

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO.410/2012

1. Leelabai Shridhar Kate,
aged about 60 years,
Occ. Husehold work.
2. ~~Giridhar s/o Shreedhar Kate~~
(Appeal is abated against
appellant no.2 as per Court's
order dated 29.06.2022.

.....APPELLANT

...V E R S U S...

State of Maharashtra,
through PSO P.S. Koradi
Vide Crime No.13/2007

...RESPONDENT

Mr. Thaokar, Advocate for appellant.
Mr. N. S. Rao, A.P.P. for respondent-State

CORAM:- AVINASH G. GHAROTE, J.
DATED :- 15.07.2022

ORAL JUDGMENT

Heard Mr. Thaokar, learned counsel for appellant and
Mr. Rao, learned A.P.P.

2. The appellant has been convicted for the offence under
Section 323 of the Indian Penal Code and sentenced to suffer
rigorous imprisonment for six months and pay a fine of Rs.1,000/-,
in default, simple imprisonment 15 days.

3. The incident is dated 28.01.2007 when it is alleged by Chandrika Phukan Nisad (PW1), that about 09:00 p.m. when she and her husband were present at home and there was *pooja* of Goddess Kali at their house on account of which, *prasad* was kept outside the house, the accused nos. 2 and 3, who are the sons of accused no.1, came to her house and threw away the *prasad* and also abused her. When objected, the accused no.2 is alleged to have given stick blows on the neck of her husband Phukan (PW2) and after abusing, have gone away.

4. On 29.01.2007, at 08:30 p.m. when Chandrika (PW1) was sitting in the courtyard, the accused nos. 1 to 3 came to her house armed with stone and sharp iron *koyta*. The accused no.1 is alleged to have dragged her *saree* and accused no.2 is alleged to have given her blows by kicks. The accused no.3 is alleged to have given blows to her by means of *koyta* over head, hand and thigh. When the Chandrika (PW1) shouted, her husband came to the spot and intervened and was also assaulted. He, however, snatched the weapon from accused no.3. Thereafter she lost consciousness and regained it in the hospital. A complaint was thereafter lodged, as a result of which FIR came to be registered on 30.01.2007. The police is thereafter said to have visited the spot and prepared spot panchanam Exh.65. The *koyta* was

produced by the husband of the complainant and was seized under seizure memo Exh.87, blood stained clothes of Chandrika (PW1) and Phukan (PW2) were seized under seizure memos Exh.55 and 56, clothes of accused no.2 were seized under seizure memo at Exh.68-A. Blood samples of Chandrika (PW1), accused nos. 1 and 2 were collected and seized vide seizure memos at Exh.57, 69 and 70. On 02.02.2007, accused no.2 is claimed to have made a disclosure statement vide Exh.-71, as a result of which the stick was seized under seizure memo at Exh.72. The accused were arrested and after investigation was completed charge-sheet came to be filed.

5. During the course of trial, prosecution has examined as many as 18 witnesses. By the impugned judgment, the learned Court has acquitted all the accused of the offence under Sections 143, 147, 148, 307, 324, 294, 506-II read with section 149 of the IPC. Only the accused no.1-Leelabai Shridhar Kate and accused no.2-Girdhar Kate have been convicted under Section 323 of the IPC, as indicated above. During the pendency of the appeal, in view of the office note dated 20.06.2022, this Court by an order dated 29.06.2022, dismissed the appeal as against appellant no.2-Girdhar Shridhar Kate as abated, as he is reported to be dead. The appeal consequently survives vis a vis only appellant no.1-Leelabai.

6. Perusal of the impugned judgment indicates that evidence of Chandrika (PW1), Phukah (PW2) and Nanda (PW7) has been relied upon by the learned trial Court to convict the accused no.1-Leelabai.

7. The evidence of Chandrika (PW1) at Exh.-33 (page 16) does not attribute, any overt act to accused no.1-Leelabai on 28.01.2007. Insofar as incident on the next day i.e. 29.01.2007 at 08:00 p.m. is concerned, the only act attributed to accused no.1-Leelabai, by Chandrika (PW1) is that Leelabai had snatched at her hair so that she fell down. No other action, is attributed to her.

8. Phukan (PW2) also does not attribute, any overt act to the accused no.1-Leelabai except for a generalized statement that all the accused, including accused no.1, were beating his wife. Meena (PW3), has turned hostile. Prakash (PW4) and Beniram (PW5), pancha witnesses for the spot also have turned hostile. Bhawarsingh (PW6), the pancha witness for the seizure has also turned hostile. Nanda (PW7) merely alleges, that the accused no.1-Leelabai had dragged Chandrika by pulling her hair to the road. Nehru (PW8), Bisram (PW9), Kishor (PW10), Durgaprasad (PW11), the pancha witness for the seizure, have turned hostile.

Vimlabai (PW12) has also turned hostile. Dr. Prashant Barve (PW13) has issued the injury certificate on the basis of the bedhead ticket. Rahul (PW14) has proved the seizure of the clothes of the complainant at Exh.-55. Vijay (PW16), the pancha for the seizure has turned hostile. Dr. Vishal Arun Yadav (PW17) has treated Phukaru Nisad. Kumar Surose (PW18) is the investigating officer.

9. It is therefor apparent that the only evidence as against accused no.1-Leelabai is that of Chandrika (PW1) and Phukan (PW2) and expect for the statement of Chandriak (PW1) to the extent that the accused no.1 had snatched at her hair, there is nothing on record to indicate any other act to be done by her. Phukan (PW2) husband of Chandrika (PW1), merely makes a bald generalized allegation that all the accused were assaulting his wife which is neither here nor there.

10. Considering the nature of evidence of Nanda (PW7), she also attributes the singular action to accused no.1 of pulling hair of Chandrika. There is no other witness, which attributes any action to the accused no.1. It has not come in the evidence of Chandrika (PW1) that the action of accused no.1 was of such a nature that it caused her bodily pain, in view of which the action

on part of the accused no.1/appellant cannot be said to be the one, falling within the definition of “hurt” as defined in Section 319 of the IPC. As a result of which, there being no other material on record or, for that matter, no other action attributed to the appellant, the conviction of the appellant under Section 323 of the IPC cannot be sustained. Learned Sessions Court has, in the impugned judgment, made a generalization as indicated by bare reading of paragraph 25 thereof to convict the appellant, which in my considered opinion, is not permissible in law. The impugned judgment therefore cannot be sustained.

11. In view of the above discussion, the appeal is allowed. The judgment and order dated 11.11.2011 passed by Additional Sessions Judge, Nagpur in Sessions Trial No. 231/2007 is hereby quashed and set aside. Appellant-Leelabai Shridhar Kate is hereby acquitted of the offence punishable under Section 323 of the Indian Penal Code. Her bail bond stands cancelled.

JUDGE

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