

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 290 Of 2001

Baby Saroja Alias Shubhangi w/o
Shivanand Shivacharya, age 25 yrs.,
occ. Household,
R/o at present c/o Kashinath
s/o Sanbhasiappa at Naigaon,
Tq. Degloor, District Nanded

...Applicant

VERSUS

- 1] Shivanand s/o Nagbhushan
Shivacharya, age 36 years,
Occ.service, at present
Dhamengao, Tq. Ashti, Beed,
- 2] Nagbhushan s/o Ramlingappa
Shivacharya, age 62 years,
Occ.agril, R/o Khanapur,
Tq. Degloor,
- 3] Sow. Kalawatibai w/o Nagbhushan
Shivacharya, age 51 years,
Occ. household, R/o Khanapur,
- 4] Madhav s/o Nagbhushan
Shivacharya, age 29 years,
Occ. service, R/o Khanapur,
Tq. Degloor,
- 5] Sow. Suman w/o Someshwarappa
Swami, age 33 years, occ. Houeshold,
r/o Khanapur,
- 6] Sow. Lalita alias Sunita
w/o Nandkumar Swami,
age 28 years, occ. Service,
R/o Gadga, Tq. Biloli,

7] Gangadhar s/o Ghallappaswami,
age 50 years, occ. Service,
r/o Lohgaon, Tq. Biloli,

8] The State of Maharashtra,
through P.S.Degloor

...Respondents
[Nos. 1 to 7 Orig.accused]

.....
Smt. Ranjana Reddy, advocate for applicant
Shri Amol Gandhi, advocate for respondent nos. 1 to 7
Shri D.R.Kale, A.P.P. for respondent no.8
.....

CORAM : V.M.DESHPANDE, J.

DATED : 6th January, 2015

ORAL JUDGMENT : -

1] Exception is taken to the judgment and order of acquittal, passed by the learned Judicial Magistrate, First Class, Degloor, dated 25.6.2001 in Regular Criminal Case No. 107 of 1998, by which the learned Magistrate acquitted respondent nos. 1 to 7 for the offence punishable under Section 498-A r/w Section 34 of the Indian Penal Code.

2] The present Revision is filed by wife of respondent no.1. Respondent nos. 2 and 3 are her parents-in-law. Respondent no.4 is her brother-in-law; whereas respondent nos. 5 to 7 are her distant relatives.

3] Criminal law was set into motion by the applicant by lodging a report on 4.3.1998 with police station Naigaon. The said report was registered in the said police station as Crime No. 0 of 1998 and it was transferred to Degloor police station. The first information report is at Exh.51.

4] In order to bring home the guilt of respondent nos. 1 to 7, the prosecution has examined four witnesses and filed the closure purshis Exh.90. The learned Magistrate, after appreciating the prosecution case, has acquitted respondent nos. 1 to 7.

5] I have heard Smt. Ranjana Reddy, learned counsel for the applicant/original first informant wife and Shri Amol Gandhi, learned counsel appearing for respondent nos. 1 to 7. With their able assistance I have gone through the record and proceedings.

6] It is the contention of Smt. Reddy that the learned Magistrate has failed to consider the prosecution evidence in its true perspective. She has further submitted that illtreatment to wife is amply proved on the basis of Exhs. 61 to 63, which are the letters sent by respondent no.1 first informant herself to her father. She further submitted that in view of the dictum of the law laid down by the Apex Court, reported in **AIR 1962 SC 1788**

[K.Chinnaswamy Reddy vs State of A.P.], the Revisional court has ample power to set aside the order of acquittal, if the evidence of the prosecution witnesses are misread by the learned court below.

7] Exh.51 is the first information report. The first information report is not a substantive piece of evidence. The first information report can be used for corroboration or contradiction. In the first information report, it is specifically alleged by the first informant that when the first informant was in the house of PW 3 Kashinath, who is her father, that time the accused persons went at Naigaon, the place of Kashinath and there she was assaulted. This particular aspect is completely absent in the evidence of PW 3 Kashinath. Further, there is no corroboration from father Kashinath in respect of the version of PW 1 the first informant from witness box about beating at her parental house. Therefore, this material aspect has remained uncorroborated in the prosecution case.

8] Heavy reliance was placed by Smt. Reddy on the letters Exhs. 61 to 63. According to her, Exhs. 61 and 62 are the letters written by accused no.1 himself and she further stated that there is no cross-examination on the said point. In a criminal case, the burden firmly rests on the shoulder of the prosecution. It was for the prosecution to prove the case

beyond reasonable doubt against the accused persons. Merely because it is a statement that the letters are sent by accused no.1, that by itself does not conclusively prove that those letters were sent by respondent no.1 husband, in absence of hand writing expert opinion on record. No attempts were made on behalf of the prosecution during the trial to send the letters to the hand writing expert or to obtain the specimen of hand writings of accused no.1 in order to prove the hand writing of the letters Exhs. 61 and 62.

Exh. 63 is an inland letter written by the first informant herself to her father. After having gone through Exh.63, it is amply clear that Shubhangi was leading a happy life with respondent no.1 at her matrimonial house. In this context, the evidence of PW 3 Kashinath would reveal that he has brought Shubhangi/first informant at Naigaon on the Makar Sankrant. It is the case of the prosecution that right from the day of Makar Sankrant the applicant is residing in her parental house. There is nothing on record to show that in view of any atrocity committed on her, Shubhangi was forced to leave her matrimonial house. Further, there are no allegations against respondent nos. 5 to 7, who are the distant relatives of the first informant.

9] By now, it is an established principle of law that the view taken by the court below while acquitting the accused

persons cannot be disturbed merely because another view is possible, except it is demonstrated before the superior court that the court below has completely failed to appreciate the evidence in its true perspective and/or the order of acquittal is outcome of perverse approach on the part of the court below.

10] I have gone through the judgment, which is impugned in the present Revision. The learned Magistrate has supplemented the reasons for acquittal. The reasons are based on the available material on record. The reasons show that there is no tinge of perversity in the impugned judgment.

11] In that view of the matter, the Revision fails and it is dismissed. Rule discharged.

[V.M.DESHPANDE, J.]

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