
(2016) 02 BOM CK 0053
In the Bombay High Court
Case No : Criminal Appeal No. 353 of 2002

Anil s/o. Keruba Shejul

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2016) ALLMRCri 1182 : (2016) 3 BomCR(Cri) 400

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : R.B.Bagul, APP, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J. (Oral) - Heard.

2. The appellant was convicted by learned Ist Adhoc Addl. Sessions Judge, Aurangabad vide judgment and order dated 15th June, 2002 in Sessions Case No.109 of 1999 for the offence punishable under Section 307 of Indian Penal Code. He was sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/-. Hence, the present appeal.

3. The prosecution case, in short, is as under :.

PW 2-Kantabai, complainant was earlier married to one Kisan Kaduba Gadkar. She had three issues from the said marriage. However, in the meantime, she had developed love affair with the present appellant-Anil Shejul. Therefore, her husband Kisan had deserted her in the year 1980. Thereafter, she started residing with the appellant and accepted him as husband. They resided together for about 10 years and cohabited happily.

The appellant already had his first wife namely, Meerabai and she was residing at a different place in the city of Aurangabad itself. Said Meerabai time and again used to visit the house of the appellant and used to quarrel with the complainant

due to the illicit relations. Therefore, the appellant also used to raise quarrel with the complainant. He used to beat her and ultimately, told that since his first wife was against their relationship, the complainant should leave him.

In the circumstances, the incident has occurred on 6th January, 1999. PW 2-Kantabai, complainant had gone for labour work at the site of the appellant. At that time, the appellant asked her not to come for work there. The complainant told that as she had no money, she was required to carry labour work at that place. The appellant, however, insisted that she should go away. Thereupon, the complainant asked the appellant for some money, upon which, the appellant beat her and took her to her house in Indiranagar area. Thereat, the appellant again beat her and ultimately, told that she was not required by him. Thereafter, the appellant poured kerosene on her person and set her on fire. However, thereafter, the appellant himself took the complainant to the Government Hospital and admitted there.

The statement of the complainant was recorded by the Police Head Constable in the hospital which is at Exhibit 21. PW 5-Dr. Dinesh Pagaria, Medical Officer, examined her. He recorded the history given by the complainant of setting her on fire by the present appellant. He found that the complainant had suffered 40% burn injuries. Accordingly, he made entries of the same in the medico-legal register, which was produced at Exhibit 27.

The Investigating Officer PW 6-Kisan Thakare recorded the panchnama of the spot of occurrence. He seized a plastic can, some burnt pieces of saree and a match box. He recorded statements of the neighbors including PW 3-Sheshrao and eye witness PW 4-Ramdas Bhise. After completion of the investigation, he filed the charge sheet in the Court.

4. Before the learned Addl. Sessions Judge, in all six witnesses, as detailed supra, were examined. Out of them, PW 3-Sheshrao Gawli is the neighbourer, who had visited the house of the complainant after the incident and PW 4-Ramdas, who, according to the prosecution, was an eye witness to the entire incident. They, however, turned hostile and did not support the prosecution. The prosecution therefore relied on the statement of PW 2-complainant and PW 5-Dr. Dinesh Pagaria.

The learned Addl. Sessions Judge believed the testimony of these witnesses and therefore, the conviction and sentence, as detailed supra, came to be recorded.

5. Learned counsel for the appellant submitted before me that there is no motive for commission of the offence. The prosecution case would show that the appellant himself had taken the complainant to the Government Hospital. Further, PW 4-Ramdas, who claimed to be an eye witness, did not support the prosecution case. The cross-examination of PW 5-Dr. Dinesh Pagaria would show that usually, he put his signature against the entries in the medicolegal register. In the present case, however, he did not put any signature. In all these circumstances, learned counsel for the appellant submitted that the case of the

appellant that the complainant herself attempted to commit suicide ought to have been accepted by the learned Addl. Sessions Judge.

6. Learned A.P.P. for the respondent-State submitted that the statement of the injured complainant is corroborated by the injuries found on her person. The history given by the complainant to PW 5-Dr. Dinesh Pagaria would show that the appellant had attempted to commit murder of the complainant. In the circumstances, he submitted that the appeal may be dismissed.

7. On the basis of this material, following point arises for my determination :

I) Whether the prosecution has proved that on 6th January, 1999 in Indiranagar area, present appellant had attempted to commit murder of the complainant by setting her on fire ?

My findings to the above point is in the affirmation. The appeal is, therefore, dismissed for the reasons to follow.

REASONS

8. It is an admitted fact that the deceased had suffered burn injuries. In the circumstances, though PW 1-Ravindra Salve, panch witness, did not support the prosecution case regarding seizure of the plastic can containing kerosene, it can be very well concluded that the complainant had suffered burn injuries due to pouring kerosene and setting her on fire.

9. It is true that Dr. Dinesh Pagaria did not put his signature against the entries made by him in the medicolegal register regarding the present case, though his usual practise is to put the signature. It is however a common case that the complainant had suffered burn injuries on that day when she was admitted to the hospital. In the circumstances, the statement of the Medical Officer cannot be discarded.

The Medical Officer made entries of the history as stated by the complainant to him at the time of admission in the hospital. It would show that present appellant had raised quarrel with her, poured kerosene on her person and set her on fire.

10. The statement of the complainant PW 2-Kantabai would go to show that she used to earn livelihood by doing labour work. As, on the day of the incident, she had no job, she went to the site of the appellant where, contract of construction was taken by the present appellant. The complainant wanted to work there to earn livelihood for the day. The appellant, however, was fed up with her, may be due to the day today quarrels with his legally wedded wife Meerabai and therefore, he asked the complainant to go away.

During the quarrel, both of them came to the house of the complainant where, the appellant set her on fire by pouring kerosene on her person. Though PW 4-Ramdas Bhise, neighbourer of the complainant, did not support the prosecution case, the same is amply proved beyond the reasonable doubt by the statements

of the complainant and the Medical Officer coupled with the history as recorded by him at the time of admission of the complainant in the hospital.

The reasons forwarded by the learned Addl. Sessions Judge cannot be faulted with. The appeal, therefore, deserved to be dismissed.

11. Hence, the following order :

A] The Criminal Appeal is hereby dismissed.

B] Bail bond of the appellant shall stand cancelled.

C] The learned Ist Adhoc Addl. Sessions Judge, Aurangabad to take steps for securing presence of the appellant for serving remainder of the sentence