IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 115 OF 1999

The State of Maharashtra … **Appellant.**
Versus
Mahmad Salim Mahmad
Husein Shaikh & Ors. ... **Respondents.**

Mrs.G.P.Mulekar, Asst. Public Prosecutor for the Appellant-State.
None for the Respondents.

CORAM : S.B. SHUKRE, J.
DATED : 17TH JUNE, 2016.

P.C. :

1] This is an appeal preferred against the judgment and order dated 27th November, 1998 delivered in Regular Criminal Case No.118 of 1996 by learned Judicial Magistrate First Class, Solapur, thereby acquitting all the respondents of offences punishable under Section 498(A), 323, 504 and 506(2) read with Section 34 of the Indian Penal Code (IPC).

2] I have heard learned Asst. Public Prosecutor for the Appellant-State. None for the respondents. I have carefully gone

through the record of the case and impunged judgment and order.

3] Although, it is submitted by learned Asst. Public Prosecutor for the State that the acquittal of the respondents recorded in this case by the learned Magistrate is perverse and illegal, I do not find it to be so upon a careful consideration of the evidence on record. There have been several material omissions in the evidence of the PW-1 Nasimabi that her in-laws subjected her to beating. PW-1 Nasimabi has stated that she was subjected to beating by her husband at any time of the day as well as night. But, the fact that both of them were not staying together during the day time, PW-1 Nasimabi being a teacher in Urdu School, Limewadi, Solapur and respondent No.1 being a teacher in Swami Vivekanand High School, Latur, itself created a doubt about the truthfulness of the version of PW-1 Nasimabi regarding her being physically ill treated. The learned Magistrate found that even though PW-1 Nasimabi was well educated and teacher by profession, she did not disclose anything about the alleged physical ill treatment given to her by the respondents, either to the Police or the neighbors or her colleagues in the school. Such

conduct was strange and required explanation. However, it was not seen anywhere in the prosecution evidence. It is also seen that evidence of the other material witness PW3-Mahmad Sharif Bhagnagre-brother of the complainant was not consistent with the evidence of PW-1 Nasimabi. It is further seen that PW-2 Valludin Bhaganagre-father of the complainant did not support the version of PW-1 Nasimabi regarding her ill treatment and beating on account of demand of motorcycle, TV and money. Thus, there was a real doubt in the prosecution case against the respondents. Therefore the learned Magistrate has rightly found that the prosecution could not prove the allegations made against the respondents beyond reasonable doubt.

4] The view so taken by the learned Magistrate is plausible. It is well settled law that in exercise of its appellate jurisdiction, particularly in appeal against the acquittal, it is not open to this Court to substitute its own view with that of the view taken by the Court below, unless the view of the Court below is perverse or arbitrary or against the well settled principles of law. Such is not the case here and therefore, in my view no sufficient grounds are made out for

making interference with the impugned judgment and order.

5] In the circumstances, I find that the appeal deserves to be dismissed. The appeal stands dismissed.

(S.B. SHUKRE, J.)