

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.28 OF 2002**

The State of Maharashtra
(Through A.P.P., J.M.F.C.,
Link No.II, Court No.8, Pune)

... Appellant

Vs

1 Arif Karim Shaikh
Age: 28 yrs., Occ: Business,

2 Sharifa Karim Shaikh,
Age: 50 yrs., Occ.:Household,

3 Shamima Arif Shaikh
Age: 30 yrs., Occ: Household,

4 Nazim Karim Shaikh
Age: 25 yrs., Occ: Business,

5 Farida Bandhulal Shaikh,
Age: 35 yrs., Occ: Household,

All r/a. Plot No.38,
Parvati Darshan, Pune

... Respondents

...

Mr. Ajay Patil, the learned Additional Public Prosecutor for the
Appellant-State.

Mr. Vikas Shivarkar for the Respondent No.1.

CORAM :SANDEEP K. SHINDE J.
DATE : 26TH OCTOER, 2018

ORAL JUDGMENT :

This Appeal is preferred by the State under Section 378(1) of the Criminal Procedure Code, 1973 inter-alia challenging the order of acquittal dated 31.7.2001 passed by the learned Judicial Magistrate, First Class, Pune in RCC No.43 of 2000.

2 Accused no.1 is the husband of the complainant and other accused are her in-laws. They were prosecuted for committing an offence under Section 498A of the Indian Penal Code.

3 In support of the charge, prosecution had examined the complainant as P.W.1, her father as P.W.2, her paternal uncle as P.W.3 and P.W.4- Investigating Officer.

4 Heard the learned Additional Public Prosecutor for the State and Mr. Shivarkar for the Respondent No.1-Accused. Perused the record and proceedings.

5 It is unfolded in evidence, that:

Complainant married accused no.1 in June, 1997. Soon thereafter she would complain that since her father had given steel utensils as gift in marriage, her in-laws were unhappy and were demanding brass utensils. It is on this count, her husband and in-laws were beating her. It was her complaint that her husband had demanded three wheeler Auto and a flat and since not given, she was beaten mercilessly by her husband. It is her case that for few days, she was treated well by husband and in-laws but after a brief period she suffered harassment at the hands of accused. She would narrate in the evidence that she reported fact of demand to her father, who then handed over three wheeler Auto to her husband. She would depose that harassment did no end and continued and, thus, she lodged a complaint with the police which was registered under Section 498A of the IPC as Crime No.45 of 2000.

6 Prosecution had examined father and the paternal uncle of the complainant. The evidence of these material witnesses

on the point of unlawful demand of three wheeler Auto, flat and utensils is absolutely vague, in-as-much as better and material particulars were not brought on record by the prosecution like the ownership details of three wheeler when it was purchased, cost of it, its registration certificate, etc. from which it was possible to hold that three wheeler was given to the accused pursuant to his demand. Not only this but prosecution had neither placed on record medical reports of complainant nor examined doctor to hold that she was admitted in the hospital on account of beatings at the hands of husband. There is no explanation on record as to why the prosecution had not examined Doctor and/or placed on record medical reports of the complainant. It may also be stated that the complainant in her evidence had stated that before lodging report with the police, she had filed complaint with Mahila Dakshata Samiti but in respect thereof, neither the complaint was placed on record nor office bearers of the said Dakshata Samiti were examined. Besides, there is no independent witness examined by the prosecution.

7 Upon appreciating the evidence, I am of the opinion that there is neither infirmity in the order of acquittal nor perversity in findings. View taken by the learned JMFC is a possible view and this Court while sitting in the appeal against the acquittal is not supposed to substitute its own view unless the finding is perverse or de-horse to the evidence on record.

8 The learned counsel appearing for the Respondent No.1-Accused made a statement across the bar that the complainant and her husband are co-habiting together as husband and wife even today. Statement is accepted.

9 In view of this, I do not find any substance in the appeal preferred by the State.

10 In the result, appeal is dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J.)