

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.62 OF 2003

The State of Maharashtra.	]	
(Through Koregaon Police Station)	]	... Appellant /
		Orig. Complainant
Versus		
1. Govindrao Dhairyashil Jadhav.	]	
Age – 28,	]	
R/o. - Bhaktawadi, Tal. Koregaon.	]	
2. Smt. Suhila Dhairyashil Jadhav.	]	
Age – 55,	]	... Dismissed vide
R/o. - Bhaktawadi, Tal. Koregaon.	]	Order dtd.19/08/06
3. Kum. Anita Dhairyashil Jadhav.	]	
Age – 22,	]	
R/o. - Bhaktawadi, Tal. Koregaon.	]	
4. Sou. Vanita Laxman Jagdale.	]	
Age – 32,	]	
R/o. - Vyankatesh Society, Godoli, Satara.	]	
5. Laxman Tukaram Jagdale.	]	
Age – 30,	]	
R/o. - Vyankatesh Society, Godoli, Satara.	]	
6. Ajit Dnyanadev Phalake.	]	
Age – 35,	]	
R/o. - Rahimatpur, Tal. Koregaon.	]	
7. Sudhakar Marutrao Mane.	]	
Age – 35,	]	
R/o. - Rahimatpur, Tal. Koregaon.	]	... Respondents

Ms. S. S. Kaushik, APP for State - Appellant.
None for Respondents.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 27 SEPTEMBER, 2018

JUDGMENT :-

1. This Appeal is preferred by the State of Maharashtra challenging the Judgment and Order dated 21/02/2002 passed by the learned Judicial Magistrate First Class, Koregaon ('JMFC'), in Regular Criminal Case No.166 of 1996 on his file. By the impugned Judgment and Order, the Respondents herein were acquitted from the charges of commission of offences punishable under Sections 498A, 323, 504 and 506 read with 34 of the Indian Penal Code. The Respondent Nos.1 to 7 herein were the original accused nos.1 to 7. During the pendency of the present Appeal, the Respondent No.2 expired and therefore, the Appeal did not survive against her.

2. The prosecution case, in brief, is as under :

The FIR was lodged by Sangeeta Jadhav who was the wife of the Respondent No.1. The Respondent No.2 was the mother of the Respondent No.1. The Respondent Nos.3 and 4 are the sisters of the

Respondent No.1. The Respondent No.5 is the husband of the Respondent No.4. The Respondent Nos.6 and 7 are the cousins of the Respondent No.1. Sangeeta got married with the Respondent No.1 on 29/03/1992. It is the case of the first informant Sangeeta that she was treated properly for about a year after her marriage. In 1993, the Respondent No.5's mother was hospitalized in Mumbai. The Respondent Nos.1 and 5 had gone to Mumbai to see her. At that time, Sangeeta's father was residing in Mumbai and therefore, these 2 Respondents visited him. According to Sangeeta, the Respondent No.1 claimed that he and the Respondent No.5 were not treated properly by Sangeeta's father and they were offended because of this indifferent behaviour. On returning to Bhaktawadi, District – Satara, the Respondent No.1 quarreled with Sangeeta. According to Sangeeta, the Respondent Nos.1, 2 and 3 beat her. Sangeeta has further alleged that the Respondent Nos.1, 2 and 4 told her to bring 2 tolas gold or money for the purpose of laying a pipeline in the field. On Sangeeta's refusal, she was harassed further. On one occasion, the Respondent Nos.1, 4, 5 and 6 dropped her at Arabwadi and asked her to go to her parental house. After that, Sangeeta's father gave 2 tolas gold to the accused – Respondents but the harassment continued. On

this occasion, the harassment was for coercing her to bring colour TV, tape-recorder and motorcycle. Sangeeta was informed that the Respondent No.1 had contracted second marriage and the Respondents drove Sangeeta out of her matrimonial house. She came back to her parental house and lodged her FIR at Koregaon Police Station vide C.R.No.98 of 1996 under Sections 498A, 323, 504 and 506 read with 34 of the Indian Penal Code. The investigation was carried out. Sangeeta produced 2 letters and a chit written by her to her father, brother and uncle at the relevant time. At the conclusion of the investigation, charge-sheet was filed. The case was tried before the learned JMFC, Koregaon vide R.C.C.No.166 of 1996. The Respondents faced the charges under the afore-mentioned Sections of the Indian Penal Code.

3. During trial, the prosecution examined first informant PW 1 Sangeeta Jadhav. PW 2 Vishwanath Bhilare was the father of the PW 1. PW 3 Sanjay Bhilare was the brother of the PW 1 and PW 4 ASI Subhash Tarate is the Investigating Officer. The Respondents did not examine any witness on their behalf. Their defence is that a false case was lodged against them to harass them.

4. PW 1 Sangeeta is the first informant, as mentioned earlier. She has deposed that after her marriage on 29/03/1992 with the Respondent No.1, for one year, she was treated properly. They were residing together at Bhaktawadi. In the year 1993, Respondent No.5's mother was hospitalized in Mumbai. The Respondent Nos.1 and 5 visited her at Mumbai. At that time, PW 2 was residing at Mumbai. When the Respondent No.1 came back to Bhaktawadi, he complained that he was not treated properly by PW 2 and on that count, picked-up quarrel with Sangeeta. She has deposed that the Respondent Nos.1, 2 and 3 beat her on that ground. She has further deposed that at that time, the Respondent No.1 was laying a pipeline in his field and asked Sangeeta to bring two tolas of gold or money for that purpose from her parents. Sangeeta refused to oblige and therefore, again she was beaten by the Respondent Nos.1, 2 and 4. She was deprived of food and clothes. She has further deposed that after this, she was treated properly for one month. It is her case that the Respondent Nos.1, 4, 5 and 6 then dropped her to Arabwadi and asked her to bring 2 tolas of gold. She has further deposed that the Respondent No.6 threatened her. Thereafter, she came to her father's (PW 2) house. She resided there for about four months. After that,

Sangeeta's father and brother gave 2 tolas told to the Respondent No.1. Sangeeta then resided with the Respondent No.1 for a few days and she was treated properly, but again the harassment started. On this occasion, she was harassed for a demand of colour TV, tape-recorder and motorcycle. She has further deposed that the Respondent No.1 informed her that he had contracted second marriage and thereafter drove her out of her matrimonial house. Sangeeta then again came back to her father's house and lodged her FIR with Koregaon Police Station. The FIR is produced at Exhibit.42. Sangeeta also produced 2 letters and a chit which she had written to her father, brother and uncle at the relevant time. These three documents are produced on record at Exh.43, 44 and 45.

5. She was cross-examined extensively on behalf of the Respondents. In the cross-examination, she has accepted that she was not able to tell as to when the Respondent No.1 fought with her on the ground that PW 2 i.e. complainant's father, did not treat him well in Mumbai. She further admitted that the Respondent No.1 laid a pipeline in his field in the year 1993 itself. She was unable to state as to when the Respondent Nos.1 to 4 asked her to bring 2 tolas of gold.

She has admitted that she did not take any treatment from a doctor when she was assaulted on her leg by the Respondent No.1. She was also unable to tell when exactly or approximately the Respondent Nos.4, 5 and 6 dropped her at Arabwadi. She was also unable to tell as to when her father gave 2 tolas of gold to the Respondents. Her cross-examination revealed that the Respondent No.3 Anita was handicapped. She has further admitted that the Respondent Nos.4 to 7 were not concerned with the daily routine of the Respondent Nos.1 to 3. She has further admitted that there was no mention of the letters Exh.43, 44 and 45 in her FIR.

6. PW 2 Vishwanath Bhilare is the father of PW 1 Sangeeta. He has deposed about Respondent Nos.1 and 5's visit to his house at Mumbai. He has deposed that Sangeeta informed him subsequently that the Respondent No.1 was unhappy with the treatment PW 2 gave the Respondent No.1 during his visit to Mumbai and on that count, the Respondent No.1 was harassing PW 1. He has further deposed that the Respondents demanded money for laying a pipeline in the field. He has further deposed that he gave 2 tolas of gold to the Respondents but the harassment of Sangeeta continued. He has

further deposed that Sangeeta was harassed on the ground that the Respondents considered her to be unlucky. He has further deposed that the Respondent Nos.5 to 7 were instigating the Respondent No.1 to live separately from Sangeeta as she was unlucky. He has further deposed that on 11/05/1996, the Respondents had beaten Sangeeta and drove her out of her matrimonial house and she came to reside in his house. When she came back to PW 2's house, she lodged her FIR.

7. In the cross-examination, PW 2 has admitted that in the year 1996, he was ill and Sangeeta had gone to meet him in the hospital and since then, Sangeeta was residing with him. He has deposed in his cross-examination that the police did not record his statement, neither did they record the statement of his wife.

8. PW 3 Sanjay Bhilare was the brother of PW 1 Sangeeta. He has deposed about the Respondent Nos.1 to 5's visit to Mumbai and Sangeeta's harassment at their hands after their visit. But, of course, he did not have any personal knowledge about this harassment and he was informed about it by Sangeeta. He has deposed that he himself and his uncle Kashinath went to the house of

the Respondents to convince them to treat Sangeeta properly. He has further deposed that at that time, they offered 2.½ tolas of gold to the Respondents. PW 3 has further deposed that even thereafter, the Respondents continued demanding colour TV, tape-recorder and motorcycle and on non-fulfillment of such demand, the harassment continued. He has further deposed that the Respondents also demanded money for pipeline. He has further deposed that the Respondent beat Sangeeta and drove her out of her matrimonial house and therefore, she came to her parental house. It is his case that the Respondent Nos.4 to 7 used to instigate the Respondent No.1 to beat Sangeeta and used to advise him to stay separately from Sangeeta as she was unlucky. He has deposed that on 05/11/1996, the Respondent Nos.1 to 3 beat Sangeeta and drove her out of her matrimonial house. Thereafter, he went with Sangeeta to police station to lodge her FIR.

9. He has admitted that he did not remember the date when 2.½ tolas of gold were given to the Respondents.

10. PW 4 ASI Subhash Tarate had investigated the C.R.No.98 of 1996 of Koregaon Police Station. He has deposed that he had recorded statements of the family members and relatives of PW 1 Sangeeta. According to him, PW 1 had given him letters which are produced at Exh.43, 44 and 45. After completion of investigation, he had filed the charge-sheet.

11. I have heard Ms. S. S. Kaushik, learned APP for the State - Appellant. Nobody appeared on behalf of the Respondents. With her assistance, I have gone through the entire evidence and have perused the record and proceedings. I have also gone through the reasoning given by the learned trial Judge while acquitting the Respondents.

12. The prosecution case rests only on the evidence of PW 1 Sangeeta Jadhav, PW 2 Vishwanath Bhilare and PW 3 Sanjay Bhilare. Except the first informant, her father and brother, no other independent witness is examined by the prosecution. From the perusal of their evidence, it appears that following are the circumstances alleged against the Respondents in an attempt to prove their guilt for the offences charged against them.

- (i) harassment of Sangeeta because the Respondent Nos.1 and 5 were not treated properly by PW 2 at Mumbai,
- (ii) harassment on the ground of demand of money for laying pipeline,
- (iii) harassment on the demand of 2.½ tolas of gold,
- (iv) harassment for non-fulfillment of demand of colour TV, tape-recorder and motorcycle,
- (v) harassment on the ground that she was considered unlucky,
- (vi) Sangeeta being forced to go to her parental house by dropping her at Arabwadi,
- (vii) driving her out of her matrimonial house after beating her.

13. Apart from the oral evidence, the prosecution has produced on record letters at Exh.43, 44 and 45. These letters are brought on record through the evidence of PW 1. According to the prosecution case, these are the letters written by Sangeeta herself to her uncle, father and brother. Obviously, once these letters are posted, they were in custody of these 3 persons. No evidence is brought on record to show that these 3 persons had produced these

letters before the police. Obviously, Sangeeta could not have had any control or any connection with these letters after she had posted them. Importantly, neither PW 2 nor PW 3 make any reference to such letters. Therefore, in this background, I am not inclined to take these letters into consideration in support of the case of the prosecution.

14. Insofar as the harassment due to not giving proper treatment to Respondent Nos.1 and 5 at Mumbai by PW 2 is concerned, it appears to be a trivial incident and PW 1 has not been able to tell around what time she was harassed and beaten on that count. The evidence of PW 2 and PW 3 will not take the prosecution case further. Only PW 1 could have been aware of any such harassment if it was there at all. Since PW 1's evidence in that behalf is not very specific and cogent, this circumstance is not proved by the prosecution.

15. Insofar as the allegations of demand of money for laying pipeline is concerned, the evidence shows that the pipeline was laid by the Respondent No.1 in the year 1993 itself. According to the PW 1, her marriage was solemnized on 29/03/1992 and for a year she was

treated properly. Thereafter, the incident of Respondent No.1 and 5's visit to Mumbai had taken place. Till then, there were no allegations of the demand of money for laying down a pipeline in the Respondents' field. Therefore, even this circumstance is not proved properly by the prosecution.

16. The prosecution has further alleged that the Respondents demanded 2 tolas of gold of money. In this regard, the evidence of PW 3 Sanjay shows that when he had gone to the house of the Respondents, at that time, he had given 2.½ tolas of gold to the Respondent. It is not his case that he had given that gold on demand made by the Respondents.

17. Insofar as the demand of colour TV, tape-recorder and motorcycle is concerned, the PW 2 has not deposed in his deposition that there was such demand by the Respondents. PW 2 would have been the best witness if he was expected to fulfill such demand. PW 2 has not mentioned any such demand made by the Respondents.

18. Regarding the incident of dropping Sangeeta at Arabwadi against her wishes, PW 1 Sangeeta could not mention even approximately the period when such incident had taken place. At least in this case, it was possible for the prosecution to examine an independent person from Arabwadi who could have witnessed such incident. Such evidence is not forthcoming and therefore, even this circumstance is not established by the prosecution.

19. About the allegations of branding her as unlucky, these are vague allegations and there are not specifically directed in respect of a particular incident. PW 1 herself has not deposed that she was harassed on that ground.

20. Insofar as the allegation that Sangeeta was driven out of her matrimonial house is concerned, the evidence shows that the PW 2 had taken ill and Sangeeta had visited him in the hospital and since then, she had not returned to her matrimonial house. Therefore, it cannot be said that she came to her parental house as the accused beat her and drove her out of her matrimonial house. Therefore, even this circumstance is not properly proved by the prosecution.

21. Thus taking into consideration all the allegations and the evidence led by the prosecution, it appears that the prosecution could not prove its case against any of the Respondents. The learned trial Judge has given cogent reasoning in acquitting all the Respondents. I find no perversity in the approach of the learned trial Judge. The view taken by the learned trial Judge is a possible view and therefore, I do not find it necessary to interfere with the decision.

22. As a result, the Appeal fails and is dismissed accordingly.

(SARANG V. KOTWAL, J.)