

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.552 OF 2002

Manjindekaur Daljeet Singh
Bajawa nee Banka
Age 30 years,
Residing at Airoli, Flat No.10
Uniaque Set, Sector-3, Airoli,
Navi Mumbai – 400 708.

... Applicant

versus

1. Daljit Singh Harbhajansingh Bajawa
Aged about 32 years
2. Pritamkaur Harbhajansingh Bajawa
Aged about 55 years
3. Sinderkaur Tejasingh Deru (Bajawa)
Aged about 32 years

All residing at C-12
Himachal Society, Sector-17
Vashi

4. State of Maharashtra
(at the instance of the
Inspector of Police,
Vashi Police Station)

... Respondents

.....

- Ms. Trupti Khamkar i/b. Mr.S.V. Marwadi, Advocate for the Applicant.
- Mr. Sunil Patel i/b. M/s Sunil & Co., Advocate for Respondent Nos.1 to 3.
- Ms.S.S. Kaushik, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, JJ.
DATE : 31st OCTOBER, 2018

JUDGMENT :

1. This Criminal Revision Application is preferred by the original first informant challenging the Judgment and Order dated 02/11/2002 passed by the Judicial Magistrate First Class, Vashi, in Regular Criminal Case No.704 of 2000. By the impugned Judgment and Order, the Respondent Nos.1 to 3 who were the original accused in this case were acquitted from the charges of commission of offence punishable u/s 498-A and 406 r/w 34 of the Indian Penal Code.
2. The prosecution case is that the Applicant was married to the Respondent No.1 on 04/02/1999 at Vashi, Navi Mumbai. According to her, for a few initial days she was treated properly. But afterwards the Respondent Nos.1 to 3 started harassing her. Respondent No.2 is the mother of the Respondent No.1 and Respondent No.3 is the sister of Respondent No.1. According to the Applicant, after her marriage she had become pregnant, but the accused forced her to terminate her pregnancy. The

Respondent No.1 in the meantime got a job at Hyderabad and therefore he went to Hyderabad. At first the Applicant was not taken with him. But subsequently for a few months, she was taken to Hyderabad by the Respondent No.1. The couple resided together for a couple of months and then she was again sent to Navi Mumbai to reside with the Respondent Nos.2 and 3. According to the first informant, the Respondents continued harassing her on non-fulfillment of their demand. It is the case of prosecution that the Respondent Nos.1 to 3 constantly demanded money from her. They asked her to bring larger amount from her parents. According to her, her father paid about Rs.2,30,000/- from June 1999 to May 2000. This amount was paid in addition to the marriage expenses incurred by the first informant's father. According to her, gold ornaments were also given in marriage. It is her further case that inspite of this, the harassment did not stop and she was driven out of the matrimonial house on 30/06/2000. The father of the first informant requested the accused Respondents to take her back but they demanded Rs.10 lakhs. Ultimately, the first informant

had no choice but to approach the police. Accordingly, she lodged the complaint with Vashi Police Station vide C.R.No.I-365/2000 u/s 498-A, 406 r/w 34 of IPC.

3. After registration of the FIR, the investigation commenced. Accused were arrested. Their house was searched, but nothing was recovered. No ornaments were taken charge of. Statements of a few witnesses were recorded and after completion of investigation, charge-sheet was filed.
4. The trial was conducted before learned Judicial Magistrate First Class, vide Regular Criminal Case No.704/2000. The charges were framed u/s 498-A, 406 r/w 34 of IPC.
5. During trial, the prosecution examined P.W.1 Manjinderkaur Daljeetsingh Bajawa, who was the first informant. P.W.2 Jagjitsingh Bishansingh Banka, was the P.W.1's father. P.W.3 Sarvajeet Jagneetsingh Banga, was the P.W.1's mother. P.W.4 Birsingh Ramsingh Gujjar was P.W.3's nephew

who had given money to P.W.2 and P.W.3 for fulfilling the demands of the accused according to prosecution case. P.W.5 Gurmukhsingh Arjansingh Dhillon was instrumental in arranging the marriage. P.W.6 API Bhaskar Baban Pingat was the Investigating Officer, who had conducted the investigation.

6. P.W.1 Manjinderkaur Bajawa has deposed that she got married with the Respondent No.1 on 04/02/1999 at Vashi. She started residing with all the accused at Koparkhairne. After a few days the accused Nos.2 and 3 started quarreling with her on petty reasons. The Respondent No.1 got a job at Hyderabad. But since he had no accommodation there, he alone went to Hyderabad. During that period she had conceived, but the accused forced her to terminate her pregnancy against her will on 14/03/1999. After getting accommodation at Hyderabad, she was sent to Hyderabad to reside with her husband-Respondent No.1. But she was ill-treated on the flimsy grounds. After a couple of months she was again sent back to Vashi. At that time, ill-treatment at the hands of Respondent Nos.2 and 3 continued.

She informed the same to her parents on 22/05/1999. According to her, P.W.2 had given 25 tolas and cash during wedding. In spite of that, accused were ill-treating her. She further deposed that in 1999 her parents gave Rs.60,000/- to the accused. In December 1999 Rs.1,00,000/- was given and in May 2000 Rs.1,50,000/- were given. But the harassment continued. Ultimately, finally on 30/06/2000 she was driven out of her matrimonial house. On 09/07/2000 P.W.2, P.W.3 and P.W.5 approached the accused. But they demanded Rs.10 lakhs for allowing P.W.1 to reside with them. In the cross-examination she was asked about the ornaments which were supposedly given at the time of marriage. She deposed that the ornaments were bought from the shop of 'R.K. Sanghavi' at Kurla. When she was asked to produce the bill, she produced the bill of purchase of ornaments which was produced on record at Ex.25. However the shop's name in the bill was 'Shri Ambika Chain' and the address mentioned was G.K. Road, Bombay-13, that means it was not the address of any jeweller's shop at Kurla. She also admitted that she had not handed over any medical papers to

the police showing termination of pregnancy. She was confronted with a letter written by her to the Respondent No.1. Though initially she denied having sent the letter by her, but afterwards she admitted that it was written by her. In the said letter no allegations are mentioned which she had mentioned in her FIR.

7. Her FIR was produced on record at Ex.24. In the FIR she had not stated that Respondent No.1 was in Navi Mumbai at the time of forced abortion. She could not give satisfactory answer to this in her cross-examination.

8. P.W.2 Jagjitsingh Banka was the father of P.W.1. He has deposed about spending Rs.2.5 lakhs at the time of marriage and giving 25 tolas of gold. He has deposed that in June 1999, December 1999 and May 2000, he has paid Rs.3,20,000/- in all to the Respondent No.1. But inspite of that ill-treatment of his daughter continued at the hands of the accused. It is further deposed that on 25/05/1999 when P.W.1 had come to his house

at Airoli, she had disclosed about ill-treatment meted out to her. She had also informed about the termination of her pregnancy, which was done against her will. In the cross-examination he was confronted with a letter dated 11/09/1999 which is produced on record at Ex.40. In the said letter there are no allegations of any ill-treatment or even about any demand or about the fact that P.W.1 was forced to terminate her pregnancy. P.W.3 Sarvajeet Banga was the mother of P.W.1 and she has deposed on the same line as those of P.W.2. P.W.4 Birsingh Gujjar was P.W.3's nephew. He has deposed that on 3 separate occasions he paid Rs.60,000/-, Rs.1,00,000/- and 1,50,000/- to P.W.3 to enable her to pay that amount to the accused. In the cross-examination when specifically asked, he could not tell the exact dates on which said amount was paid by him. He has stated in the cross-examination that he had not stated before the police that the said amount was sent by him from Punjab. Thus, on the aspect as to when the said amount was paid, his evidence is not consistent.

9. P.W.5 Gurmukhsingh Dhillon was the person who had arranged the marriage between the parties, as he knew the parties. Beyond that, his evidence is not of any significance. However, he has deposed that on 09/07/2000 he had accompanied P.W.2 and P.W.3 to the house of accused for reconciliation and on that occasion the accused had demanded Rs.10,00,000/-. In the cross-examination he has deposed that he did not remember whether he had signed the visitor's register when he had visited the Respondent's house.
10. P.W.6 API Bhaskar Pingat was the Investigating Officer. He had arrested the accused and drawn the Panchanama in respect of the search of house of accused. He has not deposed that during his investigation anything was recovered from the Respondents' house.
11. The accused denied all the allegations against them and their defence was that a false case was lodged against them. After recording the evidence and statements of the accused, the

learned Trial Judge heard the arguments and reached the conclusion that the prosecution had failed to prove the offence against the Respondent Nos.1 to 3 and all of them were acquitted from the charges of commission of offence punishable u/s 498-A, 406 r/w 34 of IPC.

12. Heard learned Counsel Ms.Trupti Khamkar, for the Applicant, Mr. Sunil Patel learned Counse for Respondent Nos.1, 2 and 3 and Ms. S.S. Kaushik, learned APP for the State of Maharashtra.

13. Ms.Trupti Khamkar has stated that the learned trial Judge erred in acquitting Respondent Nos.1, 2 and 3. The evidence on record is not properly appreciated. She has submitted that the evidence of P.W.1 itself was sufficient to show that she was treated with cruelty for non-fulfillment of demand. She was forced to terminate her pregnancy. Her evidence is sufficiently corroborated by her parents P.W.2 and P.W.3. She has submitted that the evidence of P.W.4 also

establishes as to how P.W.2 and P.W.3 had arranged for money which was demanded by the Appellant. She therefore submitted that the approach of learned Trial Judge was not correct.

14. On the other hand, Mr. Sunil Patel submitted that the learned Trial Judge has given sufficient and proper reasons for acquitting the Respondents. The prosecution has not proved its case beyond reasonable doubt. Nothing was recovered from the Respondents. Bald allegations of the P.W.1 were not sufficient to conclude that she was treated with cruelty within the meaning of section 498-A of IPC. Her evidence shows that she is not a truthful witness.

15. The learned trial Judge has discussed every allegation. Insofar as the allegations about forcible termination of pregnancy is concerned, it is held by the learned trial Judge that firstly it was impossible for any Doctor to terminate the pregnancy against the will of a pregnant lady. Secondly, the learned Judge observed that there was absolutely no material

including any documentary evidence on record to show that such procedure was actually carried out. In my opinion, the reason given by the learned trial Judge in that behalf is correct. The first informant has not given details as to when and where such procedure was carried out. The prosecution did not examine any Doctor who had supposedly terminated the pregnancy. There is nothing on record to show even first informant had made a complaint in that regard.

16. The learned Trial Judge has rightly referred to the letter Ex.27, which was dated 14/05/1999. This date is after the alleged date of abortion. P.W.1 has admitted that the said letter was written in her writing. In the said letter there is no reference whatsoever about her pregnancy and forcible termination of such pregnancy. In fact that letter does not make any reference to any ill-treatment or any demand of money on the part of the accused.

17. The learned Trial Judge has also observed that the evidence shows that initially the first informant was taken to

Amritsar and Vaishnodevi. Thereafter she had even accompanied the Respondent No.1 to Hyderabad. All these facts show that the relationship between the couple was quite normal.

18. The learned Judge has discussed the payment of Rs.3,20,000/- in all after the marriage. Such amount was allegedly paid in the month of June 1999, December 1999 and May 2000. The prosecution has examined P.W.4 as the person who had financially helped P.W.2 and P.W.3 to make such payment. P.W.2 himself has not deposed that the said amount was taken from P.W.4. This witness P.W.4 has not stated exactly when the said amount was paid to P.W.3 to enable her to pay the accused. He was confronted with his police statement where he had said that the amounts were sent from Punjab. However, in the deposition he has denied the said statement. Therefore, the prosecution did not prove exactly when and where such amount was paid by this witness to the parents of P.W.1.

19. P.W.1 has not given any specific incident or approximate period when she was harassed and ill-treated by

the accused. No specific instances are mentioned. Thus, the learned trial Judge has rightly held that the offence of section 498-A is not proved.

20. Insofar as the allegation that the accused had retained the ornaments given to P.W.1 in the marriage is concerned, it is important to note that during investigation nothing was seized from the accused. The evidence led by the first informant in this behalf is not correct as rightly held by the learned Trial Judge. P.W.1 has deposed that ornaments were purchased from a shop at Kurla. However, the receipt which is produced on record during cross-examination reveals the jeweller's shop as 'Shri Ambika Chain' and the address mentioned was G.K. Road, Mumbai-13. This important discrepancy is not explained by P.W.1. Therefore it is not proved by the prosecution that the ornaments were given to the first informant and were misappropriated by the accused.

21. The learned trial Judge has given cogent reasoning in respect of these aspects. The view taken by the learned Trial

Judge is a possible view. In this view of the matter, I do not find any merit in the present Criminal Revision Application. With the result, the following order is passed :

ORDER

The Rule issued on 11/02/2003 is discharged and Revision Application is dismissed.

(SARANG V. KOTWAL, J.)