

TRUSHA
TUSHAR
MOHITE

Digitally signed
by TRUSHA
TUSHAR
MOHITE
Date:
2022.01.11
11:25:41 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.275 OF 2019

Smt. Fulmati Hridaynarayan Chauhan ... Appellant
Vs
The State of Maharashtra and Others ... Respondents

Mr.Rajiv Patil, Sr.Counsel a/w Mr.Saurabh Raut and Ms.Sanchita Thakur
i/b Mr.Prasad T. Asolkar for the appellant

Mr.S.G. Rajput a/w Mr.Ashish Rajput for respondent nos.2 to 6

Mr.V.B.Konde-Deshmukh, A.P.P. for the State

**CORAM : S.S. SHINDE &
SURENDRA P. TAVADE, JJ.**

RESERVED ON : DECEMBER 03, 2021
PRONOUNCED ON : JANUARY 10, 2022.

JUDGMENT (Per Surendra P. Tavade, J.) :

1. The original appellant Smt.Fulmati Hridaynarayan Chauhan preferred this Appeal to challenge the judgment and order passed by Addl. Sessions Judge, Mumbai in Sessions Case No.415 of 2011 alongwith Sessions Case No.845 of 2013 (in C.R.No.56) for the offences punishable under sections 307, 406 read with section 34 of the Indian Penal Code. The Additional Sessions Court had acquitted the original accused from the above offences.

2. According to the appellant, Fulmati, she was married to Mr.Hridaynarayan Chauhan in the year 2002. After marriage, she came to matrimonial house at Nagariwadi, Shriram Lane, R. NO.88/S/8, Vadala, Mumbai. She was residing along with her husband and the respondent nos.2 to 6. The informant has a daughter out of the wedlock, namely Tapasya. The husband of appellant Mr.Hridaynarayan was working with Shipping Company.

In the month of November 2007, he proceeded to Russian Razzak Ship. The said ship got sank and Mr.Hridayanarayan did not return back to India. The Shipping Company awarded compensation of Rs.14,96,420/- in the name of Smt.Fulmati towards compensation of death of Mr.Hridayanarayan. The said amount was deposited in joint account of Appellant and Respondent No.2 in Bank of India.

3. The Appellant had also filed case in the Labour Court for compensation. The respondent nos.2 and 3 were pressurizing and insisting Smt.Fulmati to allow them to withdraw the entire amount deposited in the Bank which was received by the way of compensation. The Appellant was not ready to part with the amount of compensation. Respondent nos.2 to 6 used to quarrel with the appellant for non-payment of compensation amount to respondent no.2.

4. On 15.01.2020 at about 4.00 a.m. appellant woke up for answering nature's call. At that time, respondent nos.4 to 6 caught hold the hands of appellant. Respondent no.2 took out kerosene and poured it on the body of appellant and threatened her to transfer the amount of compensation lying in her account, otherwise she would set her on fire. Appellant tried to rescue her but could not succeed. Meanwhile, respondent no.3 lit a match stick and threw it on the appellant, resulting the body of appellant caught fire. Except her face, whole body of her caught fire. She started shouting loudly for saving herself and removed her clothes and ran out of the house and fell down the street and fire was extinguished. Neighbours arrived there and they put some clothes on her and took her initially to K.E.M. Hospital but she was not admitted there and shifted her to Hinduja Hospital.

5. The Investigating Officer Mr.Sahadev Ambekar was Station House Officer on duty on 15.01.2010. He received telephonic call at about 5.00 a.m. from anonymous person who informed him about the incident. Hence, he

informed the said message to P.I. Mr.Sonavane who was on patrolling duty. Mr.Ambekar came to know that the appellant was transferred to Hinduja Hospital and for that he went to Hinduja Hospital wherein he recorded the statement of appellant in the presence of Medical Officer of Hinduja Hospital. On the basis of the said statement, crime was registered vide F.I.R. No.12 of 2010. After recording statement, appellant was transferred to Masina Hospital, Byculla. Special Executive Officer was called by the police for recording the statement of appellant. Accordingly, Special Executive Officer recorded the statement of appellant while she was in Intensive Care Unit and obtained her thumb impression. The I.O. visited the scene of offence and seized the clothes and other articles under panchnama. Similarly, scene of offence, panchnama was prepared. Statement of witnesses were recorded. Name of appellant No.6 was subsequently added in the F.I.R. After completion of investigation, charge sheet came to be filed against the respondent Nos.2 to 6 in the court of Metropolitan Magistrate

6. As the offence under section 307 was triable by the Court of Sessions. Hence, the case of appellant was committed to the court of Session. Respondent no.6 Ms.Babita was juvenile, hence, charge-sheet against her was filed before juvenile court but subsequently her case was also transferred to the court of Sessions which was tried along with respondent nos.2 to 5.

7. The charge came to be framed against the appellant nos.2 to 5 for the offence punishable under section 307 and 406 r/w 34 of I.P.C. on 24.02.2012. Thereafter, charge against respondent no.6 Ms.Babita for the same section was framed on 07.04.2014.

8. The respondents pleaded not guilty and claimed to be tried. Defense of the respondents was total denial. According to them, appellant was insisting to marry with respondent no.3. The said proposal was rejected by the respondent

no.2. Respondent no.3 was about to leave India for his job and to prevent him from leaving India, the appellant set herself on fire and falsely implicated the respondent nos.2 to 6.

9. To prove charge against the respondent nos.2 to 6, prosecution has relied on the evidence of as many as 7 witnesses. On going through the evidence on record, trial court acquitted respondent nos.2 to 6. Hence, the appellant preferred this appeal. The State did not prefer appeal against the acquittal of the respondents.

10. It is contended that the Trial Court has not considered the evidence of appellant in proper perspective. Appellant had received 85 to 90% burn injuries on her vital part of the body. The injuries sustained by the appellant were proved by Medical Officer but Trial Court ignored the evidence of informant coupled with medical evidence. It is contended that there was sufficient evidence on record to establish that the respondent no.2 transferred the amount of compensation from the joint account of appellant and herself to the account of respondent no.3. It is also contended that respondent nos.2 and 3 misappropriated the amount of compensation awarded to the appellant but the said fact is not appreciated by the trial court in proper perspective. It is contended that the trial court has ignored the evidence of the appellant, medical officer and the officer of the bank. The findings of trial court are not proper and correct and those are required to be set aside. It is also prayed that by setting aside the order of acquittal, respondent nos.2 to 6 be convicted for the offence charged against them.

11. On the other hand, the learned counsel for the respondent nos.2 to 6 submitted that the trial court has rightly appreciated the evidence of the Appellant. It is contended that the evidence of appellant is full of omissions and contradictions. The Medical evidence is contrary to the evidence of the

appellant. It is contended that the name of respondent no.6 was subsequently added in the F.I.R. It is contended that the I.O. has manipulated the F.I.R. and falsely implicated respondent no.6. It is also contended that the evidence of medical officer of Masina Hospital is contrary to the medical certificate issued by Hinduja Hospital. It is contended that alleged amount of compensation was transferred from joint account of appellant and respondent no.2 in the account of respondent no.3 on 11.01.2010. So there was no necessity to insist the appellant to transfer the amount. The genesis of the offence was not proved by the appellant. The trial court has rightly appreciated the evidence on record. It is contended that order of acquittal passed by trial court is legal, valid and proper, therefore, it should not be interfered with. There is no perversity in the judgment of the trial court, hence, appeal is devoid of merit, hence, be dismissed.

12. With the help of counsel of the appellant and the respondents , we have gone through the evidence led before the trial court. The entire case rest on the evidence of informant, Smt.Fulmati. She has categorically deposed that she married to Mr.Hridayanarayan Chauhan in the year 2002. After her marriage she came to cohabit with her husband in the house of respondents at Wadala. She delivered a daughter namely Tapasya. Her husband was working in Shipping Company. He was earning monthly salary of Rs.30,000/- to Rs.35,000/- per month. In the month of November, 2007 her husband proceeded to Russia in Razzak Ship. The said ship sank and her husband died. The Shipping company had awarded compensation of Rs.14,96,420/- in her name towards the compensation. The said amount was deposited in the joint account of herself and respondent no.2 in Bank of India. The above facts are not denied by the defense. So it can be said that in the year 2002 appellant married to Mr.Hridayanarayan who was son of Respondent no.2. The appellant, her husband and respondents were residing at Wadala. After death

of husband, appellant received compensation of Rs.14,96,420/- which was deposited in the joint account of appellant and respondent no.2.

13. It is deposed by the appellant that on 15.01.2010 at about 4.00 a.m. she woke up for urination. At that time, respondent nos.3 to 6 caught hold of her hands. Respondent no.2 took out kerosene and poured it on her body and threatened her to hand over them the money lying in the bank account else she would be set on the fire. She tried to rescue herself but could not succeed. Meanwhile, Respondent no.3 lit a match stick and threw it on her person, resulting her body caught fire. Except her face, whole body caught fire. She started shouting loudly for saving herself but nobody came to rescue her. Thereafter, she came out of the house, she removed her clothes, fell down on the road and thereby extinguished the fire. Neighbour arrived on the road. They put some clothes on her and took her to KEM Hospital but she was not admitted to KEM Hospital. Hence, she was shifted to Hinduja Hospital. Police came to Hinduja Hospital and recorded her complaint in the presence of Medical Officer. Her both hands were burnt and doctor had put bandage on both the hands. Hence, police could not obtain her signature. Police read over her complaint. She admitted the contents of the same. The said statement was treated as FIR (Exhibit 25). She further deposed that Doctor told her that she was having 90% burn injuries. Her mental condition was good to give statement before police. She further deposed that she was shifted to Masina Hospital where her statement (Exhibit 26) was accepted by Special Executive Officer on the same day. No doubt there is no eye witness to the incident except the informant but according to appellant, her neighbour came to the spot and took her to the hospital.

14. In the cross examination of appellant, the defence has brought on record the omission and contradiction appearing in her evidence. The appellant has admitted that she had stated before police that her marriage took place in the

year 2002. But the said fact is not mentioned in her report and the statement recorded by the police. She has admitted that she had not stated before police that her husband was earning Rs.30,000/- to Rs.35,000/- per month, that in the month of November, 2007 her husband proceeded to Russia in Russian Razzak Ship. The said facts are brought on record as omissions. She further admitted that she stated before police that she was awarded compensation of Rs.14,96,420/- to her but the said fact is not mentioned in FIR or her statement. She had admitted that she had sustained burn injuries to her face and neck. She also admitted that kerosene was not sprinkled on her hair. She also admitted that she had not stated before police that the kerosene was taken out by the respondent no.2 in jug and that respondent no.2 had threatened her to handover the money lying in her account else they would set her on fire. She further admitted that except her face entire body was burnt and she fell down on the road. Therefore, fire was extinguished. The said facts are not figured in the FIR. The above omissions are proved by the defence through the evidence of Investigating Officer (PW.7). The said facts are required to be ignored from the consideration.

15. She admitted that on the date of incident, she had worn saree of black and red colour and black colour petticoat and blouse with button. At the time of incident, she removed her blouse of which some portion was burnt and some of the buttons were burnt. According to I.O., the clothes lying on the spot were seized under panchnama namely saree, petticoat, blouse and nicker. The said clothes were not produced in the court.

16. It is important to note that the appellant has attributed specific role to each Respondent in testimony before the court. She stated that her sisters in law Respondent nos.4 to 6 held her hands and Respondent no.2 poured kerosene on her person with the help of jug. She further deposed that Respondent no.3 set her on fire by igniting match stick but the said facts are

missing in the F.I.R. and her statement. On this point evidence of Geeta (PW.4) is very crucial. Geeta has specifically stated that on hearing the shouting she came out of the house. At that time, she saw Respondent no.3 coming of her room which was at the first floor. Admittedly, the appellant was residing at the ground floor along with appellant nos.2, 4 to 6.

17. The Counsel for the Respondent has invited our attention to the evidence of appellant on the point of presence of Respondent no.3 at the spot. The appellant in her evidence stated that at the time of incident except Respondent no.3 rest of the Respondents and herself were sleeping in the room by situated on the ground floor after bolting its door from inside. Respondent no.3 Udaynarayan Ramji Chauhan was sleeping in the room situated at first floor. She further admitted that nobody came to the house. She never opened main door of the room prior to the incident. So it can be said that at the time of incident, Udaynarayan Ramji Chauhan was sleeping in the room situated at first floor and he could not enter in the room where the alleged incident had taken place unless somebody opens the door. It is important to refer the evidence of Geeta Gupta P.W.No.4. She did not support the case of the prosecution but in cross examination she has admitted that when she heard the shouts she came out of the house. Respondent no.3 Udaynarayan Ramji Chauhan was coming from the top floor. However, the said statement of Geeta Gupta is not denied by the prosecution. It supports the defense that appellant no.3 Udaynarayan Ramji Chauhan was never present inside the room at the time of alleged incident.

18. It is also important to note that the appellant has admitted in her cross-examination that she never stated before police that kerosene was taken out by Respondent no.2 in jug and Respondent no.1 had threatened her and asked her to transfer the money lying in the account. The said aspect of the incident i.e. time of transfer of money from the account of appellant in fact would

contradict the prosecution case. As per the prosecution, the amount was lying in the joint account of appellant and respondent no.2. The prosecution has examined the bank officer Dattkumar Dashrath Kamthe, P.W.No.5. He categorically deposed that as per the record on 07.12.2009 cheque of 14,96,420/- was deposited in the joint account of appellant and Respondent no.2. He further deposed that on 21.12.2009 amount of Rs.51,000/- was withdrawn. Then on 26.12.2009 amount of Rs.1,00,000/- was withdrawn and on 11.01.2010 an amount of Rs.13,00,000/- was withdrawn. In all, cash amount of Rs.14,51,000 was withdrawn by Respondent no.2. In the cross-examination he had admitted that on 11.01.2010, Rs.13,00,000/- were deposited in the account of Respondent no.3. So it can be said that prior to the incident, the amount was withdrawn from the joint account of appellant and an amount of Rs.13,00,000/- was deposited in the account of Respondent no.3. If the amount was withdrawn prior to the incident, then there is no possibility that accused would threaten the appellant and set her on fire.

19. It is the basic case of the prosecution that appellant refused to transfer money from her account to the account of Respondent no.2 or 3 which she had received by way of compensation. That was the genesis of the incident which has been tried to be brought on record on behalf of the prosecution. On perusal of the evidence of the Bank Officer, it is established that the amount was already transferred prior to the incident. Therefore, the genesis of the incident alleged by the prosecution has not proved at all.

20. Prosecution has examined Dr. Suhas Vidyadhar Abhyankar P.W.No.3 who was working as head of plastic surgery department at Masina Hospital, Byculla. According to him since 2006, he was attached to Masina Hospital. On 15.01.2010 at about 8.40 p.m. appellant was brought to Masina Hospital from Hinduja Hospital. The condition of patient was critical. She was in shock. Immediately he started I.V. Fluids, I.V.Saline. Appellant was put on

oxygen Central line was also installed so that fluids can be provided to the patient. The evidence of Doctor was contrary on the point of the time of admission of the appellant. The Medical Officer states that appellant was admitted in Masina Hospital at 8.40 p.m. wherein time of admission was written as 8.40 a.m. Similarly there is evidence of appellant as well as I.O. and Geeta Gupta that the appellant was treated at Hinduja Hospital for brief period and thereafter she was shifted to Masina Hospital. Therefore, it is established that appellant was admitted in Masina Hospital at 8.40 a.m. on 15.01.2010 but Medical Officer was hesitant to accept the said fact. P.W.No.3 has deposed that he noticed burn injuries on chest, abdomen, over the back, both the upper extremities and both the lower extrimities. The total percentage was 75% superficial to deep burns.

21. Defense of the Respondent is supported by medical evidence that the appellant sustained major injuries on her hand and not other part of the body. Dr. Suhas Vidyadhar Abhyankar deposed that appellant was under his treatment for 3½ months and during the said treatment debridement and skin grafting was done by him. Appellant was operated for plastic surgery. Dr. Suhas Vidyadhar Abhyankar was confronted with the record of Masina Hospital Exhibit 36. Though the witness has stated that when patient was brought to Masina Hospital, she was in critical condition and was in shock. Witness could not explain as to why these details were not mentioned in the papers which are brought before the court and thus fail to explain in absence of any medical record how he could narrate about the same. The witness has also explained that in medical record, burn injuries were noted on chest, abdomen, over the back, both the upper extremities and both the lower extrimities. Medical record does not mention that the patient had received 75% burn injuries though the witness has stated to that effect.

22. Dr. Suhas Vidyadhar Abhyankar has produced on record medical certificate Exhibit 36. As per the said certificate, the appellant had sustained 75% superficial burn injuries. Against this, prosecution has produced on record medical certificate produced by Hinduja Hospital. Admittedly, appellant was taken to Hinduja Hospital. The said medical certificate shows that appellant had sustained 1% superficial burns over neck, chest, upper limbs, abdomen and back and 85-90% burns over lower limbs. Thus the deposition of Dr. Suhas Vidyadhar Abhyankar would add to the confusion. It is the defense that medical record has been manipulated in order to suit the prosecution.

23. It is come in the evidence of brother of appellant that he and his family members were insisting to the family members of Respondent no.2 about the solemnization of marriage of appellant with Respondent no.3 Udaynarayan Ramji Chauhan who is younger son of Respondent no.2. He deposed that respondent Nos.2 & 3 used to say 'yes' and some times used to say 'no' to the said proposal. The marriage could not be solemnised and therefore he and his family members went to Gujarat. It is stated that he was insisting Respondent no.3 to perform marriage of appellant with Respondent no.3 but the said proposal was not accepted by Respondent no.2. He admits that they thought that if the marriage of appellant is solemnised with Respondent no.3 she will be happy in her future life. He also admitted that appellant was happy with the family members of Respondent and was residing with them. It is also admitted fact that Respondent no.3 was working in shipping company and he was to leave India after 15.01.2010. It is the case of Respondent that in order to pressurize Respondent no.3 for marriage, the appellant set herself on fire and sustained injuries only to her hands and not to her whole body.

24. As per the allegations of manipulation of F.I.R. is concerned, I.O. P.W.No.7, Mr.Sahdev Vittal Ambekar has admitted that there was no allegation against Respondent no.6 Babita in the F.I.R. He also admitted that name of

Babita was not mentioned in the F.I.R. but in the printed form of F.I.R. name of Respondent no.6 Babita is mentioned. He also admitted that he cannot give any explanation how the name of Babita was mentioned in the printed form of F.I.R when there was no allegation against her in the complaint Exhibit 26. So it can be said that in the complaint Exhibit 25 there are no allegation against the Respondent no.6 Babita. Therefore, her name should not have been mentioned in the F.I.R. but subsequently, it was included in the printed form of F.I.R. I.O. has not given any explanation as to how name of Babita was inserted in the printed form of F.I.R. So it can be said that there is possibility of manipulating printed form of F.I.R. by adding name of Respondent no.6 Babita.

25. As far as role of Respondent no.5 Kalyani Ramji Chauhan is concerned, appellant has categorically stated that Kalyani and Yogita (Respondent No.4) held her hand. But in the statement recorded by Special Executive Officer, name of Kalyani is missing. There are no allegations against Kalyani in the statement recorded by S.E.O. The above contradiction are brought on record in the evidence of appellant. Through the evidence of I.O. the above contradiction are proved. Name of Respondent no.6 Babita is missing from the F.I.R. Name of Kalyani is missing from the statement of appellant recorded by Special Executive Officer. In the printed form of F.I.R. in its column no.7 names of accused persons are mentioned i.e. Respondent nos.2 to 6. Thus in the column-7, in addition to the names of respondent nos.2 to 5 also includes the name of respondent no.6. These facts was confronted to I.O. P.W.No.7 Ambekar as well as P.W. No.6 Ramesh Sonadkar. They did not give explanation as to how name of Respondent Babita was mentioned in the printed format of F.I.R. Exhibit 55.

26. Counsel for defense also argued that there is manipulation regarding address of appellant in the FIR. It was given as Nanabhai Wado, Korba Mithagar, Wadala (E), Mumbai 37. However, in the printed form of F.I.R.

address of appellant is given as Nanabhai Wadi, Korba Mithagar, R.No.88 5/8, Ram Mandir Galli, Wadala (E), Mumbai 37. These facts are again was confronted to I.O. and I.O. has stated that this address was not stated by the informant but still it appeared in the printed form of F.I.R. I.O. Ramesh Sonadkar has admitted that person who brought the appellant in hospital had given the address which was mentioned in the printed form of F.I.R. The I.O. Ramesh Sonadkar has also admitted that one Rajendra Chavan was present in Hinduja Hospital on 15.01.2010 who might have given the address of appellant and accordingly, it was noted in the printed form of F.I.R. So it can be said that some of the information of the F.I.R. was not stated by the appellant but the I.O. has noted it at the behest of the person who accompanied the appellant in the Hospital.

27. Mr. Ambekar P.W.No.7 who had seized the clothes of the appellant admits that Article 2 is not black coloured and same is not a saree. It is in fact a maxi. He has further admitted that, though there is reference of seizure of saree, petticoat, blouse and underwear in the seizure panchnama, actually those articles were not seized. His evidence would further show that, seizure of odhani and maxi which were brought before the court has no reference in the seizure panchnama. The odhani and maxi were not worn by the appellant and she has disowned it. This discrepancy is of much importance if reference is made to the report of the chemical analyser. Report of chemical analyser Exhibit 50 would show that partly burnt cloth pieces and nylon mat, partly burnt saree, burnt petticoat and nicker were referred to the C.A. and the Analyzer has reported that partly burnt saree, blouse, petticoat and nicker which were referred for analysis do not tally with the pieces of partly burnt clothes, nylon, mat and pieces of cloth, melted mat allegedly found at the place of incident. The said evidence indicates that the clothes which were seized to be those of the injured and sent for analysis to the forensic expert in fact had no concern with the seizure of clothes. Prosecution has not proved the

identification of the clothes alleged to have been worn by the appellant at the time of admission.

28. Trial Court has considered evidence on record in proper perspective. The evidence brought on record by the prosecution before the Trial Court and material placed on record by the appellant in the present appeal is not cogent, cognate and clinching to prove the extent of setting herself on fire by Respondents. Similarly, evidence of appellant is contrary to the forensic evidence. Therefore, Trial Court has taken correct view.

29. The learned counsel for the respondents has relied on the ratio laid down in the case of ***Sham Lal vs. The State of Haryana and Ors. AIR 2019 SC 1898***, wherein it was held that the Judgment and Order of acquittal of Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable. The learned counsel for the respondents has also relied on the ratio laid down in the case of ***Chandrappa and Ors. vs. State of Karnataka (2007) 4 SCC 415*** and submitted that the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

30. In view of the above case laws, the trial Court has correctly appreciated the evidence. There is no perversity in the findings recorded by the Trial Court and the prosecution has utterly failed to prove its case. The view taken by the Trial Court on the basis of evidence brought on record is plausible view. Therefore, we are not inclined to allow the Appeal. Hence, following order :

ORDER

Appeal preferred by the appellant is hereby dismissed.

(SURENDRA P. TAVADE, J.)

(S.S. SHINDE, J.)