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

CRIMINAL APPEAL NO. 423/2012

APPELLANT : The State of Maharashtra,
Through Police Station Officer,
Police Station Balapur, Dist. Akola

...VERSUS...

RESPONDENT: Sanjay Gulabrao Lande,
Aged about 23 years, Occ. Labour,
R/o Paras, Tq. Balapur, Dist. Akola.

Mrs. Mayuri H. Deshmukh, APP for appellant/State
None for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 28/06/2022.

ORAL JUDGMENT

1] Heard learned APP for the appellant/State. None for the respondent, though served.

2] The learned Sessions Court by the judgment dated 2.3.2012 has convicted the respondent Sanjay Gulabrao Lande for the offence under Section 498-A of the IPC and sentenced him to suffer R.I for one year and to pay fine of Rs. 500/-, i/d S.I. for three month. The accused 2 to 4 have been acquitted for the offence under

Section 498-A r/w 34 IPC. All the accused including the respondent who was accused no.1 have been acquitted for the offence punishable under Section 306 r/w 34 of the IPC.

3] The present appeal is by the State against the acquittal of the accused no.1 for the offence under Section 306 of the IPC. It is worthwhile to note that the accused no.1 had already undergone the sentence of one year imposed upon him for the offence under Section 498-A and has been released from the prison after serving the sentence.

4] Learned APP submits that the material on record would indicate that the requirements of Section 306 of the IPC stand complied with, as a result of which, the respondent ought to have been convicted for the said offence. She invites my attention to the evidence of PW-1 Shrikrushna Onkar Sadafale (page 19) who has spoken about the ill treatment by the accused to the deceased Sharda. She further invites my attention to the evidence of PW-4 Sadashiv Madhav Kukdey, Naib Tahsildar (page 67) who has recorded the dying declaration of the deceased Sharda on

27.6.2007, which is at Exh. 45-B, and the evidence of PW-3 Ranjit Korde, the Medical Officer (page 62), who had examined the deceased Sharda when she was admitted to the hospital and had certified that the deceased was fit to give her dying declaration. She submits that the evidence of PW-1 indicates that there were various incidences of assault and harassment by the respondent to the deceased, which has resulted in her taking her own life by burning herself by pouring kerosene upon her body and setting herself on fire on 27.6.2007. The harassment and assaults meted out by the respondent being the sole cause of the demise of the deceased Sharda, it is submitted that the conviction under Section 306 of the IPC ought to have necessarily followed.

5] The incident is dated 27.6.2007, when the deceased Sharda who was then residing with her parents at Hiwarkhed, was brought back by the respondent to Paras, some time it appears in the afternoon, in the absence of the complainant PW-1. On the same day, in the evening, Sharda is said to have made a phone call to PW-1 and informed him that the respondent had again beaten her, whereupon she was informed by PW-1 that on the next day in the

morning he will send his brother to fetch her back. However, at about 9.00 p.m. on the same day, the respondent made a phone call to PW-1 and informed him that Sharda had sustained burns and was taken to the hospital at Akola, whereupon on the next morning PW-1 went to the Civil Hospital, Akola, in Burns Ward. According to PW-1, there were burn injuries on the whole body of Sharda. When he enquired what had happened, deceased Sharda told him that the accused Sanjay had beaten her, which she could not bear and therefore, she burned herself. The evidence of PW-1 is the only oral evidence on record indicating any assault or harassment on the deceased Sharda. Though PW-1 Shrikrushna in his chief has stated that Sharda used to inform on phone of Raju Nemade his neighbour regarding the ill treatment, however, Raju Nemade had not been examined. PW-2 is the I.O. whose evidence does not shed any light upon the ingredients of Section 306 of the IPC. He however admits in his cross examination that the accused Waman and Rambhau were residing separately from the respondent Sanjay, which would indicate that there was no joint residence as alleged. PW-3 is the Medical Officer who has issued the certificate at Exh. 42/A certifying that deceased Sharda was fit to make a statement. In his cross

examination, he admits that the patient was having 72% burns, her face, head, chest, back, both upper limbs, both thighs were totally burned. He states that in his presence, the Magistrate (PW-4) recorded her statement, which was to the effect that since the respondent was quarreling and beating her, therefore she poured kerosene on her person and burnt herself. In the cross examination, he admits that though he had examined pulse and blood pressure of the patient, there is no such endorsement to that effect. He also admits that the bed ticket was not brought by him and he had no knowledge regarding the treatment given to the patient before recording her statement.

6] PW-4 is the Naib Tahsildar and Executive Magistrate who has recorded the dying declaration. On the basis of the above evidence, the learned APP seeks the conviction of the respondent under Section 306 of the IPC.

7] Section 306 of the IPC speaks about abetment of suicide. Section 107 of the IPC defines abetment as under;

107. Abetment of a thing. - A person abets the doing of

a thing, who –

First. – Instigates any person to do that thing; or

Secondly. – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. – Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure , a thing to be done, is said to instigate doing of that thing.

Explanation 2. – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

The requirement of the section as indicated *firstly,* is an instigation by any person to do the thing which is said to have been abetted. In the instant case there is nothing on record except the evidence of PW-1 and the dying declaration of the deceased Sharda which speak only about harassment or beatings. In the normal course of conduct, such harassment or beatings could not be said to be sufficient instigation for a person to take her life. In the instant case, considering the matrimony, a normal wear and tear was expected.

The conduct of the respondent to continue with the matrimony is apparent from the fact that on the fateful day he had been to Hiwarkhed where the deceased was residing with her parents and had brought back the deceased to Paras to resume the matrimony. The deceased Sharda in her dying declaration (Exh.45A) states that on 27.6.2007 at about 8.00 p.m, there was some quarrel between herself and the accused. She then goes on to say that since her marriage, the accused was fighting and beating her, therefore, she had poured kerosene on her person and set herself on fire. The dying declaration itself further records the conduct of the respondent inasmuch as it states that the respondent had doused the fire by pouring water on her person and had taken her to the Government Hospital at Akola for treatment. That apparently would not be a conduct of a person, who is said to be an instigator for his wife to take her own life. The other requirements as stated in Section 107 – *secondly*; *thridly;* and so also *Explanations 1 and 2* are not attracted in the present matter. It is thus apparent that the requirements necessary for bringing home the offence under Section 306 with the aid of Section 107 of the IPC have not been satisfied by the prosecution, in view of which I do not find any reason to interfere in

the judgment rendered by the Court below, whereby the respondent has been acquitted of the offence under Section 306 of the IPC. The appeal is therefore without any merits and is accordingly dismissed. No costs.

JUDGE

Rvjalit

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Signing Date:30.06.2022 14:29