

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

CRIMINAL APPEAL NO. 516 OF 2019

Narayan s/o Bhujangrao More (In Jail),
Aged about 41 years, Occ. Labourer, R/o
Kasabegavan, Tah. L Anjangaon Surji, At
Present Wadgaon Mahure, Tah. &
District Amravati.

... APPELLANT

VERSUS

State of Maharashtra, through Police
Station Officer, Nandgaon Peth,
District – Amravati.

... RESPONDENT

Smt. Nisha Gajbhiye, (Wasnik), Advocate (appointed) for the
appellant.

Shri M.J. Khan, A.P.P. for the respondent/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATED : 09.01.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

The Judgment and order of conviction passed by the Trial Court in Sessions Trial No.317 of 2014 vide judgment and order dated 06.05.2017 led convicted accused to file this appeal in terms of Section 374 of the Code of Criminal Procedure (the Code). The appellant

(accused) has been convicted by the Trial Court, for the offence punishable under Sections 302 and 498-A of the Indian Penal Code (IPC). The Trial Court has imposed sentence to suffer rigorous imprisonment for 14 years and to pay fine of Rs.20,000/- for the offence punishable under Section 302 of the IPC, whilst for the offence punishable under Section 498-A of the IPC, he has been sentenced to suffer rigorous imprisonment for three years along with fine of Rs.2,000/-. Both sentences were directed to run concurrently.

2. The accused is the husband of the deceased lady. At the instance of the report dated 05.08.2014 lodged by the brother of the deceased namely Amol Kamble, crime has been registered by the concerned Police vide C.R.No.140 of 2014. It is the informant's case that the deceased Jaya was his sister, who got married with the accused on 30.04.2014. After initial few days, the couple started to reside in nearby constructed Hut. The accused started to harass deceased Jaya at the instance of the monetary demand. Time and again, the deceased Jaya informed about the harassment to her brother i.e. to the informant.

3. On 03.08.2014, around 10.00 pm, Papita Khandare PW2 a neighboring lady of accused has telephonically informed to the informant that the accused was beating deceased Jaya. Soon-after the

receipt of message, the informant along with his brother Mangesh and others rushed to the place. The Hut was locked from inside hence they gave a call to the deceased Jaya, but nobody responded. They saw that one side of bamboo wall was broken from which they saw that Jaya was lying motionless. All of them entered from the hole and found Jaya lying in burn condition. Immediately, she was shifted to the hospital, however she was declared dead on admission. After last rites, the informant went to the concerned Police Station and lodged the report on 05.08.2014 .

4. On 03.08.2014, while deceased was brought dead to the hospital, it was informed to the concerned Police from the hospital. Accordingly, PW6 Police Constable Prashant Kumbhare took note and registered Merg vide No.16 of 2014. Investigation was handed over to PW8 Police Sub Inspector Vaijnath Latpate. He received the report from the informant on the basis of which crime was registered. He has sent dead body for Autopsy. During Merg inquiry, Panchnama of the scene of the offence and inquest panchnama were drawn. PW8 Police Sub Inspector Vaijnath Latpate has recorded statements of necessary witnesses. The accused was arrested and seized articles were sent for chemical analyzation. After completion of investigation, charge-sheet

has been filed.

5. The accused has been charged for the offence of cruelty within the meaning of Section 498-A of the IPC along with the case of homicidal death amounting to murder punishable under Section 302 of the IPC. The prosecution has examined as many as eight witnesses to establish the guilt. The prosecution evidence mainly consists of informant, two witnesses who have seen the accused while leaving the place of occurrence, Panch Witnesses, Medical Officer and Police persons.

6. The informant Amol (PW1) has stated that soon-after the marriage, the accused started to harass deceased Jaya. He deposed that all the time deceased was informing him about the monetary demand and consequential harassment. During cross-examination, some improvements have been brought on the record however it emerges from his evidence, that he has been informed about monetary demand and consequential harassment. It is his evidence that on the date of occurrence, in late hours, PW2 Papita telephonically informed that the accused was beating his sister Jaya. He went to the place and found that his sister was lying dead in burn condition.

7. The prosecution has examined PW2 Papita Khandare who is neighboring lady and the material witness of the prosecution side. It is her evidence that the accused used to harass deceased Jaya by consuming liquor. She deposed that deceased Jaya has disclosed her about ill-treatment on which she gave understanding to the accused. On crucial aspect, it is her evidence that on 03.08.2014, around 10.00 to 10.30 pm, neighboring lady Shashikala Kamble (PW3) informed her that the accused was quarreling with Jaya and thus, both of them went to see the matter. They gave a call to deceased Jaya however it was not responded. It was smelling of burns. The house was locked from inside. They saw the accused running through the hole made in bamboo wall. They saw from the hole that Jaya was lying in burn condition and then, she was shifted to the hospital.

8. PW3 Shahikala, who is also neighboring lady, has equally deposed that she along with PW2 Papita went to the house of the accused and saw the accused running through the hole from his house. She has specifically deposed that she heard that accused was abusing to the deceased and therefore, she called Papita and both of them went to see the matter. Both these witnesses were cross-examined at length. However nothing emerges to discard their testimony. Pertinent to note

that, both of them stated that when they went to the house of the deceased they saw the accused hurriedly leaving the place through the hole. The said evidence is not challenged by the accused during cross-examination. It emerges from the consistent evidence of PW1 Amol Kamble, PW2 Papita Khandare and PW3 Shashikala Kamble that the accused was harassing the deceased to meet unlawful demand. There was no reason to disbelieve the version of these consistent witnesses. It emerges that the harassment was to meet unlawful demand and thus, the evidence is sufficient to hold that the accused has committed an offence punishable under Section 498-A of the IPC.

9. It is the prosecution case that the deceased was lying in burn condition at her residential Hut. As per the prosecution case, the incident took place in between 10.00 pm to 10.30 pm. PW2 Papita and PW3 Shashikala have specifically stated that after hearing shouts of quarrel between the couple, they went to see the matter and particularly, saw the accused hurriedly running away from the hole created in wooden wall. It has come in the evidence that no-sooner deceased was admitted to the hospital, she was declared dead. Prosecution has examined PW5 Dr. Abhishekh Naidu who has conducted Autopsy on the dead body. It has come in his evidence that

deceased Jaya sustained 100% burns. We have also gone through the inquest panchanama and Postmortem report, which reaffirms that there were extensive burns on the entire body and cause of death was due to '100% burns'. It is not the defence that either deceased committed suicide or she caught fire accidentally. Therefore, it is evident that the deceased met with a homicidal death.

10. It reveals from the evidence of PW2 Papita and PW3 Shashikala that at crucial time they have seen the accused running from the Hut through the hole. It has come in the evidence that the couple was residing in concerned Hut for which there is no dispute. Panchanama of the scene of the offence (Exhibit 32) discloses that it was a small Hut measuring 8 x 10 feet build by dry hay and bamboo sticks. Particularly, the hole created in the Katcha wall, was noticed at the time of panchanama. The occurrence took place in residential house at late hours. Naturally, the accused was supposed to present at his house. In view of Section 106 of the Evidence Act, onus lies on the accused to explain the things as it is a case of custodial death. Besides mere denial, there is nothing from the side of the accused. Since the prosecution has proved the foundational facts and particularly, there were eye witnesses to state that they have seen the accused leaving the

place, it is for the accused to explain, but he did not.

11. Learned Counsel for the accused would submit that all witnesses are interested one. However, that alone cannot be a reason to discard their testimony. It is settled law that while appreciating the evidence of interested witness, the Court shall adopt cautious approach. PW1 Amol Kamble is real brother and naturally, he was supposed to know about the matrimonial hassle through his sister. It is not denied that PW2 Papita and PW3 Shashikala were neighboring residents. Therefore, their presence on the spot was quite natural. Their evidence on material aspect has not been challenged. Therefore, the testimony of all these witnesses inspire full confidence.

12. Learned counsel appearing for the accused would submit that the accused in his statement under Section 313 of the Code has stated that at the relevant time, he was not at his house. Pertinent to note that, no such suggestion was given to either of the witnesses nor the accused has explained as to where he was at the relevant time. Therefore, mere denial about presence, carries no substance. It has been argued that there was no previous complaint about the cruelty. However, this being a matrimonial affair, non filing of prior police

report about harassment makes no difference.

13. It reveals that on 03.08.2014, at late midnight, Jaya was declared dead. On the following day, last rites were performed and then on the next day, First Information Report has been lodged. Naturally, the informant Amol must be in a grief due to horrifying incident relating to his sister, therefore, the delay caused in filing the police report is natural, and cannot be taken adverse to the prosecution case. The accused has not explained custodial death, which is an additional circumstance which strengthens the evidence of eye-witnesses that they have seen the accused running from the place soon-after the incident.

14. On re-appreciation of entire material, we hold that the prosecution has successfully established that the accused has committed the offence of cruelty and caused death of his wife Jaya by setting her on fire. It reveals that the death was caused by pouring kerosene on the person of the lady causing her 100% burns. The said act of the accused itself postulates that he intended to cause death of his wife since on entire body kerosene was poured. His intention was apparent to cause extensive burns, which are sufficient in ordinary course of nature to cause death, and thus, act of the accused squarely

amounts to murder. Therefore, we find no merit in the appeal.

15. We have come across one another striking aspect of the case that, though the Trial Court held accused guilty for the offence of murder punishable under Section 302 of the IPC, however the Trial Court has awarded sentence to undergo imprisonment for 14 years along with the fine of Rs.20,000/- with default clause. The said punishment is unknown to the law. Once the accused is held guilty for the offence punishable under Section 302 of the IPC, the minimum sentence which is permissible under the law, is the imprisonment for life, and therefore, the punishment less than that would be contrary to the law. This Court has already issued a notice to the accused vide order dated 21.11.2022 by expressing said aspect. In this regard, the learned Counsel for the appellant has nothing to say that since the legal position is quite clear. Though no separate appeal has been filed by the State under Section 377 of the Code, however sufficient notice was given by this Court as to why the sentence shall not be modified. As a matter of fact, it is not a case of enhancement of sentence but to pass appropriate sentence in accordance with law. Therefore, modification to that extent is necessary as required under the law.

16. So far as the imposition of fine is concerned, the Trial Court has directed to pay fine of Rs.20,000/- for the offence punishable under Section 302 of the IPC and Rs.2,000/- for the offence punishable under Section 498-A of the IPC with default clause. The Trial Court has not assigned any reason for imposing fine to said extent. It reveals from the record that the accused is poor laborer, who has no means, therefore, legal aid has been provided to him. Having regard to said feature, we deem it appropriate to reduce the fine amount under both counts.

17. In view of above, the appeal is dismissed to the extent of challenge to the conviction for the offence punishable under Section 302 of the IPC. The sentence is modified to the extent that for the offence punishable under Section 302 of the IPC, the accused is sentenced to suffer imprisonment for life along with fine of Rs.2,000/-, in default of payment of fine, he shall suffer rigorous imprisonment for 15 days, and for the offence punishable under Section 498-A of the IPC the fine amount is modified to the extent of Rs.1,000/-, in default of payment of fine, he shall suffer rigorous imprisonment for 15 days. Rest of the operative part of the impugned judgment shall remain as it stands.

18. In view of the above, the appeal stands dismissed with a modification in sentence, as aforesaid mentioned.

19. Fees of the appointed learned Counsel be paid as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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