

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 958 OF 2022

Yasin Begum Shaikh Juber,
Age 29 years, Occ. Household,
R/o Kiradpura, Aurangabad,
Taluka and District Aurangabad.

. . . Appellant
(Orig. Informant)

Versus

1. Fatema Bashir Pathan,
Age 56 years, Occ. Household,
R/o Lane No.3, Nehru Nagar,
Katkot Gate, Aurangabad.
2. Majid Khan Mohammad Rafiq,
Age 43 years, Occ. Driver,
R/o Lane No.2, Rashidpura,
Aurangabad.
3. Mumtaz Begum Jainuddin Shaikh @
Majid Khan (Absconded)
(Deleted as per Court's order
dated 03.02.2023)
4. The State of Maharashtra,
Through Police Inspector,
Police Station, Jinsi, Aurangabad,
Taluka and District Aurangabad.

. . . Respondents

.....
Mr. S. S. Panale, Advocate h/f Mr. Nitin Trimbak Tribhuwan, Advocate for the
Appellant.

Mr. R. D. Sanap, APP for Respondent No.4-State.

.....

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

DATED : 03 FEBRUARY 2023

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

1. The original informant is questioning the judgment and order of acquittal passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 268 of 2019 by invoking provisions under Section 372 of the Code of Criminal Procedure (Cr.P.C.).

FACTS OF THE CASE

2. Present appellant approached Jinsi Police Station on 07.02.2017 alleging that her husband works in a hotel. That, eight months prior, she got married to him. According to her, eight days prior to the complaint, her in-laws were intending to sell her ornaments received by her in marriage. She has also alleged that in that background, her in-laws also tried to press her neck, but she refrained from lodging report. However, according to her, on 06.02.2017 around 11.00 p.m. while she was warming food, accused no.2 Mumtaz (mother-in-law) came from behind, opened the lid of stove and poured kerosene over her. She has alleged that at that time, her father-in-law Majid (accused no.3) caught hold of her both hands and thereafter her grand-mother-in-law Fatema (accused no.1) threw a burning match stick on her person, as a result of which, her *oodhani* caught fire but she managed to run away and she directly went to PW2 Shahana i.e. her sister and along with her, she went to police station and lodged report on the basis of which crime was

registered and accused persons were made to face trial. During trial, learned trial Judge has examined oral and documentary evidence. Thereafter, by judgment and order dated 11.10.2022, learned trial Judge acquitted the accused persons from all the charges and hence, aggrieved by the same, original informant has knocked the doors of this Court by way of instant appeal.

SUBMISSIONS

3. Learned Advocate for the appellant would submit that appellant had lodged prompt report. That, shortly after marriage, accused persons i.e. in-laws were insisting to sell the ornaments and when she resisted, she was beaten. Thereafter, on 06.02.2017, there was clear attempt to commit her murder. She was fortunate to escape. Same night she had approached police station, who have referred her for medical treatment and thereafter, on the next day, she lodged report. Role of each of the accused was specifically spelt out. Spot panchanama was drawn. Seizure of her clothes was also done by police. Her sister PW2 Shahana had also adduced evidence in support of her version. Medical expert had also been examined to establish the occurrence. However, learned trial court has failed to consider and appreciate such crucial and strong evidence. Offence under Section 307 of the Indian Penal Code (IPC) was clearly made out but learned trial court failed to consider the same and erred in acquitting the accused. According to learned Advocate for the appellant, seizure of clothes and scene of occurrence had also been proved and

therefore, there was no reason for learned trial Judge to disbelieve the case of informant. Her testimony was supported by PW2 Shahana. They both were consistent and therefore the only conclusion that can emerge is that prosecution had established its case, but unfortunately learned trial Judge has disbelieved the testimonies of PW1 informant and PW2 Shahana and has given undue weightage to minor inconsistencies and discrepancies. Therefore, it is prayed that, the impugned judgment and order of acquittal is required to be set aside.

4. The grounds raised before us could be summarized as under:

Firstly, there was clear attempt to commit murder by pouring kerosene.

Secondly, testimony to that extent was given by none other than the informant.

Thirdly, her testimony was finding support from the testimony of her own sister PW2 Shahana and version of PW2 Shahana also was supported by medical evidence, but there is failure to appreciate the same at the hands of learned trial Judge.

5. On behalf of State, learned APP also pointed out that there was firm and cogent evidence but learned trial court has not appreciated the legal position as well as the evidence on record and has thereby erred in acquitting the accused.

ANALYSIS AND CONCLUSION

6. In the light of above submissions, we have re-examined, re-visited and re-scrutinized the evidence of prosecution in the backdrop of object of Section 372 of Cr.P.C. It is emerging that apart from oral testimony of PW1 informant and PW2 Shahana (sister), prosecution has also examined pancha to seizure of clothes, pancha to spot panchanama, medical expert and investigating officer. Thus, in all, testimonies of five witnesses are taken recourse to apart from FIR Exhibit 17, injury certificate, spot panchanama etc.

7. On reassessing the evidence of **PW1** informant at Exhibit 16, it is emerging that after informing about marriage with Shaikh Juber and naming in-laws, informant has stated that she was residing with her husband and in-laws jointly. According to her, after she started residing with her in-laws, since beginning they were asking her to bring amount from her parental house. However, quantum of amount and purpose of financial demand has not been clarified by her in the witness-box. Regarding the incident dated 06.02.2017, she stated that while she was warming food in kitchen, accused no.2 Mumtaz

came from behind, opened the cock of the stove and poured kerosene on her. She claims that she questioned her mother-in-law for such act. Then she stated that accused no.3 Majid caught hold of both her hands and thereafter, grandmother-in-law Fatema (accused no.1) threw burning match stick on her as a result of which her *oodhani* started burning. Because of the said incident, she suffered blisters. She managed to run away and reached to her sister's place and thereafter they both went to police station and from there to the hospital. On the next day, she lodged report. She identified the clothes while in the witness-box.

In cross-examination, she is unable to state number and names of sons of her grandmother-in-law Fatema. It appears that she has also wrongly given name of her father-in-law. She has admitted that there were adjacent houses but denied that people were gathered as she raised hue and cry. Though she stated that at the time of incident there were cordial relations between herself and her husband, she stated that he had not accompanied her to the hospital. She answered that after reaching Ghati Hospital, she was not conscious and when she became conscious on the next day morning, she gave report after calling police to the hospital. When defence counsel confronted her by asking whether she had in her report stated about being asked to bring money, she confirmed it. She also confirmed about stating that they were all having dinner and so her mother-in-law had asked her to warm the food. Further, when her

report was confronted to her, she was unable to state as to how the above said material is missing from the report. Therefore, material contradictions and omissions are brought on record. She seems to have also improvised her version.

8. Now let us turn to the evidence of her sister PW2 Shahana. She speaks about in-laws of her sister (PW1 informant) selling all articles of the informant as they were in need of funds. This is not stated by the informant herself as she has merely referred about selling of her ornaments. No details regarding such acts are stated by this witness as well as her sister PW1 informant. This witness stated that on 06.02.2017 while she was sleeping, at that time her sister came to her and she found her cloths to be wet and then, on being asked, she stated that accused Mumtaz had poured kerosene on her person and accused Majid caught hold of her hands and thereafter accused Fatema ignited match stick and threw it on her, as a result of which, her *oodhani* caught fire.

In cross-examination, above witness was unable to state as to since when demand or ill-treatment began. In para 12 of the cross-examination, she gave contrary version about police not visiting Ghati Hospital. Defence has pointed out to her the portion marked “A” in her statement wherein there is use of word “gas” instead of “stove”, but this witness stated that she had not

stated about it and had rather stated about stove but she was unable to assign reason as to why the word “gas” is appearing therein.

9. Therefore, on taking audit of testimony of PW1 informant and PW2 Shahana, it is seen that there are allegations of attempt to set PW1 informant on fire. In FIR Exhibit 17 the informant only speaks of her in-laws intending to sell her ornaments received by her in marriage. She does not speak of other household articles attempted to be sold.

10. PW3 Hasan is the pancha to spot panchanama. However, in spite of occurrence taking place on the night of 06.02.2017, spot panchanama seems to have been carried out on 09.02.2017 i.e. after three days. On the same day *oodhani* was also seized. It is surprising that when PW1 informant claims to have rushed to Jinsi Police Station and had narrated the occurrence and thereafter claims to have been referred to hospital, there was no reason to lodge delayed FIR. Delayed seizure also renders the version of occurrence doubtful.

11. PW1 informant claims that because of pouring of kerosene, there were blisters on her person. PW4 Dr. Khan was examined who had occasion to clinically examine PW1 informant at around 12.55 hours. PW4 Dr. Khan has stated that patient came with the history of pouring kerosene over her body.

However, it is not reported that pouring was by her in-laws. PW4 Dr. Khan claims that he had not come across any injury on the person of the patient. He has merely issued provisional injury certificate but it is surprising to note that said certificate is issued on 15.02.2017 i.e. after more than a week.

12. It is pertinent to note that police machinery has also recorded statement of informant under Section 164 of Cr.P.C. but it is apparently recorded after inordinate delay i.e. on 18.02.2017. Her testimony in the court is also not as per the version reported by her in Exhibit 17. Except testimony of PW1 informant and her sister PW2 Shahana, there is no independent witness on the point of occurrence dated 06.02.2017 regarding pouring of kerosene. Another important aspect is that in Exhibit 26 which is also a complaint at her instance, she speaks about her *oodhani* catching fire and therefore she left the same at the same place and ran away, but in cross-examination, she has denied that it so happened that her *oodhani* was burnt. Therefore, informant herself is giving contradictory versions.

13. To sum up, here, on evaluating the entire evidence of prosecution, more particularly, the crucial evidence i.e. of PW1 informant, it is emerging that firstly, informant is not consistent in her version reported by her in FIR and her testimony before the court. The answers given by her in her cross-examination renders her testimony doubtful. Except her version, there is no other evidence

on the part of occurrence. Though her sister PW2 Shahana has been examined, she is apparently a hearsay witness. Spot panchanama is also drawn at a belated stage. Medical expert only speaks of smell of kerosene during examination but there are no injuries. Injury certificate has been issued more than a week after the alleged occurrence and that too in provisional form. Spot panchanama is also drawn after two days. Therefore, with such quality of evidence, it is difficult to hold that prosecution has succeeded in bringing home the charges. Required ingredients for attracting Section 307 of IPC are not shown to be existing in the prosecution evidence. The case of prosecution is not free from doubt. There are several vital shortfalls and as such it is unsafe to accept the version of prosecution. Resultantly, finding no merits in the appeal, the same is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

VRE