect of the wrist, 5 x 2 inches, skin blackish, surrounding area reddish and swollen.
- (ii) Superficial burn marks on right forearm, upper third medio-posteriority, 2.½ inches x 2 inches, skin blackish, surrounding area reddish,
- (iii) Superficial two burn marks on right lateral side of abdomen ½ x ¼ inch, ¼ x ¼ inch, skin blackish, surrounding reddish, tenderness present.
- (iv) Contusion on right leg at junction of upper and middle third anteriorly, 2.½ x 2 inch, skin bluish, tenderness present.
- (v) Contusion on left leg anteriorly in middle third 2.½ x 2 inches, skin bluish, tenderness present.

12. PW 9 Dr. Naryan Kamble has deposed about the injuries suffered by Gufran and Asifa. Gurdan had suffered one burn injury admeasuring 1 x ¼ cm whereas Asifa had suffered 21 superficial burn injuries on her leg. PW 7 PSI Suresh Shankar Mane had conduced major part of the investigation as mentioned earlier.

13. PW 8 Dr. Manoj Shankar Todkar is another important witness in this case who has treated Jahira on her admission to Sassoon Hospital. According to him, Jahira had suffered 31% burns. This witness had noted down the history given by Jahira in the MLC papers wherein she has clearly named the Appellant as the person who had poured acid on her. Significantly, this witness has deposed

that if emergency medical treatment was not given to Jahira, there was likelihood of her succumbing to the burn injuries. She was treated from 05/08/1998 to 14/08/1998 and she was discharged against medical advice. He has deposed in the cross-examination that the injuries sustained by her could have caused danger to her life and if she was not treated in time, the burn injuries were sufficient in the ordinary course of nature to cause her death.

14. After considering the evidence on record, I find that the evidence given by PW 2 Jahira and PW 3 Asifa is wholly reliable. They were the victims of the attack and had suffered injuries. PW 3 Asifa had fully corroborated the evidence of PW 2 Jahira. Their evidence is also supported by the medical evidence. The other circumstances of their clothes having been burnt due to presence of sulphuric acid, is sufficiently established. The spot of the incident is not in dispute. Therefore, the presence of the Appellant at the time of the incident is properly established through their evidence. There is nothing on record to doubt the veracity of their evidence. The defence has not brought on record any circumstance to show that these two witnesses were not telling the truth. Therefore, in my

opinion, the learned trial Judge has not committed any error in holding that the Appellant himself was the perpetrator of the crime in question. The presence of the Appellant is established by another circumstance and that is the injury suffered by himself. The prosecution has proved that the Appellant himself had suffered burn injuries during the incident. This is another strong circumstance against the Appellant. The prosecution has brought on record the motive behind this attack. PW 2 has given history of their strained relationship. PW 2 and PW 4 have deposed that the Appellant was addicted to liquor. PW 2 has stated that he was constantly demanding money and on that count was harassing PW 2. The Appellant was demanding that PW 2 should accede to his demand of getting divorce. All these factors clearly show that the Appellant had motive to commit this offence and had actually committed this offence.

15. Mr. Apte submitted that the prosecution has not examined the independent witness Firozabai who wanted to go with Jahira to purchase vegetables. The prosecution has also not examined Gufran and therefore, adverse inference should be drawn. Mr. Apte further submitted that the tin container which is referred to by Jahira in her

deposition, was not seized from the spot and therefore, her story is doubtful. I find no force in this submission because the prosecution has proved its case beyond reasonable doubt through the evidence of PW 2 Jahira and PW 3 Asifa. Since Jahira had bent down to pick up a bag and at that time, the Appellant had poured kerosene on her, therefore, she was not expected to see in exactly what manner the acid was poured on her and therefore, the absence of a tin container was not of much importance.

16. The nature of harassment described by PW 2 also proved that the harassment and ill-treatment meted out by the Appellant to her was of such an extent that it would clearly fall within the meaning of 'cruelty' as mentioned under Section 498A of the IPC. PW 2 was constantly being abused, threatened and finally was attacked by the Appellant. A series of acts by the Appellant brings this offence within the ambit of Section 498A of the IPC.

17. Insofar as the offence of Section 307 of the IPC is concerned, in this regard, the evidence of PW 8 Dr. Manoj Todkar is important. This witness had treated Jahira when she was admitted to Sassoon Hospital. This witness has clearly stated that if emergency

treatment was not given to her, there was strong likelihood that Jahira would have succumbed to her injuries. The medical evidence shows that she has suffered 31% burn injuries. This high percentage of burns can be fatal in a given case. This witness has categorically stated that the injuries were sufficient in the ordinary course of nature to cause death. The Appellant was dealing with sulphuric acid and he was fully aware of the consequences of pouring concentrated sulphuric acid on any person. The Appellant had gone to Jahira's house fully prepared by carrying concentrated sulphuric acid in a plastic can. He had gone to her with a specific intention to cause this attack. The Appellant was fully aware of the effect it could cause on a person and he executed his plan. Therefore, it can safely be held that the Appellant had all the intentions to commit murder of Jahira. He committed this act with such intention and knowledge that by his act he would have caused death of Jahira.

18. The learned trial Judge has taken into consideration all these aspects and has given cogent reasoning while passing the impugned Judgment and Order. Therefore, I see no reason in interfering in her conclusion.

19. Mr. Apte submitted that the incident has taken place almost 20 years ago and the Appellant has undergone major portion of his sentence and therefore, leniency should be shown to him. However, looking at the nature of the offence, it is not possible to reduce the sentence. The injuries suffered by Jahira have left permanent marks not only on her person but also on her mind. Even their children suffered burn injuries. The Appellant does not deserve any sympathy for his act and therefore, I am not inclined to reduce the sentence.

20. With the result of the above discussion, I find no merit in the instant Appeal. The Appeal accordingly stands dismissed.

(SARANG V. KOTWAL, J.)