IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 430 OF 2021

Namdeo Ramchandra Chormule ..Appellant
Versus
The State of Maharashtra ..Respondent

Mr. Abhishek R. Avachat (appointed Advocate) a/w. Siddhant H. Deshpande a/w. Mahesh Sadaphal for Appellant.
Ms. Ranjana D. Humane, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 25 JULY 2024

ORAL JUDGMENT :

1. The Appellant has challenged the Judgment and order dated 04.03.2020 passed by the Additional Sessions Judge, Solapur, in Sessions Case No.267 of 2018. The Appellant was convicted for commission of the offence punishable U/s.307 of the I.P.C. and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.10000/- and in default to suffer R.I. for one year. He was convicted for commission of the offence punishable U/s.504 of the I.P.C. and was sentenced to suffer S.I. for two years. Both the sentences were directed to run concurrently. He was given set off

U/s.428 of the Cr.p.c.

2. The prosecution case is that the Appellant was residing with his wife Rani. He was addicted to liquor and he used to harass her. On 02.08.2015, there was a quarrel between the appellant and his wife. The appellant picked up a bottle of rat poison kept in the house and forcibly poured it in the mouth of his wife. She became unconscious. She was taken to the hospital. She was treated in the hospital for about four days. Then she was discharged. She gave the complaint against the Appellant in the hospital. On this basis the F.I.R. was lodged. The investigation was carried out and the Appellant faced the trial.

3. During the trial, the prosecution examined six witnesses including the Appellant's wife, the sister of his wife, the Doctor who treated the victim, the pancha for the spot panchanama and the investigating officers. The defence of the appellant was of total denial. After considering the evidence on record and the defence taken by the Appellant, the learned Judge came to the conclusion that the Appellant had committed the aforementioned offence; for

which, he was convicted and sentenced, as mentioned earlier.

4. The prosecution evidence largely depends upon the evidence of the victim Rani. She was examined as PW-3. She has stated that, she was residing with the Appellant, who was her husband. They were staying with their children. The appellant was addicted to liquor and was doubting her character. He used to beat her. On the first day of a month, at about 8:00p.m. she had gone to her sister's house Sunita Padule. The appellant came there under the influence of liquor. He started abusing her. Both of them went to their house. He kept quarreling with her till the early morning on the next day. After some time, at about 9:00a.m. again the appellant started quarreling with PW-3. He said that, he would beat her and would not leave her alive. He picked up a bottle of rat poison and poured it in her mouth. She became unconscious. Her relatives shifted her to the Civil Hospital, Solapur. On the same day, police came to the Hospital and recorded her statement which is produced on record at Exhibit-18. She identified the bottle.

In the cross-examination, she deposed that, in the past

there was an alleged incident, in which, the Appellant had poured kerosene on her. But he was acquitted from that case. Their elder son was 15 years of age, daughter was 12 years of age and younger son was 10 years of age, on the date of incident. The house of her sister was about 50ft. away from her house. Her sister did not come to her house when there was a quarrel between the couple in the midnight. She deposed that, she had good relations with her sister. She further deposed that the quarrel went on from 7:00a.m. to 9:00a.m.. At that time, her children were not in the house. She regained her consciousness in the midnight. She admitted that the Appellant and her sister both were present in the hospital when she regained her consciousness. Her F.I.R. is almost on the similar lines except that, she has stated that on 02.08.2015 the quarrel started at 9:00a.m. The F.I.R. clearly mentions that, in the fit of anger the appellant poured that poison in her mouth.

5. PW-2 Sunita Padule is an important witness. She was the sister of the victim-PW-3. She has deposed that, when the incident took place, the Appellant had gone for work. She was preparing tea in her house. PW-3's son came to call her and told her that PW-

3 had consumed poison. PW-2 then went to PW-3's house and shifted her to the hospital. She deposed that, she did not get any information that the appellant had forcibly put poison in the victim's mouth. PW-2 was declared hostile and was cross-examined by the learned advocate for the appellant. In the cross-examination conducted by the learned Advocate for the accused, she admitted that the Appellant came to the spot after he was called telephonically. She deposed that the Appellant was with them when PW-3 was shifted to the hospital. PW-3 did not disclose about the incident. She did not make any complaint against the Appellant that he had administered poison to her.

6. PW-1 Somnath Atkare was the pancha for the spot panchanama. He has deposed that, on 03.08.2015, they conducted the spot panchanama. One empty bottle with plastic lid was found at the spot. It was seized. The spot panchanama is produced on record at Exhibit-12.

In the cross-examination, he deposed that the bottle was inside the house and it was empty. He denied the suggestion

that, it was found outside the house. However, the spot panchanama mentions that the bottle was found in the tin shed outside the house.

7. PW-4 Dr. Vitthal Dhadake had treated PW-3 for the case of poisoning. He has deposed that on 02.08.2015, she was admitted to the hospital. He produced the medical papers of her treatment. They are produced collectively on record at Exhibit-22. He could not give the name of the relative who had given the history of poisoning.

8. PW-5 API Sachin Methre was the first investigating officer. He was handed over the investigation of C.R.No.304 of 2015 registered at Mohol police station; which is the subject matter of the present case. He forwarded the seized poison bottle and the sample of stomach wash of the victim to C.A. Pune. He has produced the C.A. reports on record. The C.A. reports show that the stomach wash of the victim showed presence of “Pyrithroid insecticide Deltamethrin”. Some poison was detected in the aluminum bottle seized in this case.

9. PW-6 PSI Dilip Khaire was attached to Mohol police station. He had carried out major part of the investigation. He prepared the spot panchanama, and seized the bottle. He arrested the Appellant on 03.08.2015. He recorded the statements of the witnesses, collected the medical certificates and handed over the investigation to API Methre.

This, in short, is the evidence led by the prosecution.

10. Learned counsel for the Appellant submitted that the allegations against the Appellant are not proved by the prosecution beyond reasonable doubt. The deposition of PW-3 Rani and PW-2 Sunita will have to be read together. There was no reason for PW-2, who was the real sister of the victim, to depose against the prosecution. PW-2's evidence shows that the Appellant was not in his house when the victim had consumed poison. PW-2 was called by PW-3's son by informing that PW-3 had consumed poison. Her evidence also shows that the Appellant was called telephonically. Then he had reached the spot. He had also helped in taking the victim to the hospital. PW-3 herself has stated that, when she

regained consciousness, at that time, the Appellant and her sister both were present in the hospital. Learned counsel submitted that the Appellant deserves to be acquitted. In the alternative, he submitted that the ingredients of Section 307 of the I.P.C. are not made out. At the highest, it can be an offence U/s.308 of the I.P.C. There was no premeditation to commit the offence. He had not procured the poison bottle with pre-planning. It was lying in the house for killing the insects.

11. Learned APP opposed these submissions. According to her, there is no reason to discard the evidence of the victim herself who has described the incident in detail. She also submitted that, in the past also the appellant had attempted to pour kerosene on the victim. According to her, the ingredients of Section 307 of the I.P.C. are made out. The appellant does not deserve to be acquitted. The prosecution has proved its case beyond reasonable doubt.

12. I have considered these submissions. After perusal of the evidence, I do not see any reason to disbelieve the victim's version

that the Appellant had forcibly poured poison in her mouth. Though, the evidence of PW-2 is otherwise, she was declared hostile and she was cross-examined by the learned prosecutor and her contrary portion from the police statement was brought on record.

13. I find that the deposition of PW-3 that the quarrel was going on from 7:00a.m. to 9:00a.m., as deposed in the cross-examination, is exaggerated. Because her F.I.R. itself mentions that the quarrel started at 9:00a.m. and at that point of time, during that quarrel, the Appellant administered poison to her. PW-3 has stated that, on the previous night she had gone to the house of PW-2 and there was a quarrel in the night between the husband and wife. However, the main incident occurred on the next day. PW-2 Sunita had not heard any quarrel about the previous night. She has not deposed anything about it. She also has not deposed that she could hear the quarrel from 7:00a.m. in the morning. PW-2's house was 50ft. away from the victim's house. In that context, the statement in the F.I.R. is also important, wherein, it is specifically stated by the victim/first informant that on 02.08.2015

at about 9:00a.m. the Appellant started quarreling with her and during that quarrel he poured poison in her mouth. Subsequently, the poison bottle was seized. The C.A. report shows that same poison was found in the bottle as that in the stomach wash of the victim. Therefore, to that extent, PW-3's evidence will have to be accepted.

14. The question remains, whether the Appellant is said to have committed the offence U/s.307 of the I.P.C. The evidence shows that the quarrel had started at 9:00a.m. and during that quarrel the appellant had poured poison in the informant's mouth. Therefore, there was no premeditation, no pre-planning and no design on the part of the Appellant. In such a case, if that act had led to the death of the victim, it would not have been murder, but only the culpable homicide, not amounting to murder; as referred to *Exception 4* to Section 300 of the I.P.C. The medical evidence shows that the victim had suffered from poisoning and she had to be treated in the hospital for four days. The further evidence also shows that it is accepted by PW-3 that PW-2 and the Appellant were present in the hospital. PW-2 has specifically deposed that

the appellant with the others had taken the victim to the hospital. There is no reason for PW-2 who is the victim's sister to support the Appellant. Therefore, though, the appellant had full opportunity to cause further damage, he had not done so and in fact, he had tried to take the victim to the hospital. Therefore, there is scope to believe that the Appellant did not have intention to commit murder of the victim. Instead, the offence would fall within the meaning of Section 308 of the I.P.C.; which reads thus:

> "**308. Attempt to commit culpable homicide. -** Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

15. In this view of the matter, the conviction and sentence U/s.307 of the I.P.C. will have to be set aside. The Appellant will have to be convicted U/s.308 of the I.P.C., instead. Learned counsel for the appellant submitted that, he is in custody for five years and six months. The maximum sentence which can be imposed

U/s.308 of the I.P.C. is seven years. Therefore, considering the over all circumstances, the sentence undergone by the Appellant i.e. five years and five months would be sufficient to meet the ends of justice. The conviction U/s.504 of the I.P.C. and the sentence imposed under that section can be maintained.

16. Hence, the following order:

O R D E R

i) The Appeal is partly allowed.

ii) The conviction and sentence U/s.307 of the I.P.C. imposed by the Additional Sessions Judge, Solapur, in Sessions Case No.267 of 2018, against the present Appellant are set aside.

iii) Instead, the Appellant is convicted for commission of the offence punishable U/s.308 of the I.P.C. and the Appellant is sentenced to suffer R.I. for the period which he has undergone.

iv) The conviction and sentence imposed U/s.504 of the I.P.C. are maintained.

v) Both the sentences are directed to run concurrently.

vi) The Appellant is granted set off U/s.428 of the Cr.p.c.

vii) The Appellant is in custody. Since the maximum sentence imposed on him is for the period which he has already undergone and since the sentences are directed to run concurrently, he shall be released forthwith, if not required in other case.

viii) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)