

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.454 OF 2001

The State of Maharashtra,
Through P.S.O. Purna,
District-Parbhani.

...APPELLANT
(Ori. Complainant)

VERSUS

- 1) Sk. Mohsin s/o Sk. Rashid,
Age-22 years, Occu:Labour,
- 2) Shammu Begum w/o Sk. Rasheed,
Age-45 years, Occu:Household,

Both Respondents R/o- Madinanagar,
Parbhani, Tq. & Dist-Parbhani.

...RESPONDENTS
(Orig. Accused Nos.1 & 4)

...
Mr. B.L. Dhas, A.P.P. for Appellant.
Mr. Vijay Sharma Advocate for Respondent
Nos. 1 and 2.
Mr. Kunal Kale Advocate holding for
Mr. Rajendra Deshmukh Advocate assist
to A.P.P.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 5TH FEBRUARY, 2015

ORAL JUDGMENT :

1. This Appeal is filed by the State against acquittal of Respondent Nos. 1 and 2 who were arrayed in the trial Court as original accused Nos.1 and 4. These accused were convicted in Regular Criminal Case No.337 of 1997 by Judicial Magistrate First Class, Purna vide Judgment dated 8th January 1999. Along with these Respondents-accused, their other family members were also prosecuted but they were acquitted by the trial Court. The Respondents - accused Nos.1 and 4 had filed Criminal Appeal No.5 of 1999 before the Sessions Judge, Parbhani and they came to be acquitted by the 3rd Additional Sessions Judge, Parbhani vide Judgment dated 17th August, 2001.

2. In short, the case of the prosecution as was brought, appears to be as follows:

(A) The complainant Naseembegum wife of Respondent No.1 accused filed first information report on 20th April 1996 at Purna Police Station, Dist-Parbhani claiming that she was married to Respondent No.1 - Sk. Mohsin on 17th May 1995 and she went to reside at the matrimonial house at Parbhani. According to complainant, accused persons treated her well for initial two months and thereafter, she claims that the accused persons started asking her to bring Rs.10,000/- from her father to secure job for her husband and so saying, they started ill-treating her. After two months of the marriage, Respondent No.2 - the mother-in-law told her that if she does not get the money she should go to her parents place. So saying, she was reached to the place of her parents. After eight days the Respondent Nos.1 and 2 came to Purna and told the father of the complainant that for securing service, Rs.10,000/- were required and also a watch was required and if the same is given then only they would take the

complainant for cohabitation. Father of complainant namely Syed Hasan was unable to give the amount and there was a quarrel and the accused went away. The complainant was pregnant and she delivered a baby child in February 1996. Her grandfather Syed Bashir (PW-2) had gone to the place of the accused but the accused did not come to meet complainant. As the accused did not come to take the complainant and she was ill-treated and left at the place of her parents, the complainant filed the complaint.

(B) A.S.I. Kadiroddin registered the offence at Crime No.43 of 1996 under Section 498-A read with 34 of the Indian Penal Code, 1860 ("I.P.C." in brief) and offence was investigated by Head Constable Mohammad Khalil (PW-6). He recorded statements of the complainant and her parents. He arrested the accused. After investigating the matter, the charge-sheet came to be filed.

(C) Charge was framed against the five accused as were arrayed in the trial Court, under Section 498-A as well as Section 506 read with 34 of the I.P.C. Prosecution brought on record evidence of six witnesses. The defence of the accused persons as appearing from the cross-examination and statements under Section 313 of the Code of Criminal Procedure, 1973 was that of denial. The trial Court after considering the material available, acquitted all the accused persons of the offence punishable under Section 506 of the I.P.C. However, original accused Nos. 1 and 4 (present Respondents) came to be convicted of the offence punishable under Section 498-A read with 34 of I.P.C. The other accused were acquitted of the offence punishable under Section 498-A of I.P.C. also.

(D) The Appellate Court considered the arguments raised before it and for reasons recorded in the Judgment, acquitted the present Respondents also

of the offence punishable under Section 498-A read with 34 of I.P.C.

3. I have heard learned A.P.P. for State. The learned A.P.P. has taken me through the oral evidence of all the witnesses. He has submitted that the Appellate Court wrongly gave stress on delay in filing of the complaint and that only relatives were examined and there was no independent witness. According to him, in matter like the present one, the evidence could be only of the relatives. He submitted that the Appellate Court erred in acquitting the Respondents on the basis that only making of demand was not cruelty.

4. Against this, learned counsel for Respondents-accused supported the Judgment of the Appellate Court and the reasonings recorded by it. Learned counsel for Respondents relied on the case of **Nallabothu Ramulu @ Seetharamaiah and others vs. State of Andhra Pradesh**, reported in (2014) 12

S.C.C. Page No.261. Referring to Para 7 of the Judgment, the learned counsel submitted that in a matter of appeal against acquittal, the presumption of innocence gets strengthened in favour of the accused when the acquittal is recorded by the lower Court and thus merely because another view is possible, the same should not be the reason to interfere with the Judgment. Learned counsel relied on the reasonings recorded by the Appellate Court to submit that the Appeal of the State should be rejected.

5. A quick reference can be made to the oral evidence which was brought on record by the prosecution. Complainant PW-1 Naseembegum deposed that accused persons treated her well for initial two months after marriage and then they started demanding Rs.10,000/- and a watch. She claims that the accused used to beat her and put her to starvation. She claims that present Respondents - accused Nos.1 and 4 left her at the place of her

parents. According to her even after 8-15 days when they came at the place of her parents, they made the same demand. Evidence of PW-2 Syed Bashir, grand-father of the complainant, in short, is that the victim was treated well for two months and when he went to see her, she informed him that accused had made demand of Rs.10,000/-. He claims that after two months of marriage, the Respondents-accused had left the victim at his place and the victim had delivered a baby child. Evidence of PW-3 Syed Hasan, in short, is that his daughter was treated well for initial two months and then demand of Rs.10,000/- and watch was made. According to him, his daughter informed him about the said demand. He also claims that Hamid Baig (PW-5) had sent a letter. He proved the document at Exhibit 63. PW-4 Syed Rashid claims that he was residing at Parbhani and complainant had come to him 2-3 times and she narrated about the incident of the accused persons demanding money. PW-5 Hamid Baig, cousin brother of victim, stated that PW-4

Syed Rashid had informed him about cruelty to the complainant and he had gone to her house. He claims that complainant told him that she has been ill-treated and he sent letter Exhibit 63 to the father of the complainant.

6. Investigating Officer Mohammad Khalil stated that the neighbours of the accused are *Parda Nashin* and so he could not record statements of the neighbours.

7. The trial Court referred to the evidence of these witnesses and in Para 31 of its Judgment distinguished the case for Respondents - accused Nos.1 and 4 vis-a-vis the other accused and while convicting the present Respondents, he acquitted the other accused.

8. It can be seen from record that the evidence shows that the complainant PW-1 Naseembegum, after marriage resided at the place

of accused persons for about two months and thereafter, it is claimed that there was demand and ill-treatment and she was reached to her parents place. At the same time there is evidence that she resided at the place of accused for just about two months. The complaint Exhibit 50 claims that she was given trouble but does not mention that the complainant was beaten or she was starved as is her oral evidence. The evidence is that the accused demanded the money for securing job to her husband and so saying, trouble was given to the complainant. PW-4 and PW-5 referred to demand and cruel treatment. PW-5 Hamid Baig claims in evidence that victim told him that she was being ill-treated but in his letter claims that victim was being beaten. The Appellate Court examined the evidence and found that evidence regarding alleged cruel treatment was quite vague. The complainant even admitted in cross-examination that she filed the complaint as the accused persons had not come to take her. The Appellate Court came to the

conclusion on the basis of evidence, that even if it was to be said that some demand was there, that by itself could not be concluded as cruelty. For such reasons, the Appellate Court interfered with the Judgment of conviction of present Respondents and acquitted the Respondents.

9. Going through the evidence available and reasons discussed above, the view taken by the Appellate Court is a possible view of the evidence and it appears that the Appellate Court was justified in interfering with the Judgment of the trial Court. PW-2 Syed Bashir and PW-3 Syed Hasan in their examination-in-chiefs did not depose that victim claimed to have been beaten or starved. On the same evidence as far as regards cruelty is concerned, the other accused have been acquitted. Merely on the basis of who had gone along with complainant to her parents place, the trial Court made distinction, but the Appellate Court interfered and as the acquittal has been recorded,

it would not be appropriate to interfere in this Appeal.

10. I do not find any reason to allow the Appeal against acquittal. The Criminal Appeal is dismissed.

[A.I.S. CHEEMA, J.]

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