

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.487 OF 2003

Padmshri w/o. Shriram Shinde,
Age 28 years, Occ. Agri.,
r/o. Mangrul, Taluka, Kallam,
Dist. Osmanabad ..Applicant

Versus

- 1] Shriram s/o. Shankar Shinde,
Age 33 years, Occ. Agri.,
- 2] Avidabai w/o. Rajendra Wagh,
Age 30 years, Occ. Agri.,
- 3] Shankar s/o. Tukaram Shinde,
Age 63 years, Occ. Agri.,
- 4] Shashikalabai w/o. Shankar
Shinde, Age 53 years,
Occ. Agri.,
- 5] Sarubai w/o. Shankar Shinde,
Age 48 years, Occ. Agri.,

All residing at Tadwala,
Taluka and Dist. Osmanabad ..Respondent

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Mr.Mandar Deshmukh, advocate i/b. Mr.S.G.
Chapalgaonkar, advocate for appellant

Mr.P.N.Suryawanshi, advocate for respondents

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CORAM : M.T. JOSHI, J.
DATE : NOVEMBER 23, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by acquittal of the present respondents from the offence punishable under Section 498-A of Indian Penal Code by learned IInd Joint Judicial Magistrate F.C., Kallam, Dist. Osmanabad in R.C.C. No.275 of 1997, original complainant has preferred present appeal.

3] A private complaint was filed by the complainant PW 1 – Padmashri against the respondents on the following allegations :-

. That, the complainant was married to respondent no.1 – Shriram. During cohabitation, she has delivered two female children. After about two years of happy married life, all the respondents i.e. husband as well as his relatives,

started illtreating her. After delivery of the first daughter, respondent no.1-husband started making demand for a motorcycle. Thereafter, the complainant came at her parents house for delivery of second child. She delivered second daughter and the father of the complainant had arranged for the naming ceremony. All the respondents were invited. They came to village Mangrul.

. At that time, respondent no.2 taunted the complainant that she has delivered second female child. Respondent no.2 raised a quarrel and assaulted the complainant. Thereupon, all the respondents abused and assaulted the complainant's parents. The witnesses intervened. The complainant's father requested all the respondents to accept the new clothes as gift, however, they refused the same and left for their house. When the complainant wanted to accompany them, the

respondents refused to take her with them. Even respondent no.1 assaulted the complainant at that time. Thereupon, the complainant went to Shiradhon police station and narrated the incident. The police did not accept the complaint and therefore, the complainant filed the private complaint before learned Judicial Magistrate F.C.

4] Before the learned Judicial Magistrate F.C., in all, five witnesses were examined. PW 1 - Padmshri is the complainant. PW 2 - Nanasaheb is her father. PW 3 - Chandrakant and PW 4 - Dattatraya were the eye witnesses to the alleged incident that had occurred during the naming ceremony of the second daughter of the complainant. PW 5 - Prabhakar is the previous owner of the motorcycle, from whom a secondhand motorcycle was purchased by the father of the complainant and given to respondent no.1 - husband of complainant.

5] Learned Judicial Magistrate F.C. found exaggerations in the prosecution case. Further, upon appreciation of evidence, it was found that the evidence for the alleged offence was not proved. Therefore, learned Judicial Magistrate F.C. has acquitted all the respondents. Hence, present appeal.

6] Learned counsel for the appellant submitted that learned Judicial Magistrate F.C. ought to have taken into consideration that since the police did not accept the complaint, the private complaint was filed and that may not be a reason to doubt the prosecution case. He further submitted that the witnesses to the incident that had occurred at the time of the naming ceremony of the second daughter of the complainant, were examined. Even the previous owner of the motorcycle which was given to the respondent no.1, was also examined. He, therefore, submitted that

learned Judicial Magistrate F.C. ought to have convicted the present respondents.

7] On the other hand, learned counsel for the respondent has supported the reasons forwarded by learned Judicial Magistrate F.C. He submitted that in the present appeal against the order of acquittal, since learned Judicial Magistrate F.C. has taken a reasonable and probable view of the material before him, no interference is required in the same.

8] On the basis of this, following point arises for my determination :-

Whether the prosecution has proved that for a period of four years till 31st August, 1997, the respondents in furtherance of their common intention have subjected the complainant with

cruelty in order to fulfill their illegal demands ?

. My finding to the above point is in the negative. The appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

9] The case of the complainant, as detailed supra, would show that there was illegal demand of motorcycle from respondent no.1 and there was illtreatment for the same. Thereafter, a motorcycle was provided by PW 2 – Nanasaheb, father of the complainant to respondent no.1 upon purchasing the same from PW 5 – Prabhakar. PW 2 – Nanasaheb, father of the complainant, additionally, deposed that after fulfillment of demand of motorcycle, the respondents again started making demand of a stitching machine and

other articles, which demand could not be filled by him. This deposition of the father of complainant is an improvement over the prosecution case.

10] Further, while the case of the complainant is that at the time of the naming ceremony, all the respondents had abused and assaulted her parents. PW 2 – Nanasaheb as well as PW 3 – Chandrakant and PW 4 – Dattatraya have deposed only as regards the incident between the complainant and respondent no.2 i.e. mother-in-law of the complainant. Besides, PW 3 – Chandrakant and PW 4 – Dattatraya in examination-in-chief have deposed as if they were independent witnesses. During the cross-examination, however, it was disclosed by PW 3 – Chandrakant that his sister is wife of Lalasaheb Jadhav, who is brother of PW 5 – Prabhakar.

11] PW 4 – Dattatraya was disclosed to be a relative being in the brotherhood. Not only this, PW 4 – Dattatraya merely deposed that there was certain altercations between the complainant and respondent no.2 during the naming ceremony and he has not deposed that any taunting was given or that all the respondents had assaulted the parents of the complainant.

12] As regards fulfillment of the demand of motorcycle, the case of the complainant is that a secondhand motorcycle was purchased by her father i.e. PW 2 – Nanasaheb from PW 5 – Prabhakar and handed over it to respondent no.1. During cross-examination of PW 5 – Prabhakar, it was gathered that said motorcycle was not registered in his name. According to him, he had purchased it from another person and without registration, later on, he sold the same to PW 2 – Nanasaheb. That apart, he admitted that at the relevant time, he

was President of the Panchayat Samiti and he himself and PW 2 – Nanasaheb were workers of the Nationalist Congress Party.

13] In the circumstances, considering the overall material on record, since learned Judicial Magistrate F.C. has taken a reasonable and probable view of the material before him, in my view, no case for interference in the finding of learned Judicial Magistrate F.C., is warranted.

14] In the result, present appeal against the judgment and order of acquittal, is dismissed.

[M.T. JOSHI, J.]

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