

Uday S. Jagtap

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

CRIMINAL APPEAL NO. 191 OF 2020

Yogesh Mahadev Kamthe	]	Appellant
Vs.		
State of Maharashtra and another	]	Respondents

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Ms. Siddhi Bhosale a/w Mr. Chaitanya Pendse for the Appellant.
Mr. A.R. Patil, Addl. P.P. for respondent State
Mr. Bhaskar Sarwade for respondent no.2

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 12th JUNE, 2020.
(Through Video Conferencing)

PC:

1. Heard. Admit. At the request of the learned Counsel appearing for the parties, the appeal is taken up for final disposal.

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 challenging an order dated 29.01.2020 passed by the learned Additional Sessions Judge, Thane rejecting the application for bail preferred by the appellant

under Section 439 of the Cr.PC.

3. The appellant and his parents have been charge-sheeted by respondent no.1 State at the instance of Vashi Police Station in Crime No. I-21 of 2020 for the offences punishable under Section 498A, 323, 504, 506 of the Indian Penal Code, Section 3(1)(r)(s)(v), 3(2)(va) of S.C.S.T. Act and Section 4 of Dowry Prohibition Act.

4. Shorn of unnecessary details, the facts in brief are that the respondent no.2 and the complainant is the wife of appellant. Undisputedly, the respondent no.2 belongs to Scheduled Caste whereas the appellant does not belong to Scheduled Caste or Scheduled Tribe. They got acquainted with one another which ultimately culminated into a love affair. The appellant and the respondent no.2 were aware of their respective castes.

5. On 22.11.2011, the respondent no.2 along with her two friends visited the shop of the appellant's father at APMC Market, Vashi to inform him about their relationship and, therefore, made a proposal of marriage. It is contended that after knowing the caste of the respondent no.2, the appellant's father said that he would marry his son with any

heroin but he does not want the “filth of Mahar”.

6. Subsequently, the respondent and the appellant got married on 27.12.2012 against the wishes of the parents of the appellant. They got married at Vishweshwar Mandir, Nirmal Nagar, Bandra (E), Mumbai as per Hindu rituals. The marriage has been registered. It is alleged that the marriage was not attended by the parents of the appellant. Rather, the father of the appellant had threatened the relatives that any one who attends the marriage of the appellant with respondent no.2 will be shot at.

7. It is the case of the prosecution that a few days after the marriage, the respondent no.2 and the appellant had been to the parents house of the appellant. It is alleged that at that time when the respondent no.2 attempted to touch the feet of her in-laws to seek blessings, the father of the appellant alleged to have insulted by saying “*you belong to Mahar caste therefore, do not touch us, you do not deserve people like us belonging to upper caste and you will never been accepted as our daughter in-law, please leave our son*”. It is further alleged that the mother of the appellant taunted the respondent no.2 by saying that “*we are so rich that our son could have received 20 to 25 lakhs as dowry but*

because my son married a person like you belonging to a lower caste, my son and us have suffered a great loss". It is also alleged that in order to compel the appellant to divorce the respondent no.2, the appellant's parents often used to demand dowry of Rs.10 lakhs by saying that *"they would accept her only if the demand is fulfilled"*.

8. The prosecution case further reveals that in the year 2013 when the respondent no.2 had been to the house of the parents of the appellant at Kopar Khairane with *Kheerpuri* and *bhaaji*, it is alleged that when the respondent no.2 told the appellant about arrival of her parents, the appellant shouted by saying *"I do not eat from the house of Mahar and now even you should not eat, I have uplifted you and still you have not improved"* in front of her parents as well as friends namely Sangeeta Shinde and Raani Rai. After hearing the commotion the neighbours gathered and the parents of respondent no.2 left the house as they were deeply hurt by such words. The appellant threw the food in the dust-bin and started hurling abuses at the respondent no.2 and her parents. He had even assaulted the respondent no.2 on her stomach.

9. On 30.12.2013 the respondent no.2 delivered a girl child namely Neha. However, there was no change in the behavior of the appellant

and his parents who continued abusing and insulting the respondent no.2 on her caste. It is alleged that in the year 2014 when the respondent no.2 and the appellant had visited the parents of the appellant along with their daughter Neha, the parents of the appellant did not let them enter the house. Rather, they abused and insulted the respondent no.2 on her caste by saying “*this girl cannot be our grand daughter as she is born to a mother belonging to a lower caste*”.

10. The record further reveals that father of the respondent no.2 passed away in the month of July, 2014 and, therefore, the respondent no.2 was left with no support. She, therefore, addressed a notice to the appellant informing that she was ready to co-habit with the appellant wherever he decides. However, the appellant did not co-operate and did not take the responsibility of the respondent no.2 and her daughter.

11. Ultimately, the respondent no.2 lodged a report with the Vashi Police Station on 15.01.2020.

12. At the outset, the learned Counsel for the appellant assailed the impugned order by submitting that the learned Trial Court has failed to

appreciate the fact that there is absolutely no explanation as to why there was a delay of 6 years in lodging the report by respondent no.2 against the appellant. The parents have already been granted protection from arrest by this Court. It is submitted that respondent no.2 has been residing separately since 2014. Since the charge-sheet has already been filed, there is no question of bar of Section 18 of the S.C. S.T. Act. The learned Counsel also took me through the statement and the report of the respondent / 1st informant by contending that whatever allegations levelled against the appellant were not within public view, in the sense, the offence is alleged to have been taken place inside the house and, therefore, no case under the atrocity Act has been made out. The Investigating Agency has invoked Section 3(1)(r) and 3(1)(s) of the S.C.S.T. Act by alleging that the utterances were taken place within public view. However, it seems from the statement of respondent no.2 and from the recitals of the FIR that they were necessarily inside the house.

13. It seems that there is a matrimonial discord between the husband and wife which has reached this stage even after the birth of their daughter in the year 2013. It reveals from the FIR that at one point of

time, the appellant was ready and willing to reside with the parents of respondent no.2 during her pregnancy and in fact they were residing with her parents till Neha was born. That being so, it *prima facie* sounds improbable that the appellant would abuse his wife on caste especially when it is a love marriage. The section invoked by the prosecution is 498A of the IPC which provides punishment for 3 years. Indeed, there is no explanation as to why it took 6 years for the wife / respondent no.2 to lodge a report against the husband. Since, the charge-sheet has already been filed and the parents of the appellant have already been released, no fruitful purpose would be served in detaining the appellant behind the bars as the trial has not yet commenced.

14. Mr. Sarwade, learned Counsel appearing for the respondent no.2 has strongly objected the release of the appellant by contending that he had been repeatedly abusing his wife on caste and committing atrocities and, therefore, it would not be safe to release him on bail as there are likelihood of repeating the offence at the hands of the appellant.

15. The learned APP has also objected the release, however, he

submits that strict conditions be imposed to refrain the appellant from influencing or threatening or abusing the respondent no.2 in any manner.

16. The learned Counsel for the appellant is fair enough to submit that the appellant is ready to stay out of New Bombay since his wife – respondent no.2 is staying at Kamothe.

17. Having considered the entire circumstances of the case including the fact that charge-sheet has already been filed and there was no explanation for a delay of 6 years in filing the report, it would be a fit case in which the appellant can be released on bail, however, by putting appropriate conditions.

18. The learned trial Court has failed to appreciate all the circumstances in its correct prospective and relied upon the bare averments made in the FIR by the respondent no.2. The impugned order, therefore, needs to be quashed. Consequently, I proceed to pass the following order :-

ORDER

(i) The appeal is allowed. The impugned order dated 29.01.2020 passed by the learned Additional Sessions Judge, Thane is quashed.

(ii) The appellant - Yogesh Mahadev Kamthe, be released on executing a PR. bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Special Court, Thane in Crime No. I-21 of 2020 registered with Vashi Police Station.

(iii) The appellant shall stay out of New Bombay area until conclusion of the trial.

(iv) The appellant shall not in any manner whatsoever threaten, influence, coerce or contact the respondent no.2 / victim or her relatives, daughter or witnesses either directly or indirectly.

(v) The appellant shall not leave the jurisdiction of Special

Court, Thane without seeking prior permission.

(vi) The learned Special Court shall ensure compliance of Sub-Sections 6, 7 and 8 of Section 15A of the S.C.&S.T. Act.

(vii) In case, the appellant is unable to furnish surety, he shall be released on a provisional cash bail in the sum of Rs.25,000/- for a period of three months.

(viii) The appeal stands disposed of in the aforesaid terms.

This order shall be digitally signed by the Private Secretary of this Court. All concerned shall act on production by fax or e-mail of a digitally signed copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]