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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO.427 OF 2016

Vijay Saavitra Gaikwad

Age : 36 years,

R/o : Room No.11, Shramik Chawl,
Ramnagar, Tembhipada, Bhandup (West),
Mumbai – 400 078.

At present Appellant is in Judicial Custody
(Nasik Central Prison, Nasik.)

..Appellant
(Ori. Accused)

Versus

The State of Maharashtra
(Tilak Nagar Police Station,
C.R.No.327 of 2012.)

...Respondent
(Orig. Complainant)

Ms.Yogini A. Ugle, for the Appellant.

Mr.V.V.Gangurde, A.P.P. for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 29th MARCH, 2019

ORAL JUDGMENT :

1. The Appellant vide Judgment and Order dated 24th February, 2015, passed by learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, in Sessions Case No.370 of 2013, has been convicted and sentenced as under:-

- for the offence punishable under Section 307 of the Indian Penal Code, to suffer R.I for 10 years and to pay fine of Rs.1,000/- in default of payment of fine, to undergo further R.I. for 1 month;
- for the offence punishable under Section 498A of the Indian Penal Code, to suffer R.I. for 3 years and to pay fine of Rs.500/- in default of payment of fine, to undergo further R.I. for 15 days.

Both the sentences were directed to be run concurrently.

2. The prosecution case in brief, is as under:-

PW1-Anusaya Gaikwad, is the Appellant's second wife. It is a second marriage of both i.e. of the Appellant and PW1. According to the PW1-Anusaya, the Appellant would assault and threaten her, as a result of which, she had lodged 2 NC complaints prior to the date of the incident i.e. 19th December, 2012. According to PW1-Anusaya, on 19th December, 2012 at 12.15 p.m. the Appellant assaulted her with a blade on her neck, when she was on the Vidyavihar Skywalk. The said incident was witnessed by PW1's nephew i.e. PW3 – Kisan Kailash Zhanke. PW3 – Kisan Kailash Zhanke, immediately informed the police and took PW1-Anusaya, to the Rajawadi Hospital. After receiving medical aid, PW1-Anusaya was

discharged. Pursuant to the said incident of assault, PW1-Anusaya lodged a complaint/FIR, as against the Appellant with the Tilak Nagar Police Station, Mumbai, for the offences punishable under Sections 307 and 498A of the Indian Penal Code.

After investigation, charge-sheet was filed as against the Appellant, in the Court of the learned J.M.F.C. As the offence punishable under Section 307 of the Indian Penal Code was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

Charge was framed as against the Appellant, to which he pleaded not guilty and claimed to be tried. The prosecution in support of its case examined eleven witnesses. PW1-Anusaya (injured) and wife of the Appellant ; PW2 – Shyam, Bapu Pawar, panch to the spot panchanama; PW3 – Kisan, nephew of the PW1-Anusaya and an eye-witness to the incident of assault; PW4-Sunil Gunaji Salunkhe and PW5 – Sumit Ravindra Kadam, panchas to the recovery panchanama i.e. blade from the Appellant; PW6 – Suhas Sudam Nimbalkar, Patrolling Officer ; PW7 – Dr.Ameya Ajit Asarkar, Medical Officer from Rajawadi Hospital; PW8- Rajesh Pandurang Kadam, panch to the seizure of Appellant's clothes ; PW9 – Prashant Balkrishna Sawant (Investigating Officer), who recorded

the FIR and prepared the spot panchanama and arrested the accused ; PW10 – Govind Santu Gambhire (Investigating Officer), with respect to the recovery of blade, at the instance of the Appellant and PW11 – Shrihari Ramchandra Bahirat (Investigating Officer) who filed the charge-sheet.

3. Learned Counsel for the Appellant does not seriously press the Appeal on merits. She, however, states that the medical evidence on record will show that the injury sustained by the PW1-Anusaya (injured) was a simple injury. She submitted that having regard to the fact that the Appellant is in custody since 19th December, 2012, the Appellant be let off on undergone sentence. Learned Counsel for the Appellant also does not seriously dispute the presence of the Appellant at the spot.

4. Learned A.P.P. supports the impugned Judgment and Order and submits that no interference is warranted.

5. Heard learned counsel for the parties and perused the evidence/papers with the assistance of the learned counsel.

6. The Appellant is the husband of PW1-Anusaya. It appears from the evidence on record that the Appellant and PW1-Anusaya were married to each other, for about 2 to 3 years prior to the incident. It also appears from the evidence of PW1-Anusaya that the Appellant would assault and threaten her, pursuant to which she had lodged 2 NCs, as against the Appellant, just a few days prior to the incident of 19th December, 2012. PW1-Anusaya has stated that as she apprehended some danger, she requested her nephew, PW3 – Kisan to accompany her. She has stated that on 19th December, 2012, at about 12.15 p.m., when she reached the Vidyavihar Skywalk, the Appellant came from behind and assaulted her on her neck with a blade. It appears that PW3 – Kisan, nephew of PW1-Anusaya, was not present at the spot, and had gone close by to purchase vadapav, from where he witnessed the said incident. According to the PW3 - Kisan, prior to the incident, there was some altercation which took place between the Appellant and PW1-Anusaya, as PW1-Anusaya was not visiting his house. The Appellant was apprehended at the spot by the public and was handed over to the police. His clothes were found stained with blood, so also the clothes of PW1-Anusaya. Blood was also collected from the spot. It is thus evident, that the Appellant assaulted PW1-Anusaya, on

19th December, 2012, as deposed by her at about 12.15 p.m. on the Vidyavihar Skywalk.

7. Although, learned counsel for the Appellant submitted that PW7-Dr.Asarkar has admitted in her cross examination that the injury sustained by PW1-Anusaya, could be a self inflicted injury. There is no merit in the said submission. A perusal of the evidence of PW7-Dr.Asarkar, shows that she was attached to Rajawadi Hospital as a House Surgeon, at the relevant time. She has stated that she was on OPD duty on 19th December, 2012, when a patient viz. Anusaya Gaikwad (PW1) was brought by her relatives. She has stated that the patient has given the history of assault by her husband with a blade on her neck anterior part. She has stated that the injury was possible by a weapon like blade. According to PW7-Dr.Asarkar, the said injury was a fresh injury, but was simple in nature, requiring no hospitalization. She has stated that the length of the injury was about 7 cm whereas width was 1 cm, however, the depth was not stated.

8. The Appellant is in custody since 19th December, 2012. Having regard to the evidence on record, no infirmity can be found in the impugned Judgment and Order of conviction of the Appellant under Sections 307 and 498A of the Indian Penal Code. However, as far as the sentence imposed for the offence under Section 307 of Indian Penal Code, is concerned, having regard to the peculiar facts of the case, the same is reduced from 10 years to 7 years. The Appellant to be released forthwith, if he has completed the said sentence of 7 years, unless required in any other case.

9. The Appeal is partly allowed in the aforesaid terms and is accordingly disposed of.

REVATI MOHITE DERE, J.