
(2015) 06 BOM CK 0327
In the Bombay High Court
Case No : Criminal Appeal No. 92 of 2012

Nityanand Jagan Shetty

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 307

Citation : (2015) ALLMR(Cri) 4249

Hon'ble Judges : A.R. Joshi, J.

Bench : Single Bench

Advocate : Mallika Ingale, Advocate, for the Appellant; P.P. Bhosale, A.P.P., for the Respondent

Final Decision : Disposed Off

Judgement

A.R. Joshi, J.—Heard rival submissions on this Criminal Appeal preferred by the applicant/appellant, who is in Jail. The present appeal is taken for expeditious hearing as the application for bail during the pendency of the appeal was rejected, by this court vide earlier order. When the appeal was admitted, also there is another cause for hearing appeal expeditiously as the original complainant, wife of the appellant was present before the court and indicated that she has no grievance against her husband though during the incident for which he was convicted, he had poured some hot liquid substance on her face and body and attempted to caused danger to her life. In fact under the peculiar circumstances and mainly considering the request of the first informant original complainant the appeal is taken for expeditious hearing. The present appellant was convicted in Session Case No. 33/2011 by judgment and order dated 24th November 2011 passed by 3rd Ad-hoc Additional Sessions Judge, City Civil and Sessions Court, Borivali Division, Dindoshi, Mumbai. The appellant was convicted for the offence punishable under section 307 and was sentenced to suffer rigorous imprisonment for 10 years and to pay fine amount of Rs. 25,000/- in default, to suffer further rigorous imprisonment for 10 months. The appellant

was also convicted for the offence punishable under section 201 of Indian Penal Code and was sentenced to suffer rigorous imprisonment for 3 years and to pay a fine amount of Rs. 1,000/- in default, to suffer further rigorous imprisonment for 15 days. Both the substantive sentences were directed to run concurrently. Reportedly fine amount was not paid.

2. The incident is of throwing some hot oily substances on the face, back and other parts of the body of the complainant. Incident occurred on 24-11-2010 at the house where the complainant-appellant and her husband were staying along with their small child then aged about 4 years. Actually, on the day of the incident the child was not at home. However, the child was at home on earlier date on which day also the appellant had made a sort of rehearsal of boiling some liquid however the action could not be completed of throwing it on his wife as the small child and the wife woke up due to the emission of the smoke. This happened on earlier day of the incident. Earlier incident occurred as mentioned above and was further supported by one neighbour who is PW-7.

3. According to the case of the prosecution the motive for throwing hot oily substance on the face and body of the complainant was doubting of character of his own wife i.e. the complainant. Prior to the incident for few months the appellant had been to gulf for his livelihood and thereafter when he came back he had suspicion regarding character of his wife and then this suspicion was the cause to throw the hot oily substance on the face of his wife on the day of the incident.

4. After the incident the victim women complainant was taken to Bhagwati Hospital but she was there only for few hours. She was examined initially and attending Doctor PW-9 reported that she had sustained 70 to 80 percent burn injuries due to such oily liquid substance. So far as the injuries sustained by victim women are concerned there is no dispute regarding same. During the trial total 10 witnesses were examined and the important substantive evidence is of PW-1 (Complainant), PW-7 (Kiran Raut) and PW-9 (Dr. Shams Tabrej A. Asgarali) who treated the burns initially. It is an admitted position that though the victim was given discharge from the Bhagwati Hospital within few hours she was taken to private hospital and was treated there for about a month or so. Complainant's face is disfigured and she is having injuries on both limbs, chest and back, is not in dispute and this is admitted factual position.

5. Considering the substantive evidence adduced the trial Court convicted the accused for both charges, and it is rightly so in the opinion of this court.

6. Now the question remain whether there is anything to interfere with the quantum of punishment for the offence punishable under section 307 as now special peculiar circumstances are brought before the court by none other than the complainant i.e. wife of the appellant. When on earlier date the complainant wife was present before the court she indicated that she want to forgive her husband for what he had done to her. She further stated that she has no

objection if the appeal is allowed. Possibly due to socioeconomic conditions she has mentioned so before the court, she also filed affidavit to that effect. The affidavit is taken on record and marked "A" for identification. She has specifically mentioned that her child is 10 years and is depriving of the fatherly affection as his father the appellant is in Jail since the year 2010. The complainant has also expressed her desire to stay with accused after he is released from jail, if his appeal is favourably considered. This submission is made before the court by the complainant as apparently her earning prospectus are diminished because of disfiguring of her face and disability caused due to the incident. Moreover, she has to feed small child of 10 years age. The said special circumstances are brought before the court by the complainant and supported by the affidavit.

7. Now the question remains whether it is a case in which there is no material against the accused, the appellant so as to take away conviction for the offence or whether it is a case in which there can be interference only on the quantum of punishment so as to meet the ends of the justice, mainly considering the desire of the complainant to cohabit with her husband with all that he had done to her in the year 2010. Definitely Section 307 of Indian Penal Code is non-compoundable and as such there cannot be any compounding of the offence under any circumstances. When the offence under section 307 of Indian Penal Code is proved as in the present case. Then the question remains whether there can be interference with the quantum of punishment while dealing with this appeal. Considering above circumstances and considering the other arguments, in the opinion of this court it would be just and proper and also keeping in mind the desire of the complainant herself, it would be proper if the appeal is suitably partly allowed with altering the quantum of punishment and maintaining the conviction on both the counts. In the result the present appeal is partly allowed with following order.

1. The conviction of the appellant for the offence punishable under section 307 and 201 of Indian Penal Code is maintained. However the sentences are reduced to the following extent. So far as the sentence for section 307 of Indian Penal Code is concerned the sentence of imprisonment of 10 years is reduced to the sentence already undergone and the fine amount of Rs. 25,000/- is maintained. In default imprisonment is reduced from 10 months to 1 month. So far as the punishment under section 201 Indian Penal Code is concerned there is no change in the quantum of punishment but it is specifically directed that both the substantive sentences shall run concurrently. Rest of the impugned order shall sustain. With these directions the present appeal is accordingly disposed off.