



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 387 OF 2004

Abeda Kasam Tadvī,
Age : 70 years, Occu. : Nil.,
R/o. Marul, Tal. Yawal,
Dist. Jalgaon.

... Appellant.

Versus

The State of Maharashtra

... Respondent.

...
Mr. Vilas P. Sawant, Advocate for Appellant (Appointed through
Legal Aid)
Mrs. Chaitali Chaudhari – Kutti, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 SEPTEMBER, 2024

PRONOUNCED ON : 10 SEPTEMBER, 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction rendered by learned 2nd Additional Sessions Judge, Jalgaon in Sessions Case No. 73 of 2003 recording guilt of the appellant for offence punishable under section 307 of Indian Penal Code (IPC).

FACTUAL MATRIX

2. In short case of prosecution is that, present appellant is mother-in-law of victim Madina wife of accused no.2. It is prosecution version that, husband and mother-in-law subjected

victim to cruelty, they disliked her because of her dark complexion. On 23.03.2003, mother-in-law picked up quarrel with daughter-in-law victim as sugar container was not found. After the quarrel and abuses, she poured kerosene on victim and ignited her. She was taken to the hospital and on examination, she was found to have suffered 38% burns. On her report, crime and offence was registered.

After investigation, appellant mother-in-law and husband were charge-sheeted and tried by learned 2nd Additional Sessions Judge, Jalgaon for offence punishable under sections 307, 498A and 504 of IPC.

On appreciation of evidence, learned trial Judge acquitted husband accused no.2, but convicted present appellant mother-in-law for offence punishable under section 307 of IPC, vide judgment and order dated 23.04.2004. Hence, the appeal.

SUBMISSIONS

On behalf of Appellant :-

3. Learned counsel Shri Sawant for appellant would point out that, at the time of incident, appellant was around 70 years of age. As on today she is over 90 years of age. He pointed out that, there were no quarrel or incineration as alleged. Rather according to him, victim PW2 Madina suffered accidental burns while

cooking. That, except testimony of victim, which is full of material omissions and contradictions, there is no supportive or corroborative piece of evidence. He pointed out that, there is no material about an attempt to commit murder. That, only upper limbs/extremities are affected. Therefore, according to him, charge itself was misplaced. He pointed out that, neighbours and independent witnesses have not supported prosecution, however, still learned trial court has accepted prosecution version and recorded guilt. According to him, no sound reasons are assigned for justifying conviction. In the alternative, he submitted that, considering appellant to be over 90 years of age as on today, she may be let off on sentence already undergone.

On behalf of Prosecution :

4. Per contra, learned APP, who supported the conviction submitted that, victim herself has stepped in the witness box. She has narrated that she was maltreated and appellant disliked her because of her dark complexion. That, it amounted to mental cruelty. That, on the day of incident, appellant picked up quarrel on petty count, but poured kerosene and set victim daughter-in-law on fire. Only because of timely intervention and medical aid, victim could survive. Learned APP pointed out that, learned trial court has acquitted husband as no role was attributable to him and this

itself shows that, there is proper appreciation. Considering the nature of offence, she prays to dismiss the appeal.

EVIDENCE ON RECORD.

5. **PW1** Sharifa, neighbour did not support the prosecution.

PW2 Madina victim, who deposed at Exh.30, narrated the incident dated 23.03.2003, in which appellant allegedly poured kerosene and set her on fire by use of firewood, resulting into burns.

PW3 Abeda, mother of victim stated that, there was ill treatment to her daughter, who reported whenever she came. That, on the day of incident, she learnt that her daughter was ignited by pouring kerosene.

PW4 Meharban, neighbour did not support the prosecution.

PW5 Faruq, Police Head Constable, who recorded statement of victim (Exh.31), which is made the basis of registration of crime.

PW6 A.P.I. Jainarayan, who carried out investigation and charge-sheeted accused.

ANALYSIS

6. Evidence of victim PW2 Madina is crucial. Regarding incident, she has deposed as under :-

“2. After marriage, I started residing with both accused at Marul. Then, after one year, I and accused no.2 went to reside at Surat. There, two sons and one daughter were born to me. The, when I was pregnant for 4th time, I came to Marul for delivery. I stayed at Marul for seven months. At that time, both accused used to say that they did not like me because I am black.

3. On 23.03.2003, at 11:00 a.m., there was quarrel between me and accused no.1, because the sugar which was brought by her was not found. At that time, accused no.1 poured kerosene upon me and lit me with burning fire-wood. So, I shouted and my brother-in-law, Meharban, came and extinguished the fire. I was then taken to Rural hospital. There, police came and took down my report. Report, now shown to me, is same, contents are true and correct. It bears my signature. It is at Exh.31.”

7. Though mother PW3 Abeda alone supported prosecution, she has mere hearsay information. Independent witnesses, who are neighbours have not supported the prosecution, but investigating machinery has drawn spot panchanama and has also collected medical papers (Exh.35).

On scrutiny of spot, it is emerging that, incident has taken place near *chulha*. Situation shown in the panchanama is

that, there is half baked *jawar roti* on the pan. Victim's version is that, around 11:00 a.m., there was quarrel between herself and appellant because sugar brought by her was not found and thereafter, she poured kerosene and she has specifically stated that she was ignited by mother-in-law. Scene of occurrence at Exh.26 shows that, near the *chulha*, there is half burn fire-wood along with kerosene container/bottle.

8. Statement of victim shows that, it was recorded promptly at hospital. Exh.35 carried following noting :-

“Burn on 23.03.2003 at around 11:00 a.m.; Quarrel with husband. Then burn by mother-in-law after pouring kerosene on her. 32 weeks pregnancy.”

Above texts shows that, history is promptly noted i.e. burns by mother-in-law after pouring kerosene. This Exh.35 is prepared at 11:45 a.m. on 23.03.2023 i.e. immediately after the occurrence and admission. Therefore, taking the testimony of victim into account coupled with medical papers (Exh.35), there is no hesitation to hold that mother-in-law appellant is solely responsible for inflicting 38% burns. Therefore, charge and offence stand proved.

9. Submissions are made in the alternative that appellant as on today over 90 years of age and at the time of incident, she was over 70 years of age. Operative part shows that, after conviction, she was behind the bar from 24.03.2003 to 15.07.2003 i.e. 3 months and 23 days, and therefore, considering the circumstance, in which incident took place i.e. sudden quarrel which flared up to pouring kerosene and also taking into consideration the current age of the victim, sentence already undergone would suffice and subserve the purpose of justice.

In view of above, substantive sentence is reduced to period already undergone of around 3 months and 23 days. The judgment and order of trial court is required to be modified to that extent only. Hence, I proceed to pass the following order:

ORDER

- I. The conviction of the appellant Abeda Kasam Tadvi for offence punishable under section 307 of IPC by learned 2nd Additional Sessions Judge, Jalgaon dated 23.04.2004 in Sessions Case No. 73 of 2003 is affirmed and hereby kept intact.

HOWEVER

- II. The sentence awarded to the appellant to suffer simple imprisonment for one year is hereby modified as under :

“The appellant Abeda Kasam Tadvī is sentenced to suffer imprisonment already undergone by her.”

- III. Bail bond of appellant stands cancelled.
- IV. It is clarified that rest of the operative order passed by the trial court is maintained.
- V. The appeal is disposed of in the above terms.

(ABHAY S. WAGHWASE, J.)