

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

**CRIMINAL APPEAL NO.195 OF 2004**

The State of Maharashtra,  
(through P.S.O., Zilla Peth P.S.)  
Jalgaon

..Appellant

Vs.

1. Suresh Pandharinath Solunke,  
Age : 31 years,  
Occ. Rikshaw Driver

2. Sau.Indubai Pandharinath Solunke,  
Age : 50 years, Occ. Household,

Both r/o. Shiv Colony, Jalgaon ..Respondents

--

Ms.R.P.Gaur, APP for appellant – State

Mr.H.F.Pawar, Advocate for respondents

--

**CORAM : SANGITRAO S. PATIL, J.**

**DATE : JULY 28, 2017**

**JUDGMENT :**

This is an appeal against the judgment and order dated 18.11.2003 passed in Regular Criminal Case No.515 of 2002 by the learned Judicial Magistrate F.C., Jalgaon, acquitting the

respondents of the offence punishable under Section 498-A of the Indian Penal Code ("I.P.C.", for short).

2. Respondent no.1 is the husband, while respondent no.2 is the mother-in-law of the informant namely, Alaknanda. The informant married to respondent no.1 in the year 1993. She has begotten a daughter namely, Vaishali out of the said wedlock, who was aged about 8 years in the year 2002. It is alleged that the respondents always used to ask the informant to bring Rs.50,000/- from her father so as to enable respondent no.1 get job. They used to ill-treat her with a view to compel her to fulfill their demand for money. They subjected the informant to cruelty during the period from 17.07.2001 to 21.08.2002 in connection with the demand for money. On 17.07.2001, the respondents beat the informant and drove her out of their house. She had sustained injuries to her eye due to that

beating. The respondents further beat the informant by fists and kicks on 27.6.2002. She was required to take medical treatment from Dr.Sarojini Patil due to that beating. The respondents gave electric shock to the informant and threatened her of death on 13.08.2002. Ultimately, on 16.08.2002 they beat her on thigh and back, hurled abuses against her and threatened her to continue to illtreat her until their demand for Rs.50,000/- was fulfilled. The informant then lodged a report against the respondents on 26.08.2002 in Zilla Peth Police Station, at Jalgaon. The statements of the witnesses were recorded and after completion of investigation, the respondents came to be prosecuted for the above-mentioned offence.

3. The prosecution examined the informant at Exh.22, her father – Dashrath (PW 2)(Exh.31) and the Police Head Constable Sonar (PW 3) (Exh.35), who conducted investigation. After evaluating the

evidence of the witnesses, the learned trial Judge held that the prosecution failed to prove against the respondents the above-mentioned offence. He, therefore, acquitted them of the said offence.

4. The learned A.P.P. for the prosecution-State submits that there is specific and positive evidence of the informant, which is corroborated by the evidence of her father Dashrath (PW 2) on the point of the illtreatment meted out to her by the respondents for fulfilling their unlawful demand of Rs.50,000/-. There were certain letters written by the informant to her father in respect of the illtreatment that was being suffered by her at the hands of the respondents. The contents of those letters fully corroborate the case of the informant. The learned APP submits that the learned trial Judge wrongly disbelieved the evidence of the informant and wrongly acquitted the respondents. She, therefore, prays that the impugned judgment and order may be reversed and

the respondents may be convicted and sentenced for the above-mentioned offence.

5. On the other hand, the learned Counsel for the respondents submits that the informant herself was not interested in cohabiting with respondent no.1. She herself had left the company of respondent no.1. Since she deserted respondent no.1, he had filed H.M.P. No.215 of 2002 for restitution of conjugal rights against the informant. It was decided in favour of respondent no.1. Despite that, the informant did not resume cohabitation with respondent no.1. Respondent no.1 then filed H.M.P. No.515 of 2010 seeking divorce from the informant on the ground of cruelty and desertion. The said petition came to be decided on merits on 18.12.2013 and the learned Civil Judge, Senior Division, Jalgaon, passed a decree of divorce against the informant on 18.12.2013 on the ground of desertion. The learned Counsel submits that the evidence of the informant is full of

improvements and exaggerations. She produced fabricated letters in support of her case, which have been rightly discarded by the learned trial Judge. According to him, there is no independent evidence to support the case of the informant. Dashrath (PW 2) is an interested witness. He submits that the learned trial Judge has rightly acquitted the respondents of the above-mentioned offence.

6. The informant has stated about the alleged ill-treatment meted out to her by the respondents in her examination-in-chief. However, in her cross-examination, she accepted non-mention of many of these facts in her report Exh.23. These omissions have been proved through the evidence of P.H.C. Sonar (PW 3), who recorded the FIR (Exh.). The following are the material omissions in her evidence :-

(i) That the respondents used to drive the

informant from their house by pulling her hair.

(ii) The respondents were demanding signatures of the informant on a blank stamp paper and on her refusal, they used to beat her.

(iii) The respondents used to beat her by whatever object that was available to them.

(iv) The respondents pressed her neck.

(v) The respondents used to beat her when she used to refuse to give divorce to respondent no.1.

(vi) The respondents used to ill-treat the informant because she delivered a female child.

(vii) Dashrath (PW 2) had come to the house of the respondents and at that time, the informant had stated him about the ill-treatment meted out to her.

(viii) The informant had gone with respondent no.1 in auto-rickshaw from the place of Mahila

Atyachar Samiti and the respondents had beaten her in the auto-rickshaw itself and then, after reaching the home also.

(ix) That she had sent letters Exhs.24 to 27 to her parents.

7. The above-mentioned omissions in the FIR Exh.23 certainly are material omissions. Had the above-mentioned events as narrated by the informant really taken place, she would not have forgotten to mention them in the report Exh.23. It is, thus, clear that the informant has made several material improvements in her evidence before the Court. Consequently, it was highly risky to rely on her evidence without any independent corroboration.

8. Dashrath (PW 2) deposed that the informant had stated him about the ill-treatment suffered by her at the hands of the respondents. There is nothing in his evidence to show that the

informant was illtreated by the respondents at any time in his presence. Whatever has been stated by him about the alleged illtreatment, is solely on the basis of the information received by him from the informant. When the evidence of the informant in the absence of any independent evidence is not believable, the evidence of Dashrath (PW 2), which is based on the evidence of the informant, also cannot be believed without any independent evidence.

9. The informant has produced letters Exhs.24, 25 and 27, allegedly written by her to Dashrath (PW 2). The letter Exh.24 is dated 01.09.1996, the letter Exh.25 is dated 28.04.2002, while the letter Exh.27 is dated 30.07.1997. There is no mention in the report Exh.23 that the informant had sent any letter to Dashrath (PW 2) and the informed him about the demand for money made by the respondents and the illtreatment meted out to her for fulfilling that demand. The report

Exh.23 shows that the informant was illtreated during the period from 17.07.2001 to 21.08.2002. Therefore, the letters Exh.24 dated 01.09.1996 and the letter Exh.27 dated 30.07.1997 would be of no use to the informant to establish that she was illtreated by the respondents for fulfilling the demand for money. The letter Exh.25 dated 28.04.2002 mentions that on 04.04.2002, she was compelled to abort herself in the hospital of Dr. Sarojini Patil. However, there is no mention about the said absorption dated 04.04.2002 in the report Exh.23 or in the evidence of the informant. There is no medical evidence produced on record to show that the informant was subjected to absorption on 04.04.2002 in the hospital of Dr.Sarojini Patil. It is not even stated by the informant that she was beaten by the respondents in the month of April, 2002 and therefore, she was required to take medical treatment from Dr.Sarojini Patil. The contents of letter Exh.25 do not corroborate

the version of the informant in respect of the alleged illtreatment.

10. The letter Exh.27 *ex-facie* appears to be a document prepared for the purpose of creating evidence. It does not bear postal seal. The informant admits that it was not actually posted for being delivered to the addressee. The handwriting on the letter Exh.27 *prima facie* does not appear to be that of the informant. In the circumstances, the said letter would not be helpful to the informant to corroborate her version.

11. There is absolutely no independent evidence to support the case of the prosecution that the informant was subjected to cruelty by the respondents. The learned trial Judge has rightly appreciated the evidence and rightly disbelieved the evidence of the informant and that of her father Dashrath (PW 2). The learned trial Judge

rightly discarded the letters Exhs.24 to 27 from consideration. I do not find any illegality or perversity in the impugned judgment of acquittal passed in favour of the respondents.

12. The appeal is devoid of any substance. It is liable to be dismissed and accordingly, dismissed.

**[SANGITRAO S. PATIL, J.]**

kbp