

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 275 OF 2021

The State of Maharashtra,
Through Police Station,
Kaij, Tq. Kaij, Dist. Beed.

... Appellant.
(Orig. Informant)

Versus

Shridhar Pandhari Gaikwad,
Age : 62 Years, Occ. : _ _
R/o. Dahiphal, Tq. Kaij, Dist. Beed.

... Respondent.
(Orig. Accused)

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Mr. A. M. Phule, APP for Appellant - State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 30th JANUARY 2023.

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. By way of instant appeal State has invoked provisions under section 377(1) of the Code of Criminal Procedure, praying to quash and set aside the judgment and order passed by the learned Additional Sessions Judge, Ambajogai in Sessions Case No. 12 of 2016 to the extent inadequate sentence for commission of offence under sections 307 and 498A of Indian Penal Code and to rather award maximum sentence for said offence.

2. According to learned APP accused-convict is husband of informant-Manisha. It is pointed out that accused was idle and did no work or earn. Instead, informant Manisha took up job as a teacher and she also took up responsibilities of family as well as education of her children. Accused was addicted to liquor. To rehabilitate husband – accused and to keep him engaged, it is pointed out that, injured Manisha had raised huge loan amount. But, husband-accused spent the said amount to his bad vices. Taking us through the FIR, it is submitted that on 28.09.2015 accused again asked his wife to raise amount for opening beer shoppe. When she refused, it is alleged that accused went to the kitchen poured kerosene on her. But she managed to escape. Thereafter, wife immediately approached police to lodge complaint.

3. Learned APP submitted that with such a case and on the strength of six witnesses including daughter of accused and informant, prosecution had made out a full proof case. That, act of accused clearly shows that he had intention and knowledge that by his such act informant- Manisha would meet death. There was continuous abuse and ill-treatment and therefore ingredients of 498-A were also brought on record in the evidence of material witnesses. Therefore, there was strong case against accused for convicting him for above serious charges. Further, learned APP pointed out that learned trial judge by his order dated 20.03.2021 in spite of holding accused guilty for offence under sections 307 and 498-A of IPC awarded meager sentence i.e. three years for

offence under section 307 of IPC and one year for offence under section 498-A of IPC. Such sentence is inadequate. For the act of accused, he infact deserves maximum sentence and therefore, it is prayed that, instant appeal be allowed by granting maximum sentence.

4. After hearing learned APP for the Respondent - State, examining the FIR and on going through the record before us it seems that report has been lodged by informant against her own husband for ill treating her and for attempting to commit her murder. Case of prosecution seems to be that victim-informant is a teacher and she has two daughters. It seems from the report that respondent – accused is unemployed and he does nothing for earning. Informant seems to be running the family and meeting needs of family. FIR shows that, wife Manisha had raised amount of Rs.2,00,000/- for starting business for husband -accused, but he allegedly spent the said amount on his habits. Subsequently also, i.e. on 28.09.2015 he raised similar demand and when informant – wife refused, it is alleged that he poured kerosene on her and attempted to light a match-stick. But, she managed to escape by running away and reaching police station, she has set law into motion.

5. It also seems that some kerosene fell on her person and she has suffered blister. Investigation shows that initially she was referred primary health center and thereafter, referred to higher center at Beed. Thorough

investigation was carried out, seizures were caused including kerosene can and sent for analysis.

6. Evidence of Dr. Ashish Garje is also recorded who confirms the visit of Manisha in the hospital with a report of sprinkling of kerosene and reaction on body due to fall of kerosene. Though several witnesses are examined, daughter of informant and accused has corroborated mother's version and as such prosecution having brought home the charges, learned trial judge seems to have recorded the guilt of the accused for commission of offence under sections 498-A and 307 of IPC.

However, what is now objected by State is the quantum of sentence. As stated above, accused is convicted and he is sentenced for three years for offence under section 307 of IPC and one year for offence under section 498-A of IPC and to pay fine respectively for each of the offences. Considering circumstances like relations of informant and accused, they have two married daughters, the background in which the incident took place, learned trial judge seems to have awarded above sentence. Sentence does falls within the permissible quantum specified by the act i.e. penal code.

In the light of above discussion and taking into account the circumstance under which the alleged incidents taken place, the sentence seems to be just and proper and it would serve the purpose of justice. As no

case for enhancement is made out, we refrain from entertaining the appeal and consequently we pass following order.

ORDER

The criminal appeal is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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