

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1216 OF 2002

The State Of Maharashtra

)...Appellant

Versus

1.Shantaram Kondaji Naikode.

)

2.Nanabhau Kondaji Naikode,

)

3.Smt.Vatsalabai Nanabhau Naikode

)

4.Shri.Raghunath Yesuji Pote

)

All R/a.Golapur, Kadus, Tal:Khed, Dist.Pune

)...Respondents

(Orig.Accused 1 to 4)

*Mr.Deepak Thakare, APP for the Appellant-State.**None for the Respondents.*

CORAM : G.S. KULKARNI, JJ.**DATED : 15th May, 2017**

Judgment:

1. This appeal by the State is directed against the judgment and order dated 21 June 2002 passed by the learned Judicial Magistrate, First Class, Khed, Dist. Pune, whereby the respondents-accused have been

acquitted of the offences punishable under Section 498A, 323, 504 read with 34 of the Indian Penal Code.

2. Facts necessary for adjudication of this appeal are as under:-

Respondent Nos.1 to 4 are accused Nos.1 to 4. Accused No.1-Shantaram is husband of complainant Sunanda and other accused are relatives of accused No.1. On 2 May 1995, complainant - Sunanda got married with accused No.1 and started cohabiting with him. According to the complainant-Sunanda, when she was pregnant, accused doubted on her pregnancy and subjected her to cruelty, mental and physical ill-treatment which, according to the complainant, was continued upto 22 July 1997 when she lodged complaint with the Khed Police Station narrating the incidents. The police took cognizance of the offence and registered the case against the accused. On completion of investigation, a chargesheet came to be filed prosecuting the accused under Section 498A, 323, 504 read with 34 of the Indian Penal Code. Accused pleaded not guilty and claimed to be tried. Their defence was of total denial.

3. To bring home the guilt of the accused, the prosecution examined P.W.1 – Kantaram Mahadu Bhondve, brother-in-law of the complainant's father. P.W.2-Sunanda Shantaram Naikode - the

complainant, P.W.3-Bhagaji Bajirao Borade who is father of the complainant and P.W.4-Sudhakar Chudaman Pawar who is the neighbour of the father of the complainant.

4. The learned Trial Judge considering the evidence, reached a conclusion that the prosecution had failed to prove the offences in question. It was observed that despite ample opportunity to the prosecution, the prosecution did not examine the Investigating Officer and no satisfactory explanation was forthcoming for the same. The learned Trial Judge opined that there was no evidence to prove that the accused were guilty of having committed offence under Section 498A, as also the common intention to commit the offence is also not proved. As regards the offence under Sections 323 and 504 of I.P.C. is concerned, it is observed that neither the testimony of the complainant nor of the other witnesses prove the involvement of the accused in commission of the said offences. Accordingly, the learned Trial Judge held that the accused were entitled for benefit of doubt and the accused were accordingly acquitted of the offences punishable under Section 498A, 323, 504 read with 34 of the I.P.C.

5. I have heard Mr.Thakare, learned Assistant Public Prosecutor

for the appellant. With his assistance, I have perused the evidence of the prosecution witnesses. I have also perused the impugned judgment and order.

6. On examining the evidence, it is clear that the evidence is wholly insufficient to establish the guilt of the accused for any of the offences with which the accused were charged. Perusal of the testimony of the complainant does not indicate any instances of ill-treatment either mentally or physically meted out to the complainant as alleged by her in the complaint which would fulfill any of the ingredients of Section 498-A. Further, PW.1, PW.2, PW.3 also do not support the case of the complainant as made out in the complaint of any cruelty at the hands of the accused. As rightly held by the learned Trial Judge, the Prosecution has not examined the Investigating Officer which was also fatal to bring home the guilt of the accused. In regard to the offence under Section 323, 504 read with 34 of I.P.C., the learned APP fairly submits that as regards these offences, there is no evidence of any nature of any instances/details to prove the that the accused are guilty of commission of these offences.

7. Thus, having examined the evidence, I do not find that there is any perversity or illegality in the findings as recorded by the learned

Trial Judge in acquitting the accused for the offences punishable under Section 498-A, 323, 504 read with 34 of the I.P.C. The appeal fails and is accordingly dismissed. The bail bonds of the accused shall stand cancelled.

(G.S.KULKARNI, J.)