

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.282 OF 2018

RAJESH RAVINDRA DUDHAGI)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mrs.Nasreen S.K.Ayubi, Advocate for the Appellant.

Mr.Amit Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

**DATE : RESERVED ON 26th AUGUST 2019
PRONOUNCED ON 28th AUGUST 2019**

JUDGMENT :

1 By this appeal, the appellant/convicted accused is challenging the judgment and order dated 25th April 2014 passed by the learned Ad-hoc Additional Sessions Judge, Solapur, in Sessions Case No.138 of 2013 thereby convicting him of offences punishable under Sections 307, 498A, 377, 355, 509 and 323 of the Indian Penal Code. For the offence punishable under Section

307 of the Indian Penal Code, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.3,000 and in default to undergo rigorous imprisonment for 6 months. For offences punishable under Sections 498A and 377 of the Indian Penal Code, on each count, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 3 years apart from direction to pay fine of Rs.1,000 and in default to undergo rigorous imprisonment for 3 months. For the offence punishable under Section 355 of the Indian Penal Code, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 2 years apart from direction to pay fine of Rs.1,000 and in default to undergo rigorous imprisonment for 3 months. For offences punishable under Sections 509 and 323 of the Indian Penal Code, on each count, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 1 year apart from direction to pay fine of Rs.1,000/- whereas the default sentence is simple imprisonment for 1 month and rigorous imprisonment for 1 month respectively.

2 Facts leading to the prosecution and resultant conviction of the appellant/convicted accused can be summarized thus :

- (a) The First Informant is wife of the appellant/convicted accused. She is the victim of the crime in question, who lodged report on 18th January 2013 with Police Station MIDC, Solapur City, against the appellant/convicted accused which resulted in registration of Crime No.17 of 2013.

- (b) According to the prosecution case, the PW1/First Informant married the appellant/convicted accused on 28th November 2001 and out of this wedlock, she gave birth to two sons namely Shrinivas who is examined as PW4 and Shreyas. From the year 2002, the appellant/convicted accused started subjecting his wife i.e. the PW1/First Informant to cruelty by beating her by means of fist and kick blows as well as by confining her in the house. He used to suspect character of the PW1/First Informant and used to abuse her. The appellant/convicted accused used to drive her out of the

house at odd night hours and was not providing food to her. He used to insist her to bring one tola of gold from her parental relatives. The appellant/convicted accused used to compel the PW1/First Informant to perform oral sex on him and he used to urinate on her face and then used to prohibit her from washing her face. He used to insist the PW1/First Informant to indulge in prostitution and to supply money to him. Apart from this, the appellant/convicted accused used to insist his wife i.e. the PW1/First Informant to make her sister-in-law ready for having sex with him. Many a times, the appellant/convicted accused used to throttle the neck of the PW1/First Informant. Apart from subjecting the PW1/First Informant to cruelty, the appellant/convicted accused used to beat and harass his mother Sharda and sister Geeta. Because of this harassment by the appellant/convicted accused, Sharda and Geeta left the house by leaving the PW1/First Informant in the company of the appellant/convicted accused.

- (c) The incident of attempting to commit murder of the PW1/First Informant by the appellant/convicted accused lastly took place on 18th January 2013 at their residential house. Prior to this incident, mother and sister of the appellant/convicted accused had already left the house being fed up with harassment of the appellant/convicted accused. In the morning hours of 18th January 2013, the appellant/convicted accused constricted the neck of the PW1/First Informant and because of shouts of their son, that attempted came to be aborted. Thereafter, the appellant/convicted accused confined the PW1/First Informant in one room of the house. After sometime, PW6 Saraswati Shete – a social worker, came to the house of the appellant/convicted accused accompanied by his mother Sharda and sister Geeta. The PW1/First Informant came to be rescued by them and taken to Police Station MIDC, Solapur City, where she lodged report Exhibit 22 on 18th January 2013 itself, resulting in registration of the crime in question.

(d) Routine investigation followed. The PW1/First Informant was sent for medical examination at the Civil hospital, Solapur, where she was examined by PW5 Dr.Kirti Gaikwad. On completion of investigation, the appellant/convicted accused came to be charge-sheeted. The learned trial court framed and explained the Charge to the appellant/convicted accused, who abjured his guilt and claimed trial. In order to bring home the guilt to the appellant/convicted accused, the prosecution has examined in all seven witnesses. The First Informant/wife of the appellant/convicted accused is examined as PW1 and her First Information Report (FIR) is at Exhibit 22. Neighbour named Sangita Gaikwad is examined as PW2. Sanjay Bagalkote – brother of the PW1/First Informant is examined as the PW3. Son of the couple namely Shrinivas Dudhagi is examined as PW4. Medical Officer of the Civil Hospital namely Dr.Kirti Gaikwad is examined as PW5. Social worker Saraswati Shete is examined as PW6 whereas Investigating Officer Vishwanath Sid, Police Sub-Inspector, is examined as PW7.

- (e) Defence of the appellant/convicted accused, as seen from the line of cross-examination of prosecution witnesses, is to the effect that the appellant/convicted accused is of unsound mind and as such, incapable of knowing the nature of act which he was doing. Similarly, according to the appellant/convicted accused, he is falsely implicated and has not committed any crime. He, however, did not enter in the defence.
- (f) After hearing the parties, by the impugned judgment and order, the appellant/convicted accused came to be convicted and sentenced, as indicated in the opening paragraph of this judgment.

3 I have heard Mrs.Nasreen Ayubi, the learned advocate appointed to represent the appellant/convicted accused at the costs of the State. She, vehemently, argued that except interested witnesses, no independent witnesses are examined by the

prosecution. In her submission, evidence of the PW1/First Informant is not inspiring confidence and that evidence of PW3 Sanjay Bagalkote is hearsay in nature. Mrs.Nasreen Ayubi, the learned advocate, further argued that evidence of PW4 Shrinivas Dudhagi is an outcome of tutoring and at the relevant time, he was a child witness. According to the learned advocate for the appellant/convicted accused, no case for the offence punishable under Section 307 of the Indian Penal Code is made out as there is no supporting medical evidence. With this, the learned advocate prayed for allowing the appeal.

4 As against this, the learned APP supported the impugned judgment and order of conviction and the resultant sentence.

5 I have considered the submissions so advanced and perused the record and proceedings including the oral as well as documentary evidence.

6 Considering the nature of allegations leveled against the appellant/convicted accused, entire case of the prosecution hinges on testimony of the victim of the crime in question i.e. the PW1/First Informant, who happens to be wife of the appellant/convicted accused, so also on testimony of PW4 Shrinivas Dudhagi, who being son of the couple, is a natural witness to the incident, which took place inside the house of the appellant/convicted accused and the PW1/First Informant. Let us, therefore, examine whether testimony of these witnesses is inspiring confidence.

7 Evidence of the PW1/First Informant is in tune with the prosecution case. She has categorically stated that the appellant/convicted accused used to quarrel with her on flimsy grounds and used to abuse and assault her by means of fist and kick blows. In addition to this, the PW1/First Informant has stated that the appellant/convicted accused used to insist her to remain nude in the house and to perform oral sex on him. As per version of the PW1/First Informant, the appellant/convicted accused used

to insist her to indulge in prostitution for earning money and for giving that earned money to him. The PW1/First Informant further testified that the appellant/convicted accused used to urinate on her face and used to prohibit her from washing the face. She has spoken about confinement suffered by her because of the appellant/convicted accused. As stated by the PW1/First Informant, apart from assaulting her, the appellant/convicted accused used to assault his mother as well as his sister and was insisting the PW1/First Informant to make his own sister ready for having sex with him. The PW1/First Informant has spoken about two incidents of throttling of her neck by the appellant/convicted accused, prior to the last such incident. She stated that in the second incident of throttling, she became unconscious for about ten minutes and had regained consciousness on sprinkling water on her face by inmates of her house. As stated by the PW1/First Informant, prior to the incident in question, because of assault, her mother-in-law had left the house and had been to Village Valsang.

8 So far as the last incident dated 18th January 2013 is concerned, as stated by the PW1/First Informant, in the morning hours of that day, at about 5 to 5.30 a.m., the appellant/convicted accused throttled her neck and consequently, she shouted for help. Upon that, as stated by the PW1/First Informant, her son woke up and started crying and requested the appellant/convicted accused to leave his mother. Then, after sometime, PW6 Saraswati Shete accompanied by her mother-in-law and sister-in-law came to the house and rescued her from confinement. They, then, took her to police station, where she lodged report Exhibit 22. There is nothing in cross-examination of the PW1/First Informant to disbelieve her version regarding the ill-treatment meted out to her by the appellant/convicted accused. This witness denied the suggestion that the appellant/convicted accused was suffering from attacks of insanity. However, there are no further questions to the PW1/First Informant to the effect that all such acts, as alleged by the PW1/First Informant, were taking place when the appellant/convicted accused was under attack of insanity. Cross-examination of the PW1/First Informant

further reveals that the appellant/convicted accused used to stand on the road wearing only underwear and baniyan and when women from the area used to question such behaviour, he used to abuse them in filthy language. Thus, cross-examination of the PW1/First Informant could not create any dent in her testimony regarding the incidents which were taking place in the matrimonial life of the PW1/First Informant, at the instance of the appellant/convicted accused. Evidence on record does not suggest that the appellant/convicted accused was of unsound mind. Law presumes that every person of the age of discretion is a sane, unless contrary is proved.

9 The PW1/First Informant had lodged report about the incidents in her matrimonial life on 18th January 2013 when lastly there was an attempt strangulate her manually and her subsequent confinement by the appellant/convicted accused. The FIR lodged with promptitude after this incident is fully corroborating the testimony of the PW1/First Informant.

10 Evidence of the PW1/First Informant is gaining further corroboration from the testimony of her son PW4 Shrinivas Dudhagi, who was sharing the house with her as well as the appellant/convicted accused. This witness, at the relevant time, was 12 years old. He was administered oath by the learned trial court after ascertaining his understanding by questioning him. As per version of PW4 Shrinivas Dudhagi, the appellant/convicted accused used to throttle neck of his mother by saying that he would kill her. He deposed that his father used to assault his mother, grandmother as well as paternal aunt by means of a bat after quarreling with them. So far as the incident in question is concerned, PW4 Shrinivas Dudhagi has stated that he heard shouts of his mother when he was sleeping in the house and therefore, he woke up at 5.00 a.m. He, then, saw the appellant/convicted accused throttling neck of his mother i.e. the PW1/First Informant by both hands and at that time, he was uttering that he would kill her. PW4 Shrinivas Dudhagi testified that he as well as his younger brother then started shouting and then his father left his mother. Thereafter, as stated by PW4

Shrinivas Dudhagi, PW6 Saraswati Shete came and took his mother and others to the police station. In cross-examination, this witness has candidly stated that nobody had tutored him about what to depose in the court and he has stated what took place before him in his chief-examination. PW4 Shrinivas Dudhagi is son of the appellant/convicted accused and as such, he has no reason to falsely implicate his own father. I see no reason to disbelieve version of this child witness as the same is truthful and trustworthy. Thus, PW4 Shrinivas Dudhagi has fully corroborated version of the PW1/First Informant.

11 Evidence of the PW1/First Informant is gaining corroboration from version of PW6 Saraswati Shete, who was doing social work apart from earning her livelihood by doing tours and travel business. She has spoken about visit of mother of the appellant/convicted accused to her for narrating ill-treatment given by the appellant/convicted accused to them. PW6 Saraswati Shete stated before the court that in the morning hours of 18th January 2013 i.e. at about 6 to 6.30 a.m., accompanied by mother

and sister of the appellant/convicted accused, she went to the house of the appellant/convicted accused and insisted him to open the door of the house. When the appellant/convicted accused was threatened about police action, he opened the door. As per version of PW6 Saraswati Shete, upon entering the house, they found the PW1/First Informant confined in one room of the house. She was rescued by removing the bolt of the door. That is how, as per version of PW6 Saraswati Shete, the PW1/First Informant was taken to the police station for lodging the report. Cross-examination of PW6 Saraswati Shete reveals that she had given evidence in many cases of crime against women. This material brought on record in cross-examination is in no manner helpful to the defence as in the chief-examination itself, PW6 Saraswati Shete made it clear that she is a social worker and she visited house of the appellant/convicted accused when his mother and sister complained about ill-treatment by the appellant/convicted accused to them. Evidence of PW6 Saraswati Shete, as such, makes it clear that when she visited the house of the appellant/convicted accused, she found the PW1/First Informant

confined in one room of that house by the appellant/convicted accused. Thus, version of the PW1/First Informant stands corroborated by evidence of PW6 Saraswati Shete, to a large extent.

12 After lodging the report, the PW1/First Informant was taken to Civil hospital, Solapur, by police and on the very same day i.e. on 18th January 2013, she came to be examined by PW5 Dr.Kirti Gaikwad. Evidence of this Medical Officer shows that the PW1/First Informant narrated to her that the appellant/convicted accused throttled her neck and assaulted her. Upon examination of the PW1/First Informant, PW5 Dr.Kirti Gaikwad noticed following injuries :

- “(i) Blunt trauma to ear and nose caused by blunt and hard object, simple in nature
- (ii) Blunt trauma to head caused by blunt and hard object. It was 4 days back and simple in nature
- (iii) Blunt trauma to both upper limbs and lower limbs, caused by blunt and hard object, simple in nature.

Version of PW5 Dr.Kirti Gaikwad is corroborated by contemporaneous record made by her in the form of Medico Legal Certificate at Exhibit 29. This Medical Officer further deposed that the incident of constriction of neck of the PW1/First Informant took place about 11½ hours prior to her examination and therefore, marks on the neck of the PW1/First Informant were not visible. Cross-examination of this witness shows that she has not specifically mentioned in the case record that the PW1/First Informant was assaulted by her husband but this aspect is not of any consequence as the Medical Officer is not supposed to record history given by the patient in detail. Finding of injuries on person of the PW1/First Informant by the Medical Officer corroborates the case of the prosecution that the appellant/convicted accused had assaulted the PW1/First Informant on 18th January 2013.

13 Now let us examine whether the appellant/convicted accused, on 18th January 2013, had attempted to commit murder of the PW1/First Informant. The prosecution by its clear and cogent evidence has established the fact that the

appellant/convicted accused had constricted neck of the PW1/First Informant at about 5 to 5.30 a.m. of 18th January 2013. He was uttering that he wanted to kill the PW1/First Informant at that time. The intention of the appellant/convicted accused in constricting the neck of the PW1/First Informant by choosing vital part of the body makes out the case for the offence punishable under Section 307 of the Indian Penal Code. Apart from that, causing other injuries to the victim of the crime in question reflects intention of the appellant/convicted accused in constricting the neck of the victim.

14 Constant beating, confinement, unnatural sex and indecent behaviour of the appellant/convicted accused reflected from evidence of the PW1/First Informant makes it clear that offence of subjecting a married woman to cruelty is made out. Similarly, it is also established that by insisting the PW1/First Informant to perform oral sex on him, the appellant/convicted accused had committed the offence punishable under Section 377 of the Indian Penal Code. The appellant/convicted accused used

to assault the PW1/First Informant indiscriminately for dishonouring her without any slightest provocation. It is also clear from evidence adduced by the PW1/First Informant that the appellant/convicted accused had outraged her modesty by insisting her to indulge in prostitution and for insisting her to make her sister-in-law ready for having sex with the appellant/convicted accused.

15 In the result, no case for interference in the finding as well as the sentence recorded by the trial court is made out. The appeal is, therefore, devoid of substance and therefore, the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)