

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

CRIMINAL REVISION APPLICATION NO. 126 OF 2002

1] Devinder Singh s/o Gurusharan Singh
Khurana, age 40 years,
occ. Financial Cousultant,
R/o 63, Shreynagar, Aurangabad

2] Mrs. Joginder Kaur
w/o Gurusharan Singh
Khurana, age 65 years,
occ. Household,
R/o as above

...Applicants

VERSUS

The State of Maharashtra

...Respondent

.....
Shri D.L.Agrawal, advocate for the applicants
Shri S.A.Ambad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 10th February, 2015

ORAL JUDGMENT :-

1] The present Revision is directed against the judgment and order of conviction, passed by the learned Judicial Magistrate, First Class, Aurangabad, dated 21.3.2001 in Regular Criminal Case No. 633 of 2000, by which the present

applicants were convicted for the offences punishable under Sections 323, 498-A, 506 r/w 34 of the Indian Penal Code and were directed to suffer imprisonment till rising of the court and to pay fine of Rs.15,000/-, in default to suffer rigorous imprisonment for six months, by each of them, however, the applicants were acquitted of the offence punishable under Section 504 r/w 34 of the Indian Penal Code; together with the judgment and order, passed by the learned Ist Ad hoc Additional Sessions Judge, Aurangabad in Criminal Appeal No. 20 of 2001, dated 2.2.2002, whereby the learned lower appellate court dismissed the appeal, however, has reduced the fine amount from Rs.15,000/- to Rs.3,000/- on account of conviction under Section 498-A and Rs.2,000/- on account of conviction under Sections 324 and 506 r/w 34 of the Indian Penal Code, by each of them.

2] I have heard Shri D.L.Agrawal, learned counsel for the applicants and Shri S.A.Ambad, learned Additional Public Prosecutor for respondent/State. With their able assistance, I have gone through the record and proceedings.

3] The first informant Monika, a highly educated lady, who at the time of her marriage was Senior Accounts Officer at Nath Seeds, was married on 19.1.2000 with applicant no.1, who at the relevant time was a Finance Manager in the said

Company. It appears that their marriage developed matrimonial discord immediately. According to the first informant, it is the applicants, being her husband and her mother-in-law, subjected her to cruelty for their unlawful demand of Rs.50,000/- resulting into illtreatment to her at their hands.

Exh.13 first information report, dated 16.3.2000 was lodged against the present applicants which was recorded as C.R. No. 62 of 2000 at police station Jawahar Nagar for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code.

After completion of the investigation, challan was presented and the learned Magistrate framed the charge vide Exh.8 in Regular Criminal Case No. 633 of 2000 against the present applicants for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code.

4] In order to bring home the guilt against the applicants, the prosecution examined in all five witnesses. They are : -

- | | | |
|--------------------------|---|---|
| PW 1 Monika | - | the first informant |
| PW 2 Sou. Anita | - | mother of first informant |
| PW 3 Prithwiraj Batra | - | Neighbour of PW 2 Anita |
| PW 4 Dr. Sunil Shirodkar | - | whose dispensary was visited by the first informant |
| PW 5 Anil Singh Rajput | - | Investigating officer |

5] I would like first to decide the correctness or otherwise of the conviction in respect of the offence punishable under Section 323 of the Indian Penal Code.

From the evidence of PW 1 Monika, it is clear that she was physically assaulted only on one occasion i.e. on 18.2.2000. If the evidence of Monika is to be believed, on the said day applicant no.2 called applicant no.1 from the office. He came and gave beating to her. Therefore, she went to her parents house and her parents took her to Dr. Sunil Shirodkar (PW 4). The visit to the dispensary of Dr.Sunil (PW 4) is corroborated by the said doctor. He has issued certificate (Exh.19).

6] Dr. Sunil has admitted that he is homeopath and he is not allowed to follow alopahy practice.

Dr. Sunil has admitted that he found certain injuries as mentioned in the certificate (Exh.19), however, though it was a medico legal case, he did not inform the police. He has further admitted that except Exh.19 he never issued any certificate to anybody. No doubt true, this witness has denied the suggestion that he is known to the parents of first informant Monika, however, we cannot keep blind eye on the fact that though Monika had suffered bodily injuries, instead of going to the doctor, who is qualified in alopahy and surgery, has approached to a homeopath. This conduct on the part of the

PW 1 Monika and her parents naturally raise eye brows. Normally, if a person receives any bodily injury, natural reaction would be to approach the doctor practicing alopahy rather than going for treatment to a homeopath. This fact itself really creates a serious doubt about the fact as to whether really the first informant suffered injuries at the hands of the applicants.

7] Further, the court should not forget the fact that Monika is highly educated lady and was discharging her duties as Senior Officer in a reputed company. Even, according to her, she was assaulted on 18.2.2000, however, she did not report the incident of assault on her immediately to the police or did not visit police station for about a month and on 16.3.2000 she reported the matter to the police. Further, there is no reference at all in the first information report about the incident dated 18.2.2000. In that view of the matter, this court is of the considered view that the courts below committed serious error in convicting the applicants for the offence punishable under Section 323 r/w 34 of the Indian Penal Code, and accordingly, said conviction cannot stand to the scrutiny of law.

8] In so far as conviction of the applicants under Section 498-A of the Indian Penal Code is concerned, the available evidence is of first informant, her mother and the evidence of Prithwiraj (PW 3).

If the evidence of first informant and her mother is scrutinized, then it is clear that their evidence is at variance on the vital aspects. According to the first informant, she, for the first time after her marriage, on 30th January, went to her parents house and that time she disclosed to her mother (PW 2) about the demand of Rs.50,000/- and illtreatment. This is not corroborated by PW 2 her mother Anita. On the contrary, she has stated that Monika came on 24th January for the first time, however, if the evidence of Anita is examined correctly, then it is clear that at that time it is not the claim of Anita that Monika has disclosed any illtreatment to her or demand of Rs.50,000/-.

PW 2 Anita's evidence would disclose that on 23rd January she went to the house of the applicants and that time applicant no.2 demanded Rs.50,000/- from her and stated that then only she will be visiting house of Anita. This claim of Anita is not supported by PW 1 Monika. Further, PW 2 Anita has stated that Monika has consumed phenyl. The said statement from the witness box by Anita is totally uncorroborated, and therefore, it is clear that PW 2 Anita is ready to state anything against the applicants, and therefore, it will not be safe to accept her version for reaching to the truth.

Evidence of PW 3 Prithwiraj is hear say version, and therefore, will not be useful to the prosecution. Apart from the fact that it is hear say, his evidence is full of improvements.

9] PW 1 first informant has admitted that her husband applicant no.1 has filed petition for conjugal rights against her. This fact also demonstrates that applicant no.1 was eager to reside with his wife first informant Monika.

10] At this stage, I would like to make a reference to the order passed by this court on 26.8.2009 in Criminal Application No. 82 of 2009 which was filed in the present Criminal Revision.

By Criminal Application No. 82 of 2009, a prayer was made before this court for invoking the powers of this court under Section 482 of the Code of Criminal Procedure in view of the authoritative pronouncement of Apex Court in the case of **B.S.Joshi vs State of Haryana and anr.** reported in **AIR 2003 SC 1386**.

The said application was rejected by this court, however, perusal of the said order shows that first informant Monika filed a petition bearing Petition No.B-13/2002 for recovery of stridhan property which was settled and a petition for divorce bearing Petition No. A-168/2002 and in the order, dated 26.8.2009 it is observed that the Judge of the Family Court, Aurangabad has dissolved the marriage by decree of mutual consent in terms of Section 13(B(1) of the Hindu Marriage Act.

11] The afore said observation by me is just to narrate the history of the litigation between the first informant and the applicants.

I would like to clear here that the said fact of dissolution of marriage has not influenced me while deciding the present case, in as much as the offences under Sections 498-A and 323 are distinct from the decree of divorce.

12] To secure the conviction, the prosecution is under obligation to prove its case beyond reasonable doubt. As observed in the preceding paragraphs, in view of the variance on material aspects, it would be unsafe to accept the testimonies of PW 1 Monika and PW 2 Anita. Since, their evidence do not inspire confidence it would be unsafe to reach to the conclusion that the prosecution has proved its case beyond doubt against the applicants.

13] In that view of the matter, I propose to pass the following order.

O R D E R

(i) The Criminal Revision Application is allowed.

(ii) The judgment and order of conviction, passed by the learned Judicial Magistrate, First

Class, Aurangabad in Regular Criminal Case No. 633 of 2000, dated 21.3.2001, together with the judgment and order, passed by the Ist Ad hoc Additional Sessions Judge, Aurangabad, dated 2.2.2002 in Criminal Appeal No. 20 of 2001 are hereby quashed and set aside.

(iii) The applicants are acquitted of the offences punishable under Sections 498-A and 323 of the Indian Penal Code.

(iv) The bail bonds of the applicants stand cancelled.

(v) Fine amount, if any paid by the applicants, be refunded to them.

(V.M.DESHPANDE, J.)