IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.614 OF 2001

Ashpak Iquramuddin Shaikh
Age – 44 yrs., Occ : Business,
R/at – Indira Nagar, Gultekadi, Pune. ... Appellant/
Orig. Accused

versus

1. The State of Maharashtra
(At the instance of
Swargate Police Station, Pune,
C.R.No.62/99)

2. Sultana Ashpak Shaikh
Age : 41 yrs. Occ : Labourer.
R/at – Dias Plot, Gultekadi, Pune. ... Respondent
(Original Complainant)

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- Mr.Abhaykumar Apte, Advocate for the Appellant.
- Mr.Rajan Salvi, Addl.P.P. for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 07th MAY, 2018.

JUDGMENT :

1. In this Appeal, the Appellant has challenged the Judgment and Order dated 19/06/2001 passed by the 6th Additional Sessions Judge, Pune, in Sessions Case No.187/99,

whereby the Appellant was convicted for the offence punishable u/s 326 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine, was sentenced to suffer rigorous imprisonment for one year. Out of the fine amount of Rs.5,000/-, the amount of Rs.4,000/- was directed to be paid to the First Informant Sultana Ashpak Shaikh u/s 357 (1) of Cr.P.C. Sultana Shaikh is the Respondent No.2 in the present Appeal. Though she is served, she has not entered her appearance.

2. I have heard learned Counsel Mr.Abhaykumar Apte, for the Appellant and Mr.Rajan Salvi, Addl.P.P. for the State of Maharashtra.

3. The Appellant was initially charged for commission of offence punishable u/s 498-A and 307 of the Indian Penal Code. As per the charge framed on 13/07/1999, the prosecution case, is that the Appellant was married to Sultana Shaikh and was

treating her with cruelty. The Appellant was doubting her character and subjected her to mental and physical torture. His acts fell within the ambit of section 498-A of IPC. On 02/03/1999 at about 11.00 a.m., Sultana was assaulted by the Appellant with knife in front of Dinesh Provision Stores. She was assaulted on various parts of her body and therefore the Appellant was charged for commission of offence punishable u/s 307 of IPC.

4. In its support, the prosecution examined six witnesses. P.W.1 Sultana Shaikh was the wife of the Appellant and was the victim. She has lodged the First Information Report against the Appellant. P.W.2 Babitai Appa Londhe was the neighbour of P.W.1 and was an eyewitness to the incident dated 02/03/1999, when Sultana was assaulted by the Appellant. P.W.3 Gulab Husen Sherif Shaikh was another eyewitness to the incident of assault. P.W.4 Dr. P. Satish Bhat had examined Sultana Shaikh on 02/03/1999 and has deposed about the injuries suffered by her and has produced the medical certificate on record. P.W.5

Kasam Abdul Pathar was a Pancha when the spot panchanama was drawn. P.W.6 Anil Appa Londhe was another Pancha, in whose presence the clothes of the Appellant and the weapon of assault i.e. the knife, were seized. P.W.7 Rajesh Singh Arjunsingh Shandel was examined as the Investigating Officer. Besides the oral evidence, Panchanama in respect of the seizure of clothes of the accused and the Inquest Panchanama were produced on record. The Spot Panchanama was produced at Ex.33 and the Medical Certificate was produced at Ex.28.

5. The defence of the Appellant was of total denial and according to him, as he had advanced some amount to Sultana's father, to avoid the repayment, he was implicated falsely.

6. After recording the evidence as well as the statement of the accused u/s 313 of Cr.P.C. and after considering the submissions made on behalf of the parties, the learned Trial Judge acquitted the Appellant from the offence punishable u/s 498-A and 307 of IPC. The Appellant was convicted u/s 326 of IPC and was sentenced as mentioned earlier.

7. The prosecution story unfolds through the evidence of the First Informant, who is the victim in this case. According to her she was married to the Appellant one year prior to the incident of assault. The Appellant used to sell vegetables on a handcart. According to the complainant the Appellant was addicted to liquor and gambling and used to spend all his earnings on such vices. The Appellant used to doubt her character. On one occasion, the Appellant even sold her ornament without her knowledge. Getting fed up of his behaviour, Sultana left him and started residing with her parents. All these incidents led the Appellant to hold grudge against Sultana. On the date of incident Sultana was standing in a queue to purchase kerosene in front of a grocery shop of one Tiwari. At that time, the Appellant came there and started quarreling with her. The Appellant took out a knife and by threatening Sultana assaulted on her head, hands, back and neck. She received serious bleeding injuries. She fell down and became unconscious. She was taken to Sasoon Hospital. Her statement was recorded there, which was treated as the First

Information Report. The said FIR is produced on record at Ex.20. Sultana identified the knife which was produced in the Court. In her cross-examination she has stated that she had not filed any complaint against the Appellant for ill-treatment or harassment. Sultana has denied most of the suggestions put to her in her cross-examination, including one that she was assaulted on her hand only. A strange suggestion was put to her that she had assaulted the Appellant with Can. Sultana of course denied that suggestion. She further denied that she had filed this false case because of the dispute with the Appellant.

8. P.W.2 Babitai Appa Londhe was Sultana's neigbour and she was present in front of the grocery shop, as she had also gone there to buy kerosene. At that time, the Appellant came there and assaulted Sultana. This witness has narrated the incident of assault. She has further stated that the Appellant was running away, but the people standing there, including this witness, caught him and he was taken to Police Chowky. There is hardly any cross-examination of this witness and she has

denied the suggestion that she was deposing falsely at the instance of Sultana and police.

9. P.W.3 Gulab Husen Sherif Shaikh has similarly narrated the incident. He was another eyewitness to the incident as he was present there to buy kerosene. He has corroborated the evidence of P.W.1 and P.W.2 in respect of the assault. This witness was amongst the group of people who had apprehended the Appellant on the spot. This witness has admitted in his cross-examination that Sultana was his niece. He has denied the suggestion that he had not witnessed the incident and at that time he was present elsewhere.

10. P.W.4 Dr. P. Satish Bhat was examined to prove the injuries suffered by the victim. The list of injuries mentioned in his deposition, is as follows;

1. Lacerated wound over left temporo-parietal region of size 8 cm in length (Injury was sutured at Casualty ward).

2. 2 CLWs on nape of neck of size 5 x 8 cm.

3. CLW on left shoulder of size 4 cm in length.

4. 2 CLWs on left mastoid of size 2 cm each.

5. CLW on left acromium of 3 cm in length.

6. CLW on right scapula, spine base, length 5 cms.

7. CLW with severed tendons on right lower dorsal forearm of size 5 x 6 cm. It was bone deep.

8. CLW on right thenar eminence of 5 cms length.

9. Degloving injury on right index finger, proximal aspect of med. side, of size 5 cms.

10. Amputated injury on last two segments of right middle finger (distal 2 phalanges).

11. CLWs on fourth and fifth finger, transverse in direction on proximal phalanges.

12. CLWs on lateral cubital fossa of 2 cm length.

11. Thus, these were 12 injuries. According to him injury Nos.7 and 10 were grievous injuries. This witness has opined that the injuries were sufficient to cause death of the patient in

ordinary course of nature. In his cross-examination he has admitted that the injury Nos.1, 2 and 4 were not dangerous as they were not sufficient to cause death.

12. P.W.5 Kasam Abdul Pathar was present when the Spot Panchanama was drawn and blood samples on the spot were collected.

13. P.W.6 Anil Appa Londhe was the Pancha in whose presence clothes of the accused as well as the weapon were seized. He has denied the suggestion that he has signed the Panchanama which was already written by the Police. The prosecution has produced chemical analysis report in respect of the blood group of the Appellant and Sultana. But the prosecution has not produced on record the C.A. report in respect of the weapon and the clothes of the accused. The C.A. report indicate that the analysis of the blood of the Appellant for blood grouping was inconclusive and the blood group of the victim was 'O' group. However, these reports do not further the

prosecution case in any manner in the absence of any report in respect of weapon or the clothes of the accused.

14. P.W.7 Rajesh Singh Arjunsingh Shandel had conducted the investigation. He had recorded the complaint. He had drawn the Spot Panchanama. He had arrested the Appellant and had conducted the investigation in general.

15. After considering the evidence on record, the learned Trial Judge believed the evidence of eyewitnesses. However, the learned Judge recorded his opinion that the offence punishable u/s 307 of IPC was not made out as the Appellant did not cause injuries on vital parts, though he had ample opportunity to do so. The learned Judge held that there is no convincing evidence regarding ill-treatment given by the accused and that there was no corroborative evidence in respect of the cruelty and therefore the Appellant was acquitted for the offence punishable u/s 498-A of IPC.

16. The learned Counsel Mr.Abhaykumar Apte submitted that the prosecution case does not appear to be true. There was no occasion for the Appellant to assault Sultana as she was already residing separately from him. He submitted that there was a possibility that Sultana was assaulted by her first husband because she had divorced him and had humiliated him. He further submitted that, even the evidence of the eyewitnesses does not appear to be truthful as they had not tried to rescue the victim.

17. On other hand, Mr.Rajan Salvi, the learned Addl.P.P. supported the impugned order and submitted that the prosecution has proved its case beyond reasonable doubt. Mr.Salvi emphasized on the evidence of the victim, the eyewitnesses and the Medical Officer. Mr.Salvi submitted that based on this evidence the Court had to draw an inescapable conclusion that the Appellant was the perpetrator of the crime and he was rightly convicted.

18. Having gone through the entire record and after considering the rival submissions, I am of the opinion that the Trial Court has not committed any error in convicting and sentencing the Appellant. The prosecution case rests particularly on the evidence of the victim herself and on the evidence of the two eyewitnesses. The victim Sultana has categorically described as to how the Appellant had fallen in bad habits and was consistently in need of money. Though Sultana was residing separately with her parents, relations between the Appellant and Sultana were not good.

19. On the date of incident, when Sultana was standing in the queue, the Appellant came there, assaulted her and threatened to kill her. Sultana has described as to how she was assaulted by the Appellant. She had suffered 12 injuries. Her evidence is fully supported and corroborated by P.W.2 and P.W.3, who were natural witnesses and who were also present there for purchasing kerosene. Those two witnesses are from the same locality and the incident which had taken place, was in

front of a grocery shop, from where P.W.1, P.W.2 and P.W.3 wanted to purchase kerosene. There is no inconsistency between the evidence of these witnesses. Merely because, the P.W.2 was her neighbour and P.W.3 was her relative, it cannot be a ground to discard their evidence. To make matter worse for the Appellant, he was caught right on the spot by the people who had gathered there. From the spot itself, the Appellant was taken to Police Chowky. The Appellant has not offered any explanation as to how he came to be apprehended at the spot at that time. Though the prosecution has not placed on record the chemical analysis report in respect of the clothes and the weapon; the fact that the Appellant was caught right at the spot, is sufficiently established by the prosecution. Thus, taking into account the evidence of the victim Sultana, the eyewitnesses and the factum of the Appellant having been apprehended at the spot, it leaves no manner of doubt that the incident had taken place as it is described by the P.W.1, P.W.2 and P.W.3.

20. The Medical Officer who was examined as P.W.4 Dr. P.

Satish Bhat, has described the injuries suffered by Sultana. This witness has given the list of 12 injuries, which were present on the upper part of her body including neck, shoulder, head and back. Out of these 12 injuries the injury Nos.7 and 10 were grievous injuries. The medical evidence shows that her right hand middle finger was amputated. Thus prosecution has established that Sultana had suffered grievous injuries caused by a deadly weapon like knife. Hence the offence u/s 326 is proved by the prosecution against the Appellant. The learned Trial Judge has rightly given him benefit and has acquitted him for commission of the offence punishable u/s 307 of IPC. It is evident that all these injuries on the head and neck are simple in nature. Therefore the offence u/s 307 of IPC is not made out and the Appellant has rightly been given benefit in that behalf.

21. Considering all these aspects I am of the opinion that the learned Trial Judge has rightly recorded his findings and has properly convicted the Appellant u/s 326 of IPC.

22. At this stage, the learned Counsel Mr.Apte submitted that leniency be shown to the Appellant as the incident had occurred on 02/03/1999 i.e. nearly 19 years ago. He further submitted that the Appellant and Sultana are now residing together and therefore this is a fit case in which some leniency can be shown to the Appellant. However, there is nothing on record to suggest that the Appellant is residing peacefully with Sultana as of today. Considering the fact that the incident had occurred in front of people at around 11.00 a.m. in the morning causing panic in the locality and also taking into account the injuries suffered by the victim and in particular the injury causing amputation of her right middle finger, I am not inclined to interfere with the sentence awarded by the Trial Court.

23. With the result, I do not find any merit in the Appeal. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)