

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.370 OF 2022

**SHITAL KISHOR GADEKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Appellant : Mr. Kasar Rajendra Sudam
APP for Respondents/State : Mr. R.V. Dasalkar
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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.
DATE : 9th March, 2023**

ORDER :- (Per: Y.G. Khobragade, J.)

1. By the present appeal under Section 372 of Cr.P.C. the informant/appellant challenges the judgment and order of acquittal of the respondent nos.2 to 6 original-accused nos.1 to 5 for the offence punishable under Section 498-A, 363, 364(A), 354, 323, 504, 506 read with Section 34 of the I.P.C. passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.77 of 2017 on 03.03.2022.

2. In nutshell the prosecution story is that on 29.11.2012 the marriage between appellant-informant and the respondent no.2 was solemnised at Ahmednagar and after marriage she co-habited with her husband in joint family. For initial days she was treated well but subsequently

the respondent-accused nos.2 to 6 raised demand of dowry of Rupees Five Lakhs for construction of house and ill-treated her mentally and physically. However due to non fulfillment of said demand she was dropped at her parental house at village Chas, Tq. & Dist. Ahmednagar. Therefore, the appellant-informant had initiated proceedings under Section 498-A of the I.P.C., as well as proceeding under the Domestic Violence Act against the respondents-accused, so also her husband-accused no.1 had filed divorce petition against her. During the pendency of the said proceedings, her husband respondent no.1 showed willingness to take her back for co-habitation and on compromise the appellant complainant started co-habiting with her husband-respondent no.2.

3. However, again the respondents-accused raised demand of Rupees Five Lakhs to her and when her brother approached the accused, the respondents-accused told him about presence of hidden treasure in the house of the complainant and if sacrifice of the complainant is given on full moon night, they will get the hidden treasure and assaulted her brother. The appellant-informant further alleged that on 23.09.2014 the accused persons kidnapped her and concealed her for fifteen days i.e. from 23.09.2014 to 08.10.2014 and during said intervening period accused persons used to provide her single vada paav and she was being released in forest only for

attending nature's call. On 08.10.2014 the accused persons dropped her at village Chas bus stand. Therefore, she visited the police station and lodged the report. On the basis of said report Crime No.02/2016 was registered against the accused persons.

4. The Investigating Officer conducted the investigation and on completion of investigation charge-sheet before the Judicial Magistrate came to be filed. On compliance of Section 207 of the Cr.P.C. the learned Judicial Magistrate under Section 207 of the Cr.P.C. committed the trial to the Court of Sessions as the offence under Section 498-A, 364(A), 354, 323, 504, 506 read with Section 34 of the I.P.C. are triable by the Court of Sessions. The learned trial Court framed charge (Exhibit-23) against the accused. However, the accused pleaded not guilty and claimed for trial. Accordingly, their plea was recorded at Exhibit-24 to 28 respectively. In order to prove the offences the prosecution examined four witnesses PW1-Informant Sheetal Gadekar (Exhibit-39), PW-2 Sharda Kshirsagar (Exhibit-42), PW3-Yeshwant Kshirsagar (Exhibit-45) and Sunita Dhawale (Exhibit-46). On conclusion of trial the submissions of the accused came to be recorded under Section 313 of the Cr.P.C. at Exhibit-49 to 53. The defence of the accused is of total denial and they submitted that they were falsely implicated in the crime.

5. Upon hearing the learned prosecutor and the learned defence counsel as well as on consideration of the evidence led by the prosecution on 03.03.2022 the learned trial Court passed the impugned judgment and order and acquitted the accused/respondent nos.2 to 6 for the offence punishable under Section 498-A, 363, 364(A), 354, 323, 504, 506 read with Section 34 of the I.P.C. Being aggrieved by the said judgment the present appeal has been instituted by the appellant/informant on various grounds enumerated in the memo of appeal.

6. It is well settled principle of law that the Appellate Court having full powers to review and re-appreciate the evidence upon which the order of acquittal is founded, however, while exercising power of Appellate Court in the case of acquittal, the Appellate Court should not only consider every matter on record having bearing on the question of fact and the reasons elaborated by the Court below in support of order of acquittal and the Appellate Court required to consider whether the order of acquittal passed by the trial Court is justifiable or not and the Appellate Court should be slow in reversing the order of acquittal “unless there are strong and good grounds”, the order of acquittal passed by the trial Court should not be interfered with. Therefore, taking into consideration all said principles we have gone through the record.

7. Since the respondents-accused are charge-sheeted for the offence punishable under Section 498-A, 363, 364(A), 354, 323, 504, 506 read with Section 34 of the I.P.C. therefore, burden is cast upon the prosecution to prove essential ingredients of all the offences beyond the reasonable doubt.

8. In order to prove charges, the prosecution examined PW1-informant Sheetal (Exhibit-39) and proved report (Exhibit-40). The PW1 deposed that on 29.11.2022 her marriage solemnised with the respondent no.2-Kishor Gadekar and after marriage she co-habited with her husband-respondent no.2 at Khare Karjune. She co-habited only for two months and on 08.10.2014 she lodged a report with police on the ground that the respondent no.2 and his family members raised demand of Rupees Five Lakhs for construction of house and she was subjected to mental and physical cruelty. The PW1 further deposed that the accused persons abducted her in blue colour vehicle and she was released at village Chas Bus stand. Accused no.4/Respondent no.5-Balasaheb Bhalekar torn right side sleeve of her blouse and asked her to bring Rupees Two Lakhs and only after bringing the said amount they will allow her to co-habit. Therefore, she had lodged a report but the police did not register the FIR, hence, she filed a private complaint before the Magistrate. After recording her verification on 21.10.2016 the

process against the accused was issued. In cross-examination the PW1 admitted about not seeing the registration number of car and she is unable to give the name of driver of the car. The incident occurred on 08.10.2014 and she raised hue and cry but no one came to her help. The village Chas is situated on Ahmednagar – Pune highway and she was kidnapped from her in laws house and dropped at her parental village.

9. The prosecution examined PW2-Sharda (Exhibit-42) who is informant's mother. however, evidence of PW2 is of hearsay and does not help the prosecution. The PW3-Yeshwant is the brother of the informant, who has deposed that on 25.09.2014 he visited the matrimonial house of his sister-informant (PW1) and then he made inquiry with her in laws. Smt. Indubai the mother-in-law of his sister (informant) (PW1) abated the accused nos.1 and 2 to assault him and both of them assaulted him with kicks and fist blows. The father-in-law of his sister told him about presence of hidden treasure in his house and it requires to give sacrifice of his sister. Therefore, he visited MIDC Police Station and lodged a report but it was not registered. PW3 further deposed that the accused no.4/respondent no.5-Balasaheb Bhalekar demanded amount of Rupees Five Lakhs and threatened to sacrifice his sister in the night of full moon at his house. The PW3 further deposed that on 08.10.2014 his sister visited at his house and thereafter she disclosed him

about her kidnapping on 23.09.2014 by the respondents and were tied black ribbon on her eyes and kidnapped her for 15 days in vehicle no.MH-14-5578.

10. The prosecution examined PW4-Sunita the Investigating Officer who was attached with MIDC Police Station. The PW4 deposed that she recorded the statement of the victim-PW1 and other witnesses but during inquiry she found veracity in the statements of the witnesses and variance in respect of payment of demand of Rupees Two or Five Lakhs. Therefore on completion of inquiry she filed final report stating that the complaint lodged by the informant PW1 is false.

11. On careful scrutiny of evidence of the prosecution witnesses it can be seen that there is material veracity and contradiction. The PW1-victim deposed about the demand of Rupees Five Lakhs by the accused no.4 for construction of house, however, PW3 deposed about demand of Rupees Five Lakhs and the threat about his sister to be sacrificed on night of full moon in the event of non-fulfillment of demand. PW2 says about demand of Rs.3,00,000/-/- Thus, there is variance and contradiction in the evidence of prosecution witnesses. The evidence of the prosecution witnesses is the informant-appellant already filed a private complaint against the accused persons for the offence under Section 498-A and a legal proceeding under the

provisions of Prevention of Women from Domestic Violence Act against the respondents. Further the respondent no.2 had filed a divorce petition against the appellant-informant. The evidence of the prosecution witness does not inspire confidence about allegations of the mental and physical cruelty against the informant for non-fulfillment of demand of dowry and no essential ingredients of Section 498-A of I.P.C. are constituted.

12. Similarly, the evidence of prosecution witnesses itself suggest that on 08.10.2014. the appellant-complainant was dropped at Bus Stop of village Chas. Though, the PW1 deposed about her abduction or kidnapping but she had not given registration number of the car, and name of the driver and the place where was kidnapped and concealed. The PW3 is not eye witness to the abduction or kidnapping but he gave registration number of the vehicle, the PW3 has not disclosed source, how he came to know vehicle's number and evidence of bot the witnesses are contradictory to each other. The appellant-victim is married women and she is legally wedded wife of the respondent no.2 and she was cohabiting with the respondent no.2 at her matrimonial home, hence, ingredients of Section 363, 364 of I.P.C. are not attracted. The appellant-victim though alleged in her report about her kidnapping and dropping her at bus stop of village Chas by the accused, however, the victim herself was in lawful custody of her husband-respondent no.2 and merely he

dropped her at said bus stop may be with a view that the appellant/informant may visit at her parental house, which does not constitute an offence punishable under Section 363, 364(4) of I.P.C. Further, though the appellant-victim alleged that the respondent no.5-Balasaheb Bhalekar tornd her blouse's right sleeve but no such blouse is produced during the course of trial. The evidence of the prosecution witnesses is very much silent about outrage of modesty of the informant or causing her any grievous hurt or intentionally insulted the informant to breach the peace or the appellant complainant was criminally intimidated with common intention. Therefore, the prosecution miserably failed to prove the offences as against the respondent-accused.

13. On 03.03.2022, the learned trial Court passed the impugned order and acquitted the respondents-accused holding that the prosecution failed to prove serious charges of kidnapping, extortion, harassment due to non-fulfillment of demand of dowry and necessary ingredients of allied offences, which is itself justifiable and the appellant has not made out any substantial grounds to interfere with the evidence recorded by the trial Court and hence the present appeal is hereby dismissed.