

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 3 OF 2000

APPELLANT :- Smt. Jamila Taisim Shaikh,
(Ori. Complainant) aged about 23 years, Occ.: Household work,
r/o 54, D.P. 151, Lohiya Nagar,
Ganj Peth, Pune-42.

...VERSUS...

RESPONDENTS :- (1) Taisim Chand Shaikh,
aged about 27 years, Occ.: Business

(2) Chand @ Ramvinder
aged about 46 years, Occ.: Service.

(3) Smt. Latika Chand Shaikh
aged 41 years, Occ.: Household duties

(4) Ku. Shama Chand Shaikh
aged 21 years, Occ.: Household duties

(5) Smt. Gaya Shaikh
aged about 66 years, Household work.

(6) Munna Murtuza Shaikh
aged about 30 years, Occ.: Service
all residing at Air Force Quarters,
Near Water Tank, Lohgaon, Pune.

(7) State of Maharashtra,

None for the Appellant.
Mr. U.B. Nighot Advocate for respondents 1 to 6.
Mrs. G.P. Mulekar, APP, for the Respondent/State.

CORAM : S.B. Shukre, J.
DATED : 22nd June, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 06.9.1999 delivered in Regular Pvt. Criminal Case No. 100 of 1998 by J.M.F.C., Court No.5, Pune, thereby acquitting respondents 1 to 6 of the offence punishable under Section 498-A read with Section 34 of Indian Penal Code.

2. Briefly stated, facts of the case are as under :

(i) Complainant Jamila Taisim Shaikh got married with respondent no. 1 on 14.12.1997 at Pune. After her marriage, the complainant started residing with respondent no. 1 at his house situated at Lohgaon, Pune. It appears that respondent no. 1 was then already in a joint residence with his parents, respondents 2 and 3, his sister, respondent no. 4 and his maternal grand mother, respondent no. 5. At that time, his brother, respondent no. 6, was residing separately in a nearby house. After about 15 days of her marriage, during which period of time, the complainant/appellant was treated well by respondents 1 to 6, it is alleged, the

complainant was subjected to ill-treatment and cruelty of consistent nature on account of demand of Rs.20,000/- by respondents 1 to 6. It has been alleged that these respondents used to say that since parents of the complainant did not give any dowry at the time of marriage, the complainant, at least, now should bring the amount of Rs.20,000/- from her parents. Complainant, however, used to plead with respondents 1 to 6 that financial position of her parents was not well and that they could not afford to pay amount of Rs.20,000/- to them as dowry. Thereupon, it has been further alleged, these respondents used to subject the complainant to cruelty by hurling abuses at her, depriving her of food and also subjecting her to cruelty. It has been further alleged that these respondents also used to deny proper medical treatment to the complainant, who used to fall ill because of consistent nature of ill-treatment given to her by the respondents. The complainant also alleged that on some occasions, respondents 4 and 5 had given a push to the complainant from behind when the complainant was busy in preparing the food on gas burner, which resulted in sustaining of burn injuries by the complainant on each of these occasions. One day, respondent no. 1, the husband of complainant, had also threatened the complainant of setting up her on fire if she failed to bring the amount of Rs.20,000/- from her parents.

(ii) There are some more allegations. In the morning of

22.3.1998, respondents 5 and 6 confined the complainant in one of the rooms of her house and then respondent no. 2 caught hold of the complainant and respondent no. 1 poured kerosene oil on her person in an attempt to set the complainant on fire. The complainant, however, managed to get away from the clutches of the respondents and then succeeded in contacting her mother. Mother of the complainant came to the house of the complainant and rescued her from the attempt made by the respondents to set her on fire.

(iii) It appears that complainant resided in her parental house after 22.3.1998 for some time and when she was convinced that the possibility of reconciling her differences with respondents 1 to 6 was bleak, on 02.5.1998 she filed a complaint with police station Lohgaon against the respondents. However, Lohgaon police took no cognizance of the complaint and thereafter the complainant filed a private complaint under Section 2(b) of Code of Criminal Procedure against the respondents.

(iv) The learned Magistrate issued process against all the respondents and after their appearance before the Court, recorded evidence of the complainant which was adduced by her before charge. The learned Magistrate was satisfied that the allegations against the respondents were well founded and, therefore, by his order passed below Ex.1 directed framing of charge for an offence punishable under Section 498-A read with

Section 34 of Indian Penal Code against respondents 1 to 6. As these respondents pleaded not guilty to the charge framed against them, they were tried in accordance with law.

3. On merits of the case, the learned Magistrate found that the offence charged against respondents 1 to 6 was not proved beyond reasonable doubt and, therefore, the learned Magistrate recorded a finding of innocence against all these respondents and by his judgment and order delivered on 6.9.1999 the learned Magistrate acquitted respondents 1 to 6 of the offence punishable under Section 498-A read with Section 34 of Indian Penal Code. The complainant not being satisfied with the verdict so recorded by the learned Magistrate, has filed the present appeal after seeking leave of the Court

4. This appeal was listed for final hearing on 12.6.2015 and the record shows that it is standing on the board of final hearing for quite a long period of time. However, the appellant on 12.6.2015 was absent before this Court and nobody appeared on behalf of the appellant on that day even after waiting for considerable period of time. Learned counsel for respondents 1 to 6 as well as learned APP for respondent no. 7 were present. But, in order to give sufficient opportunity for making her submissions by the appellant before this Court, the final hearing was adjourned to this date, by way of last chance.

5. When this appeal is taken up for hearing today, nobody has appeared on behalf of the appellant. Learned counsel for respondents 1 to 6 as well as learned APP for respondent no. 7 are present. In view of mandate of Section 386 of Code of Criminal Procedure, I have proceeded to hear this appeal on merits and heard Shri Uday Nighot, learned counsel for respondents 1 to 6 and learned APP for respondent no. 7 who are present. I have carefully perused the record of the case and the impugned judgment and order.

6. It is seen from the record of this case that the complaint has been filed by the complainant/appellant against respondents 1 to 6 after about more than three months from the date on which she was allegedly driven out of her matrimonial house on 22.3.1998. No satisfactory explanation about the belated lodging of F.I.R. or the private complaint by the appellant has been given. She did not file the complaint immediately against respondents 1 to 6, although the incident which had allegedly taken place in the morning of 22.3.1998 was of a very serious nature. It has been alleged that at about 8 a.m. of 22.3.1998 respondents 1 to 6 had poured kerosene oil on the person of the complainant and attempted to set her on fire. This was apparent by a serious incident. But the appellant did not choose to approach police, or did not decide to file a report with police station Lohgaon even

within a reasonable period of time after 22.3.1998.

7. According to the appellant, she did not file the complaint against respondents 1 to 6 because she was told by her mother that she would come and take her away from matrimonial home. This can hardly be considered as an explanation, muchless satisfactory explanation for the delayed lodging of the F.I.R. Therefore, a serious doubt about the genuineness of the allegations made by the appellant against her husband and in-laws has arisen in this case.

8. Then, it also appears from the admissions given by the appellant (P.W.1) that there was possibility of her marriage with respondent no. 1 being against her wish. Of course, she has denied suggestion to this effect. But, from the admissions given by her mother, Jaitunbi (P.W.2), and also some of the admissions given by herself, it appears that she had some sort of relationship with one boy, named Ayub Ismail, before marriage which had resulted in the appellant carrying pregnancy and also the appellant filing a police complaint against Ayub Ismail for an offence of rape punishable under Section 376 of Indian penal Code. The appellant has also admitted that even on the date of her cross-examination, she was ready to resume cohabitation with her husband, respondent no. 1. Jaitunbi (P.W.2), mother of the appellant, has admitted that she was told by her daughter that respondents 1 to 6

were insisting upon her proper behaviour, in the sense that they were asking her to listen to them and behave properly if at all she intended to cohabit with respondent no.1. All these admissions cumulatively indicate that there was some thing more than what met the eye and, therefore, the evidence of P.W.1, the appellant, wherein she has stated about the consistent nature of cruelty meted out to her by respondents 1 to 6, physically and mentally, on account of her failure to bring amount of Rs.20,000/- from her parents cannot be accepted, and some corroboration to her evidence would be necessary.

9. There is yet another reason why I find corroboration to her evidence is necessary, and it is the admission given by her that her parents had visited her matrimonial home twice while she was cohabiting with respondent no. 1. The appellant, P.W.1 Jamila, however, does not say that during those visits her daughter had narrated her tale of woes to her parents. P.W.2 Jaitunbi does not say that she was told about the cruelty given to the appellant by her husband and in-laws during her visits to matrimonial home of the appellant by the appellant. Such silence on the part of appellant (P.W.1) is unnatural considering the fact that, according to the appellant, cruelty was consistent and severe in nature. It does not appeal to reason that a person who is subjected to severe mental and physical cruelty would refrain from sharing her feelings towards her husband and in-laws with her parents when

opportunity comes the way of such a person. In the instant case, the opportunity had come the way of the appellant and yet the appellant did not disclose to her parents anything about the ill-treatment given to her by her husband and in-laws.

10. P.W.2 Jaitunbi also does not state, as rightly submitted by learned APP, anything about her noticing from the overall behaviour and body language of the appellant about her being under stress and traumatised because of bad behaviour of respondents 1 to 6. These facts put together would certainly raise a cloud of suspicion over the trustworthiness of the appellant (P.W.1) and her mother (P.W.2) and would require the Court to look for corroboration. However, unfortunately, no corroboration is forthcoming and, therefore, I am of the view that it would be unsafe to conclude about the prosecution establishing guilt of respondent nos. 1 to 6 for an offence punishable under Section 498-A read with Section 34 of Indian Penal Code beyond reasonable doubt. These accused persons deserved to be acquitted of the offence with which they had been charged in this case by giving them benefit of doubt. The view taken by the learned Magistrate is in consonance with the well settled principles of law and does not appear to be so illogical as not arising at all in the facts and circumstances of this case. Therefore, it would not be open for this Court to make any interference with the impugned judgment and order. The appeal deserves to be dismissed.

11. The appeal stands dismissed.

JUDGE

/TA/