

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.396 OF 2015

Mrs. Shweta Shirish Kench	]	
Age 32 years, Occ: Housewife	]	
425/84, Tilak Maharashtra	]	
Vidyapeeth Colony,	]	
Radhakrishna Apartment,	]	
Flat No. R-3, Gultekdi,	]	
Pune-411037	]	]
		).. Appellant /
		Ori. Complainant

Vs.

(1) Mr. Prakash Ramchandra Kench	]	
Age 67 years, Occ: Nil,	]	
Residing at 484/18, Mitramandal	]	
Society, Pune -9	]	
	]	
(2) Mr. Vasudeo Ramchandra Kench	]	
Age 70 years, Occ: Civil Engineer	]	
Residing at 425/84 TMV Colony	]	
Pune-37	]	
	]	
(3) Dr. Anand Ramchandra Kench	]	
Age 60 years, Occ: Doctor	]	
Residing at 484/18,	]	
Mitramandal Society, Pune-9	]	
	]	
(4) The State of Maharashtra	]	
Through P.P. High Court,	]	
Bombay	]	).. Respondents

....
Mr. Prosper D'Souza Advocate i/b Mr. Rajendra Ambhule
Advocate for the Appellant

Mr. Rajendra Kulkarni i/b Mr. S.S.Kanetkar Advocate for
Respondent Nos. 1 to 3

Mr. H.J. Dedia A.P.P. for the State
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**CORAM : SMT.V.K.TAHILRAMANI &
REVATI MOHITE DERE, JJ.**

DATED : JANUARY 24, 2017

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 The appellant who is the informant, has filed this appeal against the judgment and order dated 3.3.2014 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 586 of 2012. By the said judgment and order, the learned Sessions Judge acquitted the respondent nos. 1 to 3 original accused nos. 1 to 3 of the offences with which they were charged.

2 The prosecution case briefly stated is that the

appellant got engaged to PW 2 Shirish (son of respondent no.1) on 24.1.2004. On 16.11.2004 while both the families were going to Pandharpur for pilgrimage, their vehicle met with an accident and Rajani the wife of respondent no.1 and three others died on the spot in the said accident. Inspite of the accident, the marriage of the appellant took place on the scheduled date on 27.5.2005. These facts are not disputed.

3 The informant is the daughter-in-law of respondent no.1. Respondent nos. 2 and 3 are the brothers of respondent no.1. The marriage of the appellant and PW 2 Shirish Kench took place on 27.5.2005. After the marriage, the appellant started residing with her husband i.e. PW 2 Shirish Kench and respondent no.1. Admittedly respondent nos. 2 and 3 were residing separately.

4 It is the case of the appellant that one month after the marriage and till 16.1.2008 i.e. the date of filing of F.I.R., the respondents made unlawful demand to the appellant to

bring Rs. 6 to 7 lakhs from her mother for construction of a flat and on failure to meet their demand, they subjected her to cruelty by taking suspicion regarding her character and physically and mentally harassed her and criminally intimidated her. It is further the case of the appellant that on 17.3.2006 on the instigation of respondent nos.2 and 3, respondent no.1 used criminal force against her, due to which, the appellant fell down. She was pregnant at that time. It caused severe pain and damage to her womb. She then lodged F.I.R. at Swargate Police Station, Pune on 16.1.2008. This F.I.R. was registered under Sections 498-A read with Section 34 of IPC. After completion of investigation, charge-sheet came to be filed.

5 The matter was committed to the Court of Sessions. The Sessions Court framed charge against the respondents under Sections 315 read with Section 511, 498-A and 325 read with Section 34 of IPC. The respondents-accused pleaded not guilty to the said charge and claimed to be tried. Their defence

was that of total denial and false implication. In addition, the respondent no.1 in his defence pointed out that there was ongoing dispute between him and his son i.e. PW 2 Shirish Kench i.e. husband of the appellant regarding flat and regarding National Savings Certificates left by his wife Rajani. On going through the evidence adduced in this case, the learned Sessions Judge acquitted the respondents of all the offences with which they were charged, hence, this appeal.

6 We have heard the learned counsel for the appellant, learned counsel for respondent nos. 1 to 3 and the learned A.P.P. for the State. We have perused the evidence in this case as well as the judgment and order passed by the learned Sessions Judge. After carefully considering the same, for the below mentioned reasons, we are of the opinion that no case is made out for interference with the acquittal.

7 In order to substantiate its case, prosecution had examined the informant i.e. PW 1 Shweta (appellant), her

husband PW 2 Shirish Kench (son of respondent no.1), PW 3 Mansi Damale who is the mother of PW 1 Shweta and Investigating Officer who is PW 4 Shinde.

8 Mr. D'Souza the learned counsel appearing for the appellant submitted that the fact that PW 2 Shirish being the son of respondent no.1 went to the extent of deposing against his father i.e. respondent no.1, is the proof of harassment given by the accused persons to PW 1 Shweta (appellant). According to him, had there been no such harassment, a son would not have gone to the extent of deposing against his own father in a criminal case. Mr. D'Souza further submitted that the very fact that he has deposed against his father shows that the case of the appellant is genuine. In view of this submission, we have examined the point of trustworthiness of the evidence of the appellant, PW 2 Shirish Kench and PW 3 Mansi Damale.

9 It is not disputed that property bearing CTS No. 91/84 Final Plot No. 425/84 having 1/5th share therein, was recorded

in the name of Mrs. Rajani. Mrs. Rajani was the mother of PW 2 Shirish Kench and wife of respondent no.1. She died on 16.11.2004 in an accident. On 27.9.2007, PW 2 Shirish made an application to the City Survey Officer to mutate the names of himself, his brother Ashish and his father i.e. respondent no.1 as legal heirs of Mrs. Rajani by contending that she did not execute any Will. On 6.12.2007, respondent no.1 i.e. father of PW 2 Shirish filed Regular Civil Suit No. 1857 of 2007 against PW 2 Shirish and the appellant for perpetual injunction restraining them from interfering with the peaceful possession and enjoyment of the property. The respondent no.1 pleaded therein that the said property was in his actual possession and he had no other residence. He also pleaded therein that on 14.5.2003 his wife executed a Will in his favour, however, his son PW 2 Shirish and his daughter-in-law i.e. the appellant as well as PW 3 Mrs. Mansi Damale mother of his daughter-in-law (PW 1), started pressurizing him to mutate the said property in favour of his son PW 2 Shirish. It was also pleaded therein that on 18.8.2007 in a meeting called at the residence of his brother

i.e. respondent no.2, at that time, his son PW 2 Shirish, his daughter-in-law PW 1 Shweta and PW 3 Mrs. Damale the mother of Shweta, assaulted and voluntarily caused hurt to him. Hence, he filed Criminal Case No. 444945/2007 against them and Court issued process against them. From the above facts, it is evident that PW 2 Shirish the son of respondent no.1, is having an adverse interest against him and therefore, merely because, he is the son of respondent no.1, his evidence cannot be termed as credible.

10 The appellant - PW 1 Shweta in her evidence has stated that respondent no.1 used to condemn her by saying that she was inauspicious as his wife had died in an accident on 16.11.2004 i.e. immediately after the engagement of the appellant with his son PW 2 Shirish. The appellant's husband i.e. PW 2 Shirish and her mother PW 3 Mrs. Damale supported her version. However, these allegations cannot be believed because as per their own version, the engagement took place on 24.1.2004. On 16.11.2004 when both the parties were

going to Pandharpur for a pilgrimage, their vehicle met with an accident and Rajani the wife of respondent no.1 that is the mother of PW 2 Shirish, died in the said accident. However, it is seen that the marriage took place on the scheduled date i.e. on 27.5.2005. The evidence shows that inspite of the said fatal accident, the accused insisted for performance of marriage as per the scheduled date and accordingly the marriage was performed. If the respondents specially respondent no.1, had any such grievance that the appellant was inauspicious, they would have created obstacle in the marriage. But there is no whisper regarding any such effort. On the contrary, it is an admitted fact that inspite of the sad demise of Mrs. Rajani the wife of respondent no.1, the marriage was performed on the scheduled date.

11 The material allegations regarding unlawful demand by the respondents is that after one month of the marriage, they demanded that PW 1 Shweta should bring money from her mother by saying that rights of upper portion i.e. terrace of the

building would be purchased and a flat would be constructed thereon. As per the F.I.R., the demanded amount was Rs.4 to 6 lakhs and the respondents threatened her that if she did not bring that money, they will put an end to her marital relations. The allegations are also made that gold was demanded in the marriage. According to the appellant, her mother has spent Rs.65,000/- to Rs.70,000/- in her marriage to PW 2 Shirish. In addition, she presented her 7 Tolas gold in the marriage. The appellant claimed that it was agreed that Rs.65,000/- to Rs.70,000/- were to be spent on the marriage and two gold bangles were to be presented to her. However, in addition respondent nos.1 and 2 asked her bangles and therefore, her mother presented 7 Tolas gold, however, it is noticed that she has admitted that respondent nos. 2 and 3 were not present in the meeting when the agreement was arrived to spend Rs.65,000/- to Rs.70,000/- on the marriage and to present her bangles. It is pertinent to note that the appellant has admitted in her cross-examination that whatever gold was presented by her mother, was given to her. In such case, the expenses of

Rs.65,000/- to Rs.70,000/- for the marriage and giving of 7 Tolas gold, cannot be said to be an unlawful demand or demand of dowry by the respondents. The appellant had also deposed that her mother presented her Refrigerator, however, she has admitted that the Refrigerator is still in her custody, hence, it cannot be said that giving of Refrigerator is an incriminating circumstance against any of the respondents.

12 As far as demand for Rs.4 to 6 lakhs is concerned, the F.I.R. was lodged on 16.1.2008. As per its contents, respondent no.1 started making demands for money after one month of the marriage which took place on 27.5.2005. Thus, there is delay for 2½ years in lodging F.I.R. as far as such demand is concerned, which raises suspicion about the genuineness of the case of the appellant. PW 1 Shweta has admitted that during the period from the date of her marriage and the date when she lodged F.I.R., her mother i.e. PW 3 Mansi met her on 4 to 5 occasions and she told her about the demand and harassment at the hands of respondents. The

appellant had also filed complaint on 28.8.2007 (Exh.37) which is her first complaint, in which she has stated that respondent no.1 demanded that she should bring agreed dowry of “Rs.4 lakhs” so that he could start construction work of the flat. But there is no whisper in the evidence about any “agreement” for payment of dowry of “Rs.4 lakhs”. The F.I.R. dated 16.1.2008 (Exh.21) shows material improvement in the version of the appellant as she has mentioned therein that respondent no.1 demanded that she should bring Rs.4 lakhs to 6 lakhs. Thus, it is seen that there is material discrepancy in the first complaint dated 28.8.2007 and the F.I.R. regarding the quantum of the amount as the amount increased from Rs.4 lakhs to Rs.6 lakhs. This material discrepancy strikes at the root of the prosecution case. The appellant had filed another complaint where she has stated that respondent no.1 demanded that she should bring Rs.4 lakhs by stating that construction work was to be started in a short period & as she did not bring any dowry, hence, she should bring Rs.4 lakhs from her mother. This shows that earlier there was no agreement about payment of dowry. It is

also noticed that second complaint Exh. 39 is filed jointly by the appellant – PW 1 Shweta and her husband PW 2 Shirish. The contents of this complaint clearly indicate the then existing disputes between the appellant and her husband PW 2 Shirish on one side and respondent i.e. father of PW 2 on the other side regarding the flat left behind by Mrs. Rajani (wife of respondent no.1). Thus as far as demand for dowry is concerned, the evidence is totally discrepant.

13 As far as the offence under Section 325 read with Section 34 of IPC and Section 315 read with Section 511 of IPC is concerned, the appellant and her husband PW 2 Shirish stated that in the night of 17.3.2006 respondent nos. 1 to 3 along with one Raju a friend of respondent no.1, had been to the flat occupied by the appellant and her husband. The respondent nos.1 to 3 demanded money. She refused their demand, hence, they quarreled with her and her husband and gave abuses. They beat her and her husband PW 2 Shirish. Respondent no.1 then gave forcible push to her. She fell down

on her abdomen. She was pregnant at that time. She got pain in her abdomen. Respondent nos.2 and 3 instigated respondent no.1 to beat her. Then respondent no.1 gave forcible kick on her abdomen. She shouted loudly. Her husband then took her to Patankar hospital. Respondent nos.2 and 3 threatened her not to disclose the incident to anybody in the hospital, hence, she did not disclose about it to anyone. It may be stated that this incident which took place on 17.3.2006 was not at all mentioned in the complaint dated 16.1.2008. In the joint complaint of appellant and PW 2 Shirish dated 27.10.2007 (Exh. 39) though the appellant has mentioned that respondent no.1 kicked her and she was six months' pregnant and she had to undergo an operation as there was an ovarian "cyst", there was no whisper in her complaint about the fact that she was asked not to disclose the incident to anyone. As far as causing hurt and the offence under Section 315 read with Section 511 of IPC is concerned, only one specific instance has been stated i.e. of 17.3.2006. There is no reference to this incident in the FIR.

14 Regarding the incident dated 17.3.2006, the appellant, her husband PW 2 Shirish and PW 3 Mrs. Mansi the mother of the appellant, deposed that due to the act of respondent no.1 there was imminent danger to the appellant's child which she was carrying in her womb and to the life of the appellant herself. However, no corroborative evidence like medical papers, has been produced nor have the Doctors who treated the appellant, been examined. Reliance was placed on the Discharge Card of the appellant i.e. Article-P-1 which shows that she was admitted in the hospital on 18.3.2006 and was discharged on 21.3.2006. This Discharge Card shows that she was operated for an "ovarian cyst". Even if the contents of this Discharge Card are taken as true, there is no cogent evidence that "ovarian cyst" which was noticed during this period, was due to the act of any of the accused. The respondents-accused on the other hand, produced the attested copies of the medical papers of the appellant. It is evident from these medical papers that on 7.3.2006 i.e. even prior to the alleged

incident dated 17.3.2006, there was an “ovarian cyst”.

15 It is seen that after the death of Mrs. Rajani i.e. mother of PW 2 Shirish and wife of respondent no.1, a dispute arose between Shirish and his father i.e. respondent no.1 regarding the flat left behind by Mrs. Rajani. Respondent no.1 claimed that she bequeathed the flat in his favour whereas his son PW 2 Shirish claimed that there was no such Will and hence, he was also an heir and has right in the flat. It appears that during the course of such disputes, the appellant and her husband PW 2 Shirish resorted to filing of cases against the respondents. All these allegations regarding demand for money were made only after the disputes arose between PW 2 Shirish and his father respondent no.1 regarding the flat which was left behind by Mrs. Rajani. Therefore, these allegations of unlawful demand of dowry, cruelty and hurt appear to be ill-motivated and they appear to be on account of ongoing disputes between the parties.

16 For the foregoing reasons, we conclude that the evidence of the appellant, her husband PW 2 Shirish and her mother PW 3 Mrs. Mansi is not trustworthy, hence, the case of the appellant that the respondents-accused demanded dowry under the guise of expenses for construction of flat and in order to cause her to meet such unlawful demand, they subjected her to cruelty and on 17.3.2006 on the instigation of respondent nos.2 and 3, respondent no.1 used criminal force against the appellant which put her life and life of the child in her womb in danger, is liable to be disbelieved.

17 Looking to the evidence on record, we find that the view of acquittal taken by the learned Sessions Judge is a reasonable and possible view. The plenitude of power available to the Court hearing an appeal against acquittal is the same as that available to a Court hearing an appeal against an order of conviction, but, however, the Court hearing an appeal against acquittal, will not interfere solely because a different possible view may arise on the evidence. The

Supreme Court in the case of **C. Anthony Vs. K.G. Raghavan Nair** reported in **(2003) 1 SCC 1** has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of evidence on record, the appellate Court should not disturb the finding of the trial Court. We have already observed that the view taken by the learned Sessions Judge is a reasonable and possible view. Hence, we are not inclined to interfere in the judgment and order of acquittal. In the result, the appeal is dismissed.

[REVATI MOHITE DERE, J.]

[SMT.V.K.TAHILRAMANI, J.]