

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.6 OF 2002

The State of Maharashtra (Through P.S. Akkalkot, North)	]	 Appellant
<i>Versus</i>		
1. Basha Abdul Mujawar, Age – 33	]	
	]	
2. Abdul Basha Mujawar, Age – 55	]	
	]	
3. Aminabi Abdul Mujawar, Age – 50	]	
	]	
4. Chandbi Sarfaraj Sheriker, Age – 25	]	
	]	
All R/of Kini, Tal. Akkalkot, Dist. Solapur	]	 Respondents / (Accused Nos.1 to 4)

Mr. H.J. Dedia, A.P.P., for the Appellant/State.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 3RD DECEMBER 2015.

ORAL JUDGMENT :

1. This Criminal Appeal is preferred by the Appellant/State challenging acquittal of the Respondents for the offence punishable under Section 498A r/w. 34 of IPC, as recorded by the Judicial Magistrate, First Class, Akkalkot, Dist. Solapur, vide his Judgment and Order dated 1st October, 2001 in Regular Criminal Case No.64 of 1997.

2. Brief facts of the Appeal can be stated as follows :-

The marriage of PW-1 Nasrin with Respondent No.1 Basha had taken place about five to six years prior to the lodging of the complaint. Respondent Nos.2 and 3 were her parents-in-law and Respondent No.4 was her sister-in-law. As per her case, after the marriage, she was treated properly only for five to six months and since then, she was subjected to harassment and ill-treatment in order to fulfill the demand of cash amount of Rs.2,000/-, some gold ornaments and costly clothes. As she was unable to satisfy the said demand, she was left in the house of her parents. After the birth of her son Allauddin, she again returned to the house of the Respondents. PW-2 Mohmad H. N. Shaikh and one Aziz Tamboli, the family friends, tried to convince the Respondents to treat her properly; however, it was of no use. Again she was subjected to harassment and left in the house of her parents. She gave birth to a female child and again returned to the house of the Respondents, but the harassment continued. Hence, she was constrained to lodge the complaint at Akkalkot Police Station against all the Respondents.

3. On her complaint (Exhibit-21), PW-4 Police Head Constable Kallappa Solapure registered C.R. No.56 of 1993. Further investigation of

the case was made by PW-6 Police Head Constable Jagdev Patil. He has recorded statements of the witnesses, arrested the Respondents and further to completion of investigation, filed Charge-Sheet in the Court.

4. The Trial Court framed charge against the Respondents vide Exhibit-13. The Respondents pleaded not guilty and claimed trial. In support of its case, the prosecution examined six witnesses, placing reliance mainly on the evidence of PW-1 Nasrin, PW-2 Mohmad H. N. Shaikh and PW-3 her brother Maheboob Alure. On appreciation of their evidence, the Trial Court was pleased to disbelieve the case of the prosecution and, accordingly, acquitted the Respondents.

5. This Judgment of the Trial Court is challenged in this Appeal by the State. In view of the order passed in this Appeal on 29th January, 2002, the Appeal was admitted against Respondent No.1 alone.

6. The prosecution case, as stated above, is based on the evidence of PW-1 Nasrin and PW-3 her brother Maheboob. To some extent, the prosecution is also relying on the evidence of PW-2 Mohmad H. N. Shaikh, who has acted as Mediator and tried to convince and persuade the Respondents not to harass or ill-treat PW-1 Nasrin. However, at the

outset itself, it has to be stated that the statement of this witness PW-2 Mohmad H. N. Shaikh is not recorded during the course of investigation, as observed by the Trial Court in its Judgment. Therefore, the Respondents/Accused had no opportunity to test his credibility. His evidence hence, being in the nature of a got up witness, is not of much help to the prosecution to rely upon.

7. As a result, the only evidence on record is of PW-1 Nasrin and PW-3 her brother Maheboob. The evidence of PW-1 Nasrin reveals that it is of a general and omnibus nature. No specific allegations are made against the Respondents. She has merely stated that, after their marriage, for five to six months, she was treated properly, but thereafter she was subjected to ill-treatment on the count that her parents had not spent sufficient amount for her marriage. The Respondents were demanding Rs.2,000/-. As her father could not fulfill the said demand, she was left in the house of her parents. After the birth of her son, she again returned to the house of the Respondents. However, Respondents quarreled with her, abused her and again she was brought to the house of her parents. After the birth of her daughter, she again returned, but it was of no use. Respondent Nos.1 to 4 then assaulted her father. Her father went to the house of the Sarpanch of the Village Shri. Ashok Patil. He gave understanding to the

Respondents, but the things did not improve. The prosecution has not examined the Sarpanch of the Village Shri. Ashok Patil in respect of this incident. Thus, it can be seen that no specific allegations are made by PW-1 Nasrin against Respondent No.1, her husband. The allegations are made against all the Respondents, but without attributing any specific incriminating act.

8. Similarly, the evidence of PW-3 her brother Maheboob, also goes to reveal that he was not an eye-witness to the alleged ill-treatment or harassment of PW-1 Nasrin. Moreover, in his cross-examination, it is brought on record that major portion of his evidence is in the nature of improvement. It is not mentioned in his statement recorded by the Police that Respondents had told that unless and until their demand of gold, costly clothes and cash amount was fulfilled, they will not come to see the baby. An omission is also elicited through his cross-examination that in his statement recorded by the Police, it is not stated that six months after the first delivery of PW-1 Nasrin, Respondent No.1 came to their house and demanded cash amount of Rs.2,000/-, half tola Gold and costly clothes. It is also not mentioned that, at that time, Respondent No.1 quarreled with his father. Further, an omission is elicited that it is not mentioned in the statement recorded by the Police that due to the birth of female child,

Respondent No.1 became unhappy and that gave cause to the ill-treatment of PW-1 Nasrin. Thus, his evidence is, more or less, in the nature of omission and improvements. Moreover, his evidence proves that PW-1 Nasrin has hardly co-habited with Respondent No.1. For major portion of her married life, she has resided in the house of her parents.

9. In view thereof, in my considered opinion, the finding recorded by the Trial Court that prosecution has failed to prove its case against the Respondents beyond reasonable doubt, being based on the proper appreciation of evidence on record, does not call for any interference. The Appeal, therefore, holds no merit, hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]