

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 452 OF 2022

Ashwini W/o Revannath Rohokale
Age : __ Years, Occu. : Nil,
R/o. Bhalawni, Tal. Parner,
Dist. Ahmednagar

... Appellant
(Orig. Informant)

Versus

1. The State of Maharashtra
2. Revannath Revaji Rohokale
Age : 39 Years, Occu. Service.
3. Asha Arjun Chemate
Age : 48 Years, Occu. Nil,
4. Vanita Arjun Chemate
Age : 28 Years, Occ. : Nil,

All R/o. Bhalawni, Tal. Parner,
Dist. Ahmednagar.

... Respondents
(Respondent No.2 to 4
are Orig. Accused)

.....

Mr. Abhijit C. Darandale, Advocate for Appellant.
Mr. A. M. Phule, APP for Respondent No.1-State.
Mr. N. B. Narwade, Advocate for Respondent Nos.2 to 4.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 15th FEBRUARY 2023.

JUDGEMENT (ABHAY S. WAGHWASE, J.) :

1. The judgment and order passed by the District Judge-8 and Additional Sessions Judge, Ahmednagar dated 02.05.2022 in Sessions Case No. 30 of 2019, by which original accused Nos. 1, 2 and 3 stood acquitted from charges under sections 498-A, 323, 307, 504, 506 read with 34 of Indian Penal Code, is now challenged before us by original informant by invoking provisions under section 372 of the Code of Criminal Procedure.

BRIEF BACKGROUND OF THE CASE IN TRIAL COURT

2. Appellant was married to accused No.1. Out of their wedlock they had a daughter. After one year of marriage, husband started ill-treating appellant. Subsequently, after June 2017 he started raising demand of Rs.10 lakh and accused Nos.2 and 3 were instigating husband to raise demand and on its non fulfillment to ill-treat her. She asserted that accused husband had telephoned to appellant to come to Bhalwani, their village, where there was matrimonial house of appellant, for *Vat Pournima* festival, but he beat her. Appellant again came with her daughter at Bhalwani and while she was cleaning the house, accused Nos.2 and 3 reached there, questioned her how and why she came. At such time, husband also made telephone call to accused Nos. 2 and 3 and told them to ask whether appellant had brought money and if not, she should leave the house. Appellant refused. In the evening, again accused Nos.2 and 3 came back and thereafter they poured

kerosene on the person of appellant as well as her daughter and threatened to ignite them, but because of the hue and cry raised by appellant, neighbours came due to which accused Nos. 2 and 3 fled from there. Therefore, appellant approached Parner Police Station and lodged compliant Exh.25, alleging attempt to kill and threats. On the strength of which, crime was registered bearing No.1029 of 2017.

3. After filing charge-sheet, learned trial court framed charge against the accused persons and on their denial, trial was undertaken, during which prosecution and defence was permitted to lead evidence and upon appreciation of the same, learned trial judge reached to a finding that prosecution failed to prove its case against accused persons in respect of any of the offence and as such accused persons came to be acquitted.

4. Feeling aggrieved by the judgment and order of acquittal, original informant i.e. appellant has taken exception to the same on following grounds.

Firstly, learned trial court has failed to consider and appreciate the evidence in proper perspective and arrived at erroneous conclusion.

Secondly, learned trial court misconstrued and misread Exhibits 25 to 27, which were non cognizable cases and erred in holding that the said documents revealed that accused and informant were residing separately.

Thirdly, conclusion arrived by learned trial court while appreciating the testimony of appellant-informant and her daughter shows total non application of mind and findings are contrary to the evidence on record.

Fourthly, learned trial judge has ignored corroborative evidence of **PW-2** Kamal and **PW-4** Thakaram and has assigned reasons purely on the basis of assumption and presumption.

Fifthly, **PW-3** Shrisai daughter of appellant was a direct eye witness, but unfortunately, her testimony is also disbelieved and therefore, for all above reasons, it is prayed that judgment under challenge is deserves to be set aside.

5. In the above backdrop, we have examined the records comprising of oral and documentary evidence before the trial court. Here, it seems that in all 8 witnesses were examined by prosecution. **PW-1** informant, **PW-2** Kamal mother of informant, **PW-3** Shrisai is the daughter of informant, **PW-4** Thakaram is the father of informant, **PW-5** Raju Jadhav is the police personnel, who is visited civil hospital and recorded statement of **PW-1**. **PW-6** Rajendra Pawar is the A.P.I., who carried out investigation, **PW-7** Dr. Manisha Undare, who examined **PW-1** on 19.09.2017 and issued certificate (Exh.69). **PW-8** Annasaheb Chavan is the Police Constable posted at Parner Police Station, who

had received compliant (Exh.23). **DW-1** Sachin Shinde is the A.P.I. posted at Manikpur Police Station Vasai.

6. In the light of allegations raised in the report (**Exh.25**) and statement of informant dated 26.09.2017, there seem to be allegation that informant's husband accused was in service at Mumbai. On 18.09.2017, informant appellant had reached her house at *Bhalvani*. It is alleged that accused Nos.2 and 3 came there, questioned the purpose of visit of informant in the house and asked her to leave and abused her they left. Thereafter, it is alleged that initially she was beaten and thereafter in evening kerosene was sprinkled on her person as well as on the person of her daughter and threatened to ignite them and kill them. On the strength of which, Parner Police Station have registered the crime.

7. It seems that, report (Exh.23) was received by PW-8 Annasaheb who was working as P.S.O. at Parner Police Station and on the remark of P.I., this witness registered crime bearing No. 208 of 2017. In this report dated 26.09.2017 at Exh.23, informant has alleged that she has a daughter and a son out of marriage with accused, who worked at Dr. Babasaheb Ambedkar Corporation School, Vikroli. Here, she alleges that one year after marriage, she was treated well and thereafter her husband started ill treating her. On 09.06.2017, she had come to Bhalwani on being called by her husband for *Vat*

Pournima and there he had beaten her and had asked her to bring Rs.10 Lakh from her parents as he wanted to clear his credits, however, according to informant appellant is refrained from lodging report. Further according to her, on 18.09.2017, when she and her daughter had come to Bhalwani in their house and while she was cleaning, accused Nos.2 and 3 came there, they abused her, and after beating her, sprinkled kerosene on her and attempted to ignite her. Hearing her shouts, neighbors came and the accused fled.

8. However, in her testimony at Exh.22, she has reiterated about ill-treatment and abuses by her husband. In witness box, she surprisingly attributes ill-treatment at the hands of husband about being unable to cook food properly and that husband did not like her. In witness box, she also narrated about the incident of 09.06.2017 about having beaten by husband at Bhalwani and being asked to bring Rs.10 lakh from parents. Regarding occurrence of 18.09.2017, she stated that while she was in her matrimonial house at Bhalwani at 7.00 p.m, accused Nos.2 and 3 entered into house and asked as to why she came there. They even asked her whether she had brought money and thereafter threatened her that they would not allow her to stay unless she brings money and they went away. Further, according to her, at around 9.00 p.m. they came and accused No.2 had kerosene can and said that they do not require her and that they would set her and her daughter on fire. Accused No.2 poured kerosene on her person as well as on her daughter and

accused No.3 assaulted her with sharp edged weapon. Apprehending the gathering of people outside the house, both accused Nos. 2 and 3 ran away. Thereafter appellant reached police station, who referred her to the Government Civil Hospital and there her statement was recorded, which she identified to be at Exh.23. However, when Exh.24 was confronted to her, she denied the contents of her complaint.

9. **PW-1** Ashwini is subjected to defence cross-examination, wherein she has answered that house at Bhalwani is owned by accused No.1. According to her, since marriage till 18.09.2017 she cohabited with accused in that house. She denied that her husband worked in Dr. Babasaheb Ambedkar Corporation School, Vikroli. According to her, he was staying at parksite area and she answered that she had no occasion to go and stay at Mumbai. She admitted that at the time of making report, she had not alleged that accused No.1 made demand of money and ill treated her for non fulfillment of that demand. She has denied stating about article A, B and C. i.e. Exh.25, 26 and 27. She denied that there was *Vat Pournima* festival on 09.06.2017. She has identified her signature over N.C. dated 19.09.2017. She admitted that she did not raise any objection with police that though she lodged the report on 18.09.2017, why the date was mentioned as 19.07.2017.

In para 15, she admits about filing of Hindu Marriage Petition by

her husband for divorce and the same to be pending in the Family Court, Ahmednagar. She has also identified Exh.31 at her instance for maintenance as well as domestic violence (D.V) proceedings Exhibits 31 and 32 respectively. In para 16, when report (Exh.23) was confronted to her, the same was found to be silent regarding accused No.2, turning to bring match-box after incident of pouring. Rest is all denial.

10. In cross-examination at the hands of counsel for accused No.3, she has answered that accused Nos. 2 and 3 residing at Bhalwani. She was questioned about school of PW-3. In para 19, she has admitted that in N.C. Report (Exh.25), address is noted as per her information.

11. **PW-2** Kamal and **PW-4** Thakaram seem to be parents of PW-1 informant. They too are stating about beating and ill-treatment by son-in-law. They spoke about visit of Ashwini in Bhalwani on 09.06.2017 and there accused husband demanding Rs.10 lakh. They have alleged about instigation at the hands of accused Nos. 2 and 3. Regarding occurrence dated 18.09.2017, they claimed that Ashwini was at Bhalwani and they received informant about the occurrence at 9.00 p.m. Both of them spoke about learning from PW-1 about accused Nos. 2 and 3 abusing, pouring kerosene and injuries being inflicted on her hands.

12. **PW-3** Shrisai is the minor daughter and she stated that at 7.00 p.m. Vanita and Asha quarreled with her mother and asked her mother about bringing money. About call made by her father, Asha and Vanita questioned whether PW-1 informant has brought money, they quarreled and then went away and again came at 9.00 p.m. According to her, both Asha and Vanita beat her mother. She stated that Asha poured kerosene of can on herself as well as her mother and they made hue and cry. Thereafter, her mother called her grandparents, and they came there. She sticks to the statements recorded by police.

In cross, PW-3 child has answered that she studied in school. She stated that Asha and Vanita were staying near their house of Mumbai. According to her, incident also took place in Mumbai. Rest of witnesses are police and Medical Officer.

ANALYSIS

13. On analyzing documentary evidence, here it is emerging that there is matrimonial discord between accused No.1 and appellant in spite of having issues. From the record, it is emerging that husband is in service and as such he is residing in Mumbai. There are several matrimonial proceedings including divorce petition filed by accused No.1 and this has not been disputed by PW-1 informant. Infact, maintenance proceeding and domestic violence (D.V.) proceeding are instituted by her. There seems to be three NC reports at

her instance and on her acknowledgment during cross the same are marked as Exhibits 25, 26 and 27.

14. The specific defence of accused persons in trial court is that report is false and afterthought. Informant was not residing with her husband and even never came to reside at house at Bhalwani owned by husband. Such defence is refuted by appellant and her case is that though there was ill treatment, she was staying in the matrimonial house at Bhalwani itself and on calling of husband, she had come there. First incident took place on 09.06.2017 and the second occurrence allegedly took place on 18.09.2017, but on close scrutiny of N.C. which is instituted by her, apparently her addresses are not of either Mumbai or of Bhalwani. Rather, she seems to be with her parents and therefore, the question that arises is how she came to the home at Bhalwani on 18.09.2017, where alleged incident at the instance of accused Nos. 2 and 3. It is surprising that here there is no dispute about divorce proceeding initiated by accused husband. Then why and how, while stay of her husband at Mumbai, she would come and reside at house at Bhalwani is not clarified by her. In Exh.25, address is given as Ganeshnagar, Kalyna Road, Ahmednagar, whereas in Exh.26 another N.C., there is material about husband and wife residing separately since last four years, and whereas in Exh.27 her residential address is shown as Raigad Vibhag Parksite. These NC reports are regarding some quarrel taking place between husband and wife

and in-laws of informant. These NCs are of 2017.

15. N.C. Report (Exh.64) shows that there was an occurrence, which is admitted by Investigating Officer, i.e. on information given by accused husband dated 19.09.2017, wherein it is alleged that father of accused No.1 was in their house of village Bhalwani and that time, informant, her father and other relatives had come there and they gave threats to his father and also created ruckus in the house. Therefore the question is, when there is evidence suggesting separation of accused No.1 and informant, why would she come to matrimonial house at Bhalwani on 18.09.2017. Except of the testimonies of PW-1 Ashwini and PW-3 Shrisai, there is no other independent evidence regarding occurrence dated 18.09.2017. Though informant claims that people had gathered there, no independent witness has been examined. Though PW-3 Shrisai a minor narrated about roles allegedly made by accused Nos. 2 and 3, in cross-examination the child has candidly answered that accused Nos.2 and 3 were staying in Mumbai near their house. Her answer that the very incident took place in Mumbai inflicts severe blow to the version of PW-1 informant about occurrence taking place in the house at Bhalwani.

16. Though PW-7 Dr. Manisha Undare attached to Rural Hospital, Parner is examined, this witness PW-7 Dr. Manisha has admitted that in the entry regarding register of examination of patient, there is difference in the ink

of the history. However, unfortunately, I.O. has not gathered documents and papers of District Hospital, at Ahmednagar, wherein informant allegedly took treatment for seven days. Even the injury allegedly suffered by victim and that examined by PW-7 Dr. Manisha Undare are not matching and therefore, there is material variance between ocular account and medical account rendering allegations of informant doubtful. Even otherwise, PW-7 Dr. Manisha has allegedly come across simple injuries.

17. It is also worth noting that, cloths of victim were seized on 11.10.2017 i.e. of alleged occurrence which took place on 18.09.2017 and therefore it is doubtful whether clothes which were on the person of victims on 18.9.2017 were at all seized by investigating machinery and further when doctor's evidence is silent about sensing kerosene smell, even if subsequently there is detection of kerosene residue on analysis, for above reasons, the report also comes under shadow of doubt. Infact, in spite of report lodged immediately on 19.07.2017, police machinery failed to seize clothes of informant and her daughter, even when they had allegedly visiting the hospital.

18. Further, the aspect of drawing of seizure panchanama of occurrence dated 18.09.2017 is apparently on 11.10.2017 and therefore even scene of occurrence panchanama cannot be straight away relied and accepted.

19. Therefore, to sum up here, admittedly there are strained relations between PW-1 informant and accused No.1. Apart from the divorce proceedings, there are proceedings filed for maintenance which suggest that when the same are pending, there is no possibility of stay of PW-1 informant in the house of accused No.1. Testimony of PW-1 informant is damaged by her own daughter PW-3 Shrisai, though a minor who spoke about occurrence taking place at Mumbai and not at Bhalwani. With such quality of material on record, it is unsafe to rely on the version of prosecution. There is ample material suggesting parties to be residing separately and distinctly. There being no independent witness to alleged occurrence dated 18.09.2017, it is hazardous to believe the same.

20. Consequently, charges level against the respondents having failed, we are not inclined to grant the prayers raised in appeal. No perversity or illegality has been brought to our notice in the decision and findings reached at by learned trial Judge, who also had occasion to record evidence and appreciate the same. Consequently, finding no merits in the appeal, we proceed to pass following order :-

ORDER

(i) Criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)