

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

CRIMINAL REVISION APPLICATION NO. 300 OF 2002

Laxman s/o Pralhad Puthewad,
age 54 years, occ. Agril.,
R/o Lavaral, Tq.Loha, Dist.Nanded ...Applicant

VERSUS

The State of Maharashtra ...Respondent

.....
Shri S.S.Jadhavar, advocate for applicant
Shri S.A.Ambad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 12th February, 2015

ORAL JUDGMENT : -

1] Being aggrieved by the judgment and order of conviction, passed by the learned Judicial Magistrate, First Class, Kandhar, dated 30.1.1997 in Regular Criminal Case No. 303 of 1993, by which the applicant was convicted for the offence punishable under Section 498-A of the Indian Penal Code and was directed to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to further suffer rigorous imprisonment for one month, together with the judgment and order, passed by the learned Additional Sessions

Judge, Nanded, dated 17.10.2002 in Criminal Appeal No. 6 of 1997, by which the learned lower appellate court dismissed the appeal and confirmed the judgment and order of conviction passed by the learned trial court. The applicant is before this court to challenge his afore said conviction.

2] I have heard Shri S.S.Jadhavar, learned counsel for the applicant and Shri S.A.Ambad, learned Additional Public Prosecutor for respondent in extenso. With their able assistance, I have gone through the record and proceedings.

3] On 17.9.1993, a written report was lodged by Anusayabai, the wife of the present applicant with police station Malakoli, Taluka Loha (Exh.25). It is alleged in the said report that her marriage with the applicant took place about 7 years ago. From the wedlock, she is having one female child. Her husband, the present applicant had one concubine by name Taherabee. They, in collusion with each other, beat her and demanded Rs.5,000/-.

It is further alleged that on 16.9.1993 at 8 O' clock in the morning, Taherabee gave beating to her and she was driven out of her house. It is further alleged that when she returned from work from the house of Sarpanch and when she was sleeping, that time the applicant also picked up quarrel with her as to why she quarreled with Taherabee and on that count

he gave beating to her. Therefore, she ran away from the house and took shelter in the house of one Maroti Shankar Dasarwar. That time, the present applicant pelted stone on his house.

Since the report was disclosing commission of a cognizable offence, a crime was registered against the present applicant and Taherabee for the offences punishable under Sections 498, 323, 504, 506 r/w 34 of the Indian Penal Code vide Crime No. 68 of 1993.

4] After completion of the entire investigation, the clallan was presented in the court of Judicial Magistrate, First Class, Kandhar. The learned Magistrate framed charge against the applicant and Taherabee for the offence punishable under Section 498-A r/w 34 of the Indian Penal Code against both the accused, however, framed charge under Section 323 of the Indian Penal Code only against the present applicant.

In order to bring home the guilt against the applicant, the prosecution examined eight witnesses. The learned Magistrate, on appreciation of the prosecution case, found that the prosecution has not proved its case against original accused no.2 Taherabee, and therefore, acquitted her. At the same time, the learned trial court also acquitted the present applicant for the offence punishable under Section 323 of the Indian Penal Code. However, according to the learned trial

court the applicant was found guilty of the offence punishable under Section 498-A of the Indian Penal Code, and, therefore, the trial court passed the order of conviction and sentence as observed in the opening paragraph of this judgment, which was confirmed by the appellate court.

5] Exh. 25, the first information report is very specific. It would reveal that first informant Anusayabai was subjected to illtreatment and beating at the hands of both the accused on account of demand of Rs.5,000/-. Thus, the cause for beating is demand of Rs.5,000/-.

The first information report is not a substantive piece of evidence. It can be used for corroboration or for contradiction.

6] First informant, Anusayabai entered into witness box as Prosecution Witness No.1. Her evidence is completely silent about the demand of Rs.5,000/-. Not only that, her evidence is also silent that she received illtreatment at the hands of present applicant on account of demand of Rs.5,000/-. In that view of the matter, the allegation made against the present applicant that he demanded Rs.5,000/- from the first informant Anusayabai (PW 1) remained to be proved by primary evidence of Anusayabai.

The courts below, especially the appellate court, has confirmed the order of conviction under Section 498-A of the Indian Penal Code on the basis of the evidence of PW 2 Narayan, PW 3 Vitthal, PW 4 Madhav and PW 6 Maroti, who have stated before the court that there was demand of Rs.5,000/- from the present applicant and for that Anusayabai was subjected to cruelty.

Their evidence would show, especially the evidence of PW 2 Narayan that after 5 to 7 years of their marriage, the applicant gave beating for bringing Rs.5,000/-. These witnesses are not the relatives of Anusayabai. Further Anusayabai has not stated in her evidence or in first information report that she has disclosed the beating on account of money to these witnesses. The evidence of these witnesses is completely silent about the place of beating by the applicant to his wife. Nowhere they claim that within their view Anusayabai was beaten by the applicant.

In that view of the matter, it is really hard to believe that these witnesses are the witnesses to the truth, especially when source for their information and/or their statement on oath is not disclosed.

7] Further, evidence of Anusayabai would reveal that she was residing separately even at her matrimonial place from last two years. The assertion in the first information report that

she took shelter in the house of Maroti has remained uncorroborated. Maroti is examined as Prosecution Witness No.6. His evidence would reveal that he has not claimed that Anusayabai took shelter in his house due to the beating from the present applicant and/or the applicant pelted stone on his house. Thus, the allegation in the first information report in that behalf remained uncorroborated.

8] The learned trial court on same facts and evidence has acquitted the accused no.2 Taherabee, whose acquittal was not challenged either by the State or by the first informant.

The evidence of Anusayabai is completely silent about the illtreatment and its cause as stated in the first information report. A new case is tried to be put forth in the evidence that the applicant used to ask her that she should reside in her parental house as she could not begot male child. Thus the evidence of Anusayabai is at total variance with the first information report. In such a situation and in view of the fact that the prosecution witnesses cannot be believed on the point of illtreatment, the judgment and order of conviction passed by the learned trial court for the offence punishable under Section 498-A of the Indian Penal Code cannot stand to the scrutiny of law and is liable to be set aside. Hence I pass the following order.

ORDER

(i) Present Criminal Revision Application is allowed.

(ii) The judgment and order of conviction, passed by the learned Judicial Magistrate, First Class, Kandhar, dated 30.1.1997 in Regular Criminal Case No. 303 of 1993, for the offence punishable under Section 498-A of the Indian Penal Code and confirmed by the learned Additional Sessions Judge, Nanded by his judgment and order, dated 17.10.2002 in Criminal Appeal No. 6 of 1997 are quashed and set aside.

(iii) The applicant is acquitted of the offence punishable under Section 498-A of the Indian Penal Code.

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

(v) Fine amount, if any paid by the applicant, be refunded to him.

[V.M.DESHPANDE, J.]