

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 310 OF 2002

The State of Maharashtra
Through Police Station Jawaharnagar,
Aurangabad

..Appellant

VERSUS

- 1) Hardeepsing Karnalsingh Dhanova,
Age : 25 years, Occu. Nil,
R/o. Osmanpura, Aurangabad
- 2) Santikh Karnalchand Dhanova,
Age : 27 years, Occu.: Service,
- 3) Karnalchand Babusingh Dhanova,
Age : 52 years, Occu.: Doctor,
- 4) Arjunsingh @ Vikramsingh S/o
Karnalchand Dhanova,
Age : 23 years, Occu.: Nil,
- 5) Sow. Nirmala Kaur W/o Karnalchand
Dhanova, Age : 45 years,
Occu.: Household,

All resident of Osmanpura,
Aurangabad

..Respondents

Appeal abated as against respondent no. 2 as per
Courts order dated 17.08.2009.

Mrs. B.B. Gunjal, A.P.P. for the appellant - State
Mr. S.K. Barlota, Advocate for the respondents

CORAM : M.T. JOSHI, J.

DATE : 29/04/2015

ORAL JUDGMENT :

1. Heard both sides.

2. Aggrieved by the acquittal of the present respondents from the offences punishable under section 498-A, 323, 504, 506 r/w. 34 of the Indian Penal Code by the learned VI Judicial Magistrate First Class, Aurangabad, vide judgment and order dated 27/12/2001 passed in Regular Criminal Case No. 37 of 2001, the present appeal is preferred by the State.

3. The prosecution case, in nutshell, is as under:-

. The present respondent no.1 - Hardeep Singh has married with the complainant on 4/4/1996 under the Special Marriage Act. It was a love marriage. Thereafter, respondent no.1 and the complainant started residing in the joint family consisting of the respondent no.1 and rest of the respondents. For a period of two years, relations were good. Thereafter,

however, according to the complainant, she found that the respondent no.1 had illicit relations with one woman, namely, Shabanakhan. Upon questioning, respondent no.1 started abusing and beating the complainant. The fact of illicit relations was also noticed by the friend of respondent no.1, namely, P.W. 4 Sameer Sarhadi. Thereafter, the rest of the respondents started pestering the complainant for a demand of Rs.1,50,000/- to be brought from her parents. Even they forced them to raise loan for starting a computer institute. The loan of Rs.1,50,000/- was obtained for opening the computer institute, however, the said amount was expended for other purposes and the computer institute was not opened. They again started pestering her (complainant). She was ill-treated on these counts. Her father was also required to gift a scooter in the month of October, 1997. Ultimately, on 2nd July, 1998, all the respondents drove the complainant from the matrimonial home and warned her not to return till the demand of Rs.1,50,000/- is complied with. For 6-7 months, efforts for compromise were made and, thereafter, the complainant again returned to the matrimonial home. However, again the ill-treatment

continued. The complainant filed complaint on 09.11.2000 against the respondents on the basis of which the investigation was started and ultimately, the chargesheet was filed.

4. Before the learned Judicial Magistrate First Class, the complainant as well as the friend of respondent No.1, as named earlier, alongwith other witnesse, namely, PW2 Lisha were examined. The learned Judicial Magistrate, however, held that the prosecution case is not proved beyond reasonable doubt. Therefore, the acquittal of the respondents came to be recorded. Hence, the present appeal.

5. Mrs. B.B. Gunjal, learned A.P.P. submitted that there is positive evidence of the complainant and even the friend of the respondent No. 1 that he had illicit relations with one Shabanakhan. He further submitted that the deposition of the complainant is corroborated by her relatives to whom she had narrated about the illtreatment.

6. On the other hand, Mr. A.S. Barlota, learned

counsel for the respondents, filed on record true copy of the certified copy of the judgement, dated 2nd December, 2003, passed by this Court in Family Court Appeal No. 56 of 2003, which is taken on record and marked "X" for the purpose of identification. The said judgement would show that the marriage between the parties is dissolved. He further makes a statement that both the parties are now married. He further submits that the learned Judicial Magistrate First Class has taken a reasonable and probable view on the basis of evidence before him. Mr. Barlota therefore submits that in the facts of the case, no interference in the reasoning recorded by the learned Judicial Magistrate First Class is called for.

7. On the basis of above material and the submissions advanced on behalf of both the sides, the following points arise for my determination :-

(I) Whether the prosecution has proved that from the year 1998 till 08.11.2000, the present respondent No. 1 being the husband and relatives of the husband of the complainant, in

furtherance of their common intention, subjected the complainant to cruelty for fulfilment of demand of Rs. 1,50,000/- ?

- (II) Whether the prosecution has proved that during the same period, all the respondents, in furtherance of their common intention, caused hurt to the complainant ?
- (III) Whether the prosecution has further proved that during the given period and time, all the present respondents, in furtherance of their common intention, had threatened and provoked the complainant ?
- (IV) Whether the prosecution has proved that during the given period and time, the present respondents, in furtherance of their common intention, have given criminal intimidation of giving threat of killing the complainant ?

My findings to all the above points No. (I) to (IV) are in negative. The appeal is, therefore, dismissed for

the reasons to follow.

R E A S O N S

8. The learned Judicial Magistrate First Class has observed that the statements of the near relatives of the complainant are not only of interested witnesses but as the complainant herself has filed the FIR and deposed before this Court, the statements of other witnesses would be a hearsay evidence. It was further found that except the oral testimony of PW1 – the complainant, PW2 Lisha and PW4 Sameer regarding the illicit relations of respondent No. 1 with one Shabanakhan, no further investigation is carried by the Investigating Officer as regards said Shabanakhan by securing the details of her full name, address, etc. It was further found that as per the prosecution case itself, though it was a love marriage between the youngsters of two different castes, still there were happy relations in the joint family for two years. It was further observed that only due to raising of the loan, certain dispute might have arisen which ultimately led to the filing of the complaint.

9. Since the learned Judicial Magistrate First Class had an occasion to note the demeanour of the witnesses and as the reasoning recorded by him are based on material on record, in the present appeal against acquittal, there is no need to interfere in the reasoning forwarded by the learned Judicial Magistrate First Class. The present appeal is, therefore, liable to be dismissed. In the circumstances, the following order:-

10. The criminal appeal is dismissed. The bail bonds, if any of the respondents shall stand cancelled.

Sd/-

[M.T. JOSHI]
JUDGE

npj/criapl310-2002