

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.901 OF 2022

Shaikh Rahima Shaikh Rashid
Age: 33 years, Occu.: Household,
R/o. Neknoor, Tq. and Dist. Beed.

.. Appellant

Versus

1. The State of Maharashtra
Through Police Inspector,
Neknoor Police Station,
Tq. and Dist. Beed.
2. Shaikh Rashid Shaikh Dagdu
Age: 42 years, Occu.: Agri.,
3. Shaikh Ayyub Shaikh Dagdu
Age: 38 years, Occu.: Agri.,
4. Shaikh Kondanbee Shaikh Dagdu
Age: 68 years, Occu.: Household,
Respondent Nos.2 to 4 R/o. Neknoor,
Tq. and Dist. Beed.

.. Respondents

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Mr. Suvidh S. Kulkarni, Advocate for the appellant.
Mr. S. J. Salgare, APP for the respondent – State.

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

DATE : 6th November, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present appeal has been filed under Section 372 of the Code of Criminal Procedure by the victim as defined under Section 2(wa) of the Code of Criminal Procedure to challenge the acquittal of respondent Nos.2

to 4 by learned Additional Sessions Judge, Beed in Sessions Case No.88 of 2019 on 14.09.2022 from the offence punishable under Sections 498-A, 307, 323, 504, 506 and 201 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. Suvidh S. Kulkarni for the appellant and learned APP Mr. S. J. Salgare for respondent No.1 – State at the stage of admission. We have gone through the material which was before the learned Trial Judge.

3. It is not in dispute that the present appellant is the wife of original accused No.1. Their marriage had taken place in the year 2005 and she has two sons aged 12 and 10 as on the date of FIR i.e. 05.12.2018. It is then stated that since a year prior to the FIR, there was dispute between the husband and wife and therefore, in the same house, the informant started residing with her sons on the first floor and her husband, mother-in-law and brother-in-law used to stay on the ground floor. She states that the incident had taken place around 12.00 to 12.30 a.m. on 02.11.2018. She says that her husband had knocked the door and, therefore, her son had opened the door. Accused No.1 came inside and then followed by accused Nos.2 and 3. They tried to forcibly evict her. The mother-in-law had pulled the hair of informant and banged her head on the wall and the brother says that she is the keep of accused No.1 and she should be eliminated and, therefore, her husband took the kerosene can from the hand of her brother,

poured it on informant and when he was about to ignite the matchstick, she raised hue and cry. The elder son came to rescue her and thereby she rescued herself from the clutches of the accused and went to police station. Police sent her for treatment. She was still not feeling well and, therefore, she was referred by Neknoor Government Hospital to Government Hospital, Beed. She was admitted there till 06.11.2018. She was still not feeling well and not mentally fit and, therefore, could not lodge the report immediately. Therefore, she lodged the FIR on 05.12.2018.

4. Learned Advocate appearing for the appellant submitted that the learned Trial Judge has not appreciated the evidence properly. The delay was explained and the testimony of the informant was supported by her brother P.W.2 – Shaikh Sohail and P.W.4 Shaikh Tabish, the elder son of the informant. P.W.6 Kazi Mohammad, who had seen the informant in the police station and also P.W.5 Shaikh Wasim, who had also seen the informant, whose clothes were soaked in kerosene and the medical officer P.W.7 Dr. Sachin have been examined. The informant appellant has been harassed by the accused persons and therefore the acquittal of the accused persons on the grounds mentioned is illegal and amounting to injustice to her. It needs to be re-appreciated.

5. At the outset, it is to be noted that the incident is alleged to have taken place on 02.11.2018 and the FIR has been lodged on 05.12.2018.

After considering all the aspects, the learned Trial Judge has held that the delay has not been properly explained. It is not a rule that the FIR should be lodged by the victim. P.W.2 Shaikh Sohail, who is the brother of informant, alleges that he had come to know about the incident on the same day, then what prevented him from lodging the FIR. Now, it has been tried to be stated that the police had not recorded her FIR. Still, the option of approaching the Magistrate under Section 156(3) of the Code of Criminal Procedure was open for the informant. Testimony of P.W.6 and P.W.7 would show that Amjad Ali, father of informant was also with informant in the police station itself, but still neither he has been examined, nor he has lodged FIR. If we consider the testimony of P.W.7 Dr. Sachin, who had examined informant around 1.30 a.m. on 02.11.2018, it is said that she had contusion 2 x 1 cm., fresh and simple in nature. Why it required admission of informant till 06.11.2018 itself is a question. Though P.W.7 Dr. Sachin says that there was smell of kerosene on the person of informant, it cannot be said that it could have been poured by somebody else. Under the said circumstance, the appreciation of evidence by learned Trial Judge is probable, logical and legal, which requires no interference. The appeal therefore stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

scm

[SMT. VIBHA KANKANWADI]
JUDGE