

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.180 OF 2018

AJAY BHAGWAN RAUT

)...APPELLANT

V/s.

1) THE STATE OF MAHARASHTRA

)

)

2) ARTI AJAY RAUT

)...RESPONDENTS

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

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 26th AUGUST 2019

JUDGMENT :

1 By this appeal, the appellant/convicted accused is challenging the judgment and order dated 31st May 2017 passed by the learned Additional Sessions Judge, Vasai, District Palghar, in Sessions Case No.66 of 2015 thereby convicting him of offences punishable under Sections 326A and 498A of the Indian Penal

Code. On the first count, he is sentenced to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.25,000/- and in default to undergo rigorous imprisonment for 1 year. On another count, he is sentenced to suffer rigorous imprisonment for 2 years apart from direction to pay fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for 3 months. Substantive sentences are directed to run concurrently by the learned trial court.

2 Facts leading to the prosecution of the appellant/convicted accused and his resultant sentence can be summarised thus :

- (a) First Informant Arti Ajay Raut, who happens to be the victim of the crime in question, is the wife of the appellant/convicted accused. She married the appellant/convicted accused 17 years prior to the incident and out of the wedlock, she is having two sons namely PW3 Ankit and Smit. As the appellant/convicted accused was not doing any job for earning livelihood, there used to be

frequent quarrels in the house. The appellant/convicted accused used to assault and abuse First Informant/PW1 Arti Raut. He used to suspect her character. Hence, from six months prior to the incident, she started residing separately at her parents house along with her two sons.

- (b) The incident of causing burn injuries to PW1 Arti Raut took place in wee hours of 20th November 2015 near the bathroom, adjacent to the parental house of PW1 Arti Raut. When she came out of the bathroom, somebody with veiled face embraced her from behind. That person tried to pour acid in her mouth and in that attempt, the liquid from the container fell on her cheek, face, wrist, abdomen as well as elbow. PW1 Arti Raut suffered burn injuries. She was then taken to Sir D.M.Petit Municipal Hospital at Vasai. Her statement came to be recorded at that hospital on 20th November 2014 and accordingly, Crime No.I-187 of 2014 came to be registered at Police Station Vasai.

- (c) During course of investigation, spot came to be inspected in presence of PW2 Austin Futado, panch witness by Investigating Officer PW5 Waman Mhatre, Police Sub-Inspector. Spot panchnama Exhibit 20 came to be prepared and from the spot of the incident, one full shirt and yellow coloured container came to be seized. The appellant/convicted accused came to be arrested. Seized articles were sent for chemical analysis. On completion of routine investigation, the appellant/convicted accused came to be charge-sheeted. The learned trial court framed and explained the Charge for offences punishable under Sections 326A and 498A of the Indian Penal Code to the appellant/convicted accused. He pleaded not guilty and claimed trial.
- (d) In order to bring home the guilt to the appellant/convicted accused, the prosecution has examined in all five witnesses. Injured First Informant Arti Raut is examined as PW1. The report lodged by her is at Exhibit 17. Panch witness Austin

Futado is examined as PW2 and Spot Panchnama is at Exhibit 20. Ankit Raut – son of PW1 Arti Raut as well as the appellant/convicted accused is examined as PW3. Dr.Rani Badlani, Medical Officer working in Sir D.M.Petit Municipal Hospital, Vasai, is examined as PW4. Report of her medical examination is at Exhibit 28. Investigating Officer Waman Mhatre is examined as PW5.

- (e) The defence of the appellant/convicted accused was that of total denial. He contended that after marriage, he refused to change his religion and therefore, false report came to be lodged against him.
- (f) After hearing the parties, the learned trial court came to be conclusion that the appellant/convicted accused had subjected his wife PW1 Arti Raut to cruelty, as explained by Explanation to Section 498A of the Indian Penal Code and on 20th November 2014, he voluntarily caused grievous hurt to her by throwing acid on her person and thereby

committed offence punishable under Section 326A of the Indian Penal Code. The said judgment and resultant order of conviction is impugned in the instant appeal

3 I have heard Mrs.Ayubi, the learned advocate appearing for the appellant/convicted accused. She argued that evidence of prosecution witnesses namely PW1 Arti Raut and PW3 Ankit Raut indicates that the person who flung acid on PW1 Arti Raut had concealed his identity by wearing a scarf on his face whereas the spot panchnama shows that shirt was found on the spot. PW3 Ankit Raut has accepted the fact that the assailant was not wearing a scarf. It is argued that no acid injuries were found on the person of the appellant/convicted accused and such evidence is not forthcoming. The prosecution witnesses are deposing that the assailant carried acid in the bottle whereas what was seized from the spot was a container having lid. Clothes of either the victim or the appellant/convicted accused were not seized by the prosecution, and therefore, story of the prosecution is doubtful. The learned advocate further argued that the learned

trial court committed error in imposing fine of Rs.25,000/- on the appellant/convicted accused and default sentence of rigorous imprisonment for 1 year for the offence punishable under Section 326A of the Indian Penal Code, by ignoring evidence of prosecution witnesses.

4 The learned APP supported the impugned judgment and order of conviction and resultant sentence.

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

6 So far as the offence punishable under Section 326A of the Indian Penal Code is concerned, I see no reason to differ with the conclusion arrived by the learned trial court in holding the appellant/convicted accused guilty of the said offence. It is seen from evidence of the First Informant/ PW1 Arti Raut that after leading sufficiently long married life with the appellant/convicted accused, she started residing separately from him by taking her

both sons with her, because of matrimonial disputes. It is in her evidence that on 20th November 2014, she woke up at 5.00 a.m. and had been to the bathroom for answering nature's call. When she came out of the bathroom, one person came from behind. He had wrapped a piece of cloth around his face. That person tried to pour some liquid in her mouth from the bottle held by him. However, because of jerk, the liquid from that container dropped on her person causing burns to her chin, breast, abdomen and elbow. PW1 Arti Raut deposed that hearing her shouts, her elder son PW3 Ankit came out and they both caught hold of the said person, who was ultimately found to be the appellant/convicted accused. Neighbours also came on the spot and that is how the appellant/convicted accused came to be apprehended. Evidence of PW1 Arti Raut shows that then she was admitted to the hospital from where she lodged report Exhibit 17. Despite searching cross-examination of this witness, nothing came on record to disbelieve her version regarding the incident of sustaining burns by the acid, so also apprehension of the appellant/convicted accused on the spot itself. Cross-examination of PW1 Arti Raut shows that the

appellant/convicted accused had lost his job after birth of their elder son Ankit and thereafter, he started plying auto rickshaw and he used to spend his earnings on liquor. Cross-examination of this witness further reveals that the appellant/convicted accused made various efforts to bring back PW1 Arti Raut from her parental house but she was unwilling to cohabit with him, due to his addiction of liquor.

7 PW3 Ankit, who happens to be the elder son of the couple, is corroborating the version of his mother PW1 Arti Raut. Evidence of PW3 Ankit is showing that on 20th November 2014, at about 5.00 a.m., he heard alarms of PW1 Arti Raut and then rushed out of the house. PW3 Ankit deposed that he then caught hold of a person running away and removed a scarf like cloth found wrapped on face of that person. PW3 Ankit testified that the said person was found to be his father i.e. the appellant/convicted accused. Cross-examination of PW3 Ankit shows that there used to be quarrels between his father and mother and then his father used to beat his mother PW1 Arti Raut.

In cross-examination, PW3 Ankit admitted that the cloth which was found wrapped on face of the appellant/convicted accused was not a scarf.

8 Cumulative effect of evidence of PW1 Arti Raut and PW3 Ankit unerringly points out that in the morning hours of 20th November 2014, it was the appellant/convicted accused who poured acid on person of PW1 Arti Raut and caused burn injuries to her. The appellant/convicted accused was residing separately from PW1 Arti Raut and in the morning hours of 20th November 2014, immediately after the incident, he was apprehended by PW1 Arti Raut and her son PW3 Ankit on the spot itself. As such, it cannot be said that the prosecution has not proved the fact that the appellant/convicted accused was not the person who had poured some corrosive substance on person of PW1 Arti Raut causing burn injuries to her. The FIR Exhibit 17 lodged with promptitude fully corroborates version of PW1 Arti Raut.

9 Evidence of PW4 Dr.Rani Badlani, Medical Officer working with Sir D.M.Petit Municipal Hospital, Vasai, shows that soon after the incident i.e. at about 6.15 a.m. of 20th November 2014, she had examined PW1 Arti Raut and found following injuries on her person :

- “i) Acid burn injury over mandibular and right side of face
- ii) Burn injury at left forearm anterior aspect and right elbow region anterior aspect
- iii) Burn under both breast over the chest and over the abdomen
- iv) Burn injury at right lateral side of the chest”

Evidence of this Medical Officer shows that PW1 Arti Raut had sustained 15 to 20 % burn injuries because of acid. Evidence of PW4 Dr.Rani Badlani is corroborated by contemporaneous Medical Certificate Exhibit 28.

10 Evidence of PW2 Austin Futado and PW5 Waman Mhatre, Investigating Officer, shows that on the very same day of the incident, the spot came to be inspected and a full shirt as well

as yellow coloured container came to be seized from the spot by preparing Spot Panchnama Exhibit 20. PW5 Waman Mhatre had sent the bottle seized from the spot of the incident so also the shirt for chemical analysis vide forwarding letter Exhibit 33. Chemical Analyser's Report at Exhibit 26 shows that traces of Nitrate radicals from nitric acid were detected in the container seized from the spot of the incident. PW4 Dr.Rani Badlani has categorically deposed that burn injuries caused to PW1 Arti Raut can be sustained by sulphuric acid or nitric acid. Finding of residues of nitric acid in chemical analysis of the container seized from the spot of the incident corroborates version of PW1 Arti Raut. This evidence is sufficient to hold that it was the appellant/convicted accused who caused burn injuries to PW1 Arti Raut by pouring acid on her. Therefore, no error can be found in conviction of the appellant/convicted accused for the offence punishable under Section 326A of the Indian Penal Code. He is rightly sentenced to suffer rigorous imprisonment for 10 years on that count.

11 However, so far as imposition of fine of Rs.25,000/- and default sentence of 1 year of rigorous imprisonment for the offence punishable under Section 326A of the Indian Penal Code is not in consonance with the settled law of imposition of fine and default sentence. In the matter of **Shantilal vs. State of M.P.**¹ it is held thus, in paragraphs 31 and 32, by the Honourable Apex Court while dealing with imposition of fine and default sentence :

“31.....The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or otherwise. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the

1 (2007) 11 SCC 243

court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine.”

32 A general principle of law reflected in [Sections 63 to 70, IPC](#) is that an amount of fine should not be harsh or excessive. The makers of [IPC](#) were conscious of this problem. The Authors of the Code, therefore, observed;

“Death, imprisonment, transportation, banishment, solitude, compelled labour, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the legislature, in assigning these punishments to offences, may safely neglect the differences produced by temper and situation. With fine, the case is different. In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence.’ (Ratanlal & Dhirajlal's Law of Crimes, 26th Edn., 2007, p. 221)

The authors further stated : (Ratanlal & Dhirajlal

at pp.226-227)

'.....when a fine has been imposed, what measures shall be adopted in default of payment? And here two modes of proceeding, with both of which we were familiar, naturally occurred to us. The offender may be imprisoned till the fine is aid, or he may be imprisoned for a certain term, such imprisonment being considered as standing in place of the fine. In the former case, the imprisonment is used in order to compel him to part with his money; in the latter case, the imprisonment is a punishment substituted for another punishment. Both modes of proceeding appear to us to be open to strong objections. To keep an offender in imprisonment till his fine is paid is, if the fine be beyond his means, to keep him in imprisonment all his life; and it is impossible for the best Judge to be certain that he may not sometimes impose a fine which shall be beyond the means of an offender. Nothing could make such a system tolerable except the constant interference of some authority empowered to remit sentences; and such constant interference we should consider as in itself an evil. On the

other hand, to sentence an offender to fine and to a certain fixed term of imprisonment in default of payment, and then to leave it to himself to determine whether he will part with his money or lie in goal, appears to us to be a very objectionable course....

.....We propose that, at the time of imposing a fine, the Court shall also fix a certain term of imprisonment which the offender shall undergo in default of payment. In fixing this term, the Court will in no case be suffered to exceed a certain maximum, which will vary according to the nature of the offence. If the offence be one which is punishable with imprisonment as well as fine, the term of imprisonment in default of payment will not exceed one-fourth of the longest term of imprisonment fixed by [the Code](#) for the offence. If the offence be one which by [the Code](#) is punishable only with fine, the term of imprisonment for default of payment will in no case exceed seven days.”

12 In the matter of **Palaniappa Gounder vs. State of T.N.**², the Honourable Apex Court has considered the issue of

² (1977) 2 SCC 634

sentence in default of payment of fine and has held that legitimacy is not to be confused with propriety and the fact that the court possesses a certain power does not mean that it must always exercise it. It is further held that though there is power to combine a sentence of death with a sentence of fine, that power is to be sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty a sentence of fine is hardly calculated to serve any social purpose. The Honourable Apex Court also observed that, infact, the common trend of sentencing is that even a sentence of life imprisonment is seldom combined with a heavy sentence of fine. These observations were relied by the Honourable Apex Court while deciding the case of **Shahejadjkhan Mahebubkhan Pathan vs. State of Gujarat**³ in which the substantive sentence of imprisonment was brought down from 15 years to 10 years and that of default sentence from 3 years to 6 months. Relevant observations of the Honourable Apex Court in the matter of **Shahejadjkhan (supra)** can be found in paragraphs 12, 13 and 15, which read thus :

3 (2013) 1 Supreme Court Cases 570

“12 It is clear and reiterated that the term of imprisonment in default of payment of fine is not a sentence. To put it clear, it is a penalty which a person incurs on account of non-payment of fine. On the other hand, if sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. However, the imprisonment ordered in default of payment of fine stands on a different footing. When such default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. Accordingly, he can always avoid to undergo imprisonment in default of payment of fine by paying such an amount. In such circumstance, we are of the view that it is the duty of the Court to keep in view the nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character and magnitude of the offence before ordering the offender to suffer imprisonment in default of payment of fine. The provisions of Sections 63 to 70 of IPC make it clear that an amount of fine should not be harsh or excessive. We also reiterate that

where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.”

“**13** While taking note of the above principles, we are conscious of the fact that the present case is under the NDPS Act and for certain offences, the Statute has provided minimum sentence as well as minimum fine amount. In the earlier part of our judgment, taking note of the fact that the appellants being the first time offenders, we imposed the minimum sentence, i.e., 10 years instead of 15 years as ordered by the trial Court. In other words, the appellants have been ordered to undergo substantive sentence of RI for 10 years which is minimum.”

“**15** It is clear that clause (b) of sub-section (1) of Section 30 of the Code authorizes the Court to award imprisonment in default of fine up to 1/4th of the term of imprisonment which the Court is competent to inflict as punishment for the offence. However, considering the circumstances placed before us on behalf of the appellants-accused, viz., they are very poor and have to maintain their

family, it was their first offence and if they fail to pay the amount of fine as per the order of the Additional Sessions Judge, they have to remain in jail for a period of 3 years in addition to the period of substantive sentence because of their inability to pay the fine, we are of the view that serious prejudice will be caused not only to them but also to their family members who are innocent. We are, therefore, of the view that ends of justice would be met if we order that in default of payment of fine of Rs.1.5 lakh, the appellants shall undergo RI for 6 months instead of 3 years as ordered by the Additional Sessions Judge and confirmed by the High Court.”

13 In the case in hand, it is reflected from evidence of PW1 Arti Raut that the appellant/convicted accused had lost job after birth of their son and thereafter he used to ply auto rickshaw for earning livelihood. In such a situation, imposition of fine of Rs.25,000/- on him is not at all justified, so also the default sentence of rigorous imprisonment of 1 year. Ends of justice would meet if the appellant/convicted accused is directed to pay fine of Rs.5,000/- for the offence punishable under Section 326A

of the Indian Penal Code and in default to undergo further rigorous imprisonment for 3 months.

14 So far as the offence punishable under Section 498A of the Indian Penal Code is concerned, there is no sufficient evidence to convict the appellant/convicted accused on that count. Cruelty as explained by Explanation to Section 498A of the Indian Penal Code implies harsh and harmful conduct with certain intensity and persistence. It implies willful conduct of such a nature as is likely to drive a married woman to commit suicide or to cause grave injury or danger to her life, limb or health. In the case in hand, evidence on this aspect coming from the mouth of PW1 Arti Raut is as vague as it can be. Her omnibus statement that the appellant/convicted accused used to doubt her chastity and used to treat her with cruelty by beating her is not sufficient to convict the appellant/convicted accused for the offence punishable under Section 498A of the Indian Penal Code. Evidence of PW1 Arti Raut on this count is not corroborated by evidence of her son PW3 Ankit. He has only deposed that his mother started residing

separately from the appellant/convicted accused on account of disputes. Therefore, the appellant/convicted accused is entitled for benefit of doubt, so far as the offence punishable under Section 498A of the Indian Penal Code is concerned because of lack of sufficient evidence. In the result, the following order :

ORDER

- i) The appeal is partly allowed.
- ii) Conviction of the appellant/convicted accused for the offence punishable under Section 326A of the Indian Penal Code so also substantive sentence of rigorous imprisonment for 10 years imposed on him by the learned trial court is maintained.

However, sentence of fine of Rs.25,000/- and default sentence of rigorous imprisonment for 1 year is modified by directing the appellant/convicted accused to pay fine of Rs.5,000/- and to undergo rigorous imprisonment for 3 months for the offence punishable under Section 326A of the Indian Penal Code, in default of payment of fine.

- iii) The appellant/convicted accused is acquitted of the offence punishable under Section 498A of the Indian Penal Code.
- iv) The appeal is accordingly disposed off.

(A. M. BADAR, J.)