

Kishor / Ajay

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

**CRIMINAL APPEAL (ST) NO. 5380 OF 2024
WITH
INTERIM APPLICATION NO. 1576 OF 2024
IN
CRIMINAL APPEAL (ST) NO. 5380 OF 2024**

Afsana w/o. Sarfaraj Ahmed Patel .. Appellant
Versus
Sarfaraj Ahamad Mainodin Patel and Ors. .. Respondents

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- Ms. Shaila S. Zende, Advocate for Appellant.
 - Ms. Manisha R. Tidke, APP for the State.
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CORAM : MILIND N. JADHAV, J.
DATE : NOVEMBER 28, 2024.

JUDGMENT:

1. This Criminal Appeal is directed against twin concurrent judgments passed by the trial Court dated 18th January 2019 acquitting the private Respondents and the Sessions Court in Appeal dated 15th September 2022 upholding their acquittal. The judgment of the trial Court is appended at page No.31 and judgment of the Sessions Court is appended at page No.9 of the present Appeal. Ms. Zende, learned Advocate appears for Appellant who is the first informant / Complainant aggrieved by the aforementioned twin judgments exonerating the private Respondents from the charge of offences punishable under Sections 498A, 323, 504 and 506 of the Indian Penal

Code (IPC). Respondent No.1 is the husband of Appellant whereas Respondent Nos.2 to 9 are the family members / relatives of the husband.

2. Briefly stated the Respondent No.1 (accused No.1) married with Appellant on 26th June 2011. It was a marriage culminated after a love affair between the parties. It is prosecution case that Respondent No.1 was working as teacher in Zilla Parishad school at Village Ghotage in district Solapur. He was an office bearer of the Students Federation of India Organization. It is prosecution case that Appellant was a member of the said organization where she befriended Respondent No.1 on account of various programmes conducted by the said organization and they subsequently decided to get married. It is prosecution case that P.W.3 – mother of Appellant incurred expenses of approximately Rs.3,00,000/- (Rupees Three Lakh Only) for their marriage and in addition to that Appellant was offered a 2 tola gold ring and cash of Rs.50,000/- (Rupees Fifty Thousand only) by her. Prosecution led evidence of two family members namely PW-2 and PW-3 being the mother and sister of Appellant alongwith evidence of PW-4 i.e. the Appellant herself. Allegation was to the effect that pursuant to marriage after a lapse of 9 months, Respondent No.1 and his family members treated the Appellant with cruelty by incessantly demanding the Appellant to cater their unlawful demands. There are two specific incidents which have been alleged by the complainant

which find mention in the FIR lodged by her. Prosecution case under Section 498A, 323, 504 and 506 of the IPC is based on two incidents.

3. The two incidents are dated 7th January 2012 and 18th September 2012 which are after a lapse of 7 months (first incident) and 15 months (second incident) of marriage. The first incident pertains to an alleged demand of Rs.1,50,000/- from complainant Appellant by Respondent No.1 - husband by making a telephonic call asking her to meet him personally on 7th January 2012. It is alleged that the telephone conversation / message for the Appellant to meet Respondent No.1 was received by her from the mobile phone of a lady called Ms. Asma and when Appellant inquired about her with Respondent No.1, he assaulted her on her leg by a stick and blade causing injuries on her stomach. In so far as this incident is concerned after the allegation is made, there is no corroborative evidence i.e. either medical evidence or any other evidence placed on record by the prosecution to prove this incident and also the injuries. Appellant did not report this incident. That apart the incident of demand of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) has not been proved by the prosecution by leading any evidence and this fact has found favour with both the Courts below in rejecting the case of Appellant in so far as the first incident is concerned.

4. Before the trial Court, evidence of the prosecution witness namely PW-2, PW-3 and PW-4 who are the sister, the mother and Appellant herself who led to prove the prosecution case. One common thread which runs in the evidence of all three prosecution witnesses is that all of them have deposed that after the marriage between Appellant and Respondent No.1 atleast for the first 9 months there was absolutely no issue between them or they had no quarrel. This deposition of the prosecution witnesses has been considered by the trial Court as against the complaint lodged on the basis of the twin incidents, since the first incident is alleged to have occurred in the month of January 2012 i.e. six and half months after the marriage between the parties on 26th July 2011.

5. The alleged demand which is made at the time of the first incident was for the purpose of the job / recruitment of Respondent No.1. However, this fact has been negated and dismissed by both the Courts below on the basis of evidence having been placed and proven before the Court that Respondent No.1 was already working as a teacher in Zilla Parishad school prior to his marriage and therefore, making of such a demand of Rs.1,50,000/- for his job / recruitment would be unsustainable unless it is proved to the contrary by leading relevant and cogent evidence. Admittedly no evidence has been led. Mere allegation cannot be transformed into evidence and therefore, the learned trial Court and also the learned Appellate Court has

considered the aforesaid issue in this context and rejected the case of prosecution in so far as the demand of Rs.1,50,000/- been made by Respondent No.1 or any of his family members as alleged by Appellant.

6. This rejection therefore, takes us to the second demand made 15 months post marriage of the parties. This demand alleged by Appellant is by the Respondent No.1 and his family members asking her to bring an amount of Rs.1,50,000/- for his transfer from village Ghotage to some other place in Solapur. The second incident is of 18th September 2012. It is alleged by Appellant in the FIR that all private Respondents threatened to eliminate her by tagging her mouth and abusing her and also forced her to leave Respondent No.1. These two incidents are the only basis of lodging the Complaint. In between these two incidents on 17th April 2012 Respondent No.1 underwent treatment for assault on his hand by a blade by the Appellant herself and this is not denied by Appellant. It is prosecution case that this demand was made and at the same time Respondent Nos.1 to 9 assaulted and abused the Appellant. What is crucial is the fact that if such demand was made then at the time when such a demand was made in September 2012, why did the Appellant remain silent. What goes against the Appellant is that the crime was lodged much belatedly by the Appellant in the year 2014. In between the date of marriage i.e. July 2011 and 2014 there were meetings held for counselling between

the parties due to their differences. However, it is prosecution case that it is only in January 2014 i.e. specifically on 7th January 2014 the Respondent No.1 forced the Appellant to leave the matrimonial house. Thereafter on 30th March 2014, Appellant attempted to return back to the matrimonial house alongwith her mother accompanying her, but at this time it is alleged by her that the mother-in-law i.e. accused No.3 abused them leading to filing of the complaint with Kudal Police Station at Awalegaon by her. It is thereafter alleged that on 12th May 2014 Respondent No.1 once again harassed and threatened Appellant and called upon her to end their marital relationship with a Talaq which forced her to file the complainant in May 2014.

7. The aforesaid two incidents of demand of money and also cruelty form the basis of the complaint filed by Appellant. What is crucial for the Appellant to prove according to her complaint was the abuse, harassment and illegal demand as alleged to have been made by the private Respondents. Whether the fact that mere allegation of harassment can be attributable as cruelty would depend on the facts of each case. Here facts of the case are that there is an alleged demand rather unlawful demand made for bringing an amount of Rs.1,50,000/- in January 2012 and September 2012 for a specific purpose which are clearly disproved. Evidence on harassment, abuse, any form of cruelty using force are questions of facts which have not been described by the Appellant, *lest* that she has proved them.

8. The learned Courts below have considered the alleged unlawful demand from the perspective of the specific purpose alleged by the complainant herself. In the case of the first demand, the Courts have considered the fact that since Respondent No.1 was already employed as teacher in Zilla Parishad school it is not possible for him to demand the amount of Rs.1,50,000/- for procuring a job or recruitment for himself. Hence, case of the prosecution stood dismissed on the first count.

9. In so far as the second demand is concerned there has to be cogent evidence placed on record of the alleged demand having been made and the force and harassment being caused, which is not proved. The learned trial Court has considered the chronology of the cross-examination of the Appellant who has deposed as PW-4 herself and also her own family members namely her sister and her mother. The evidence of the prosecution witnesses is that until January 2014 the association between Appellant and Respondent No.1 was normal and there were no issues. In so far as the second demand of Rs.1,50,000/- is concerned without any material evidence having been placed on record, merely the statement and version of the complainant and the two witnesses about Respondent No.1 insisting on Appellant to bring Rs.1,50,000/- for the purpose of his transfer has not been accepted by both the Courts below.

10. The learned Courts below have considered the evidence of the prosecution and have infact opined that the evidence is with respect to the marital life of parties between July 2011 and January 2014 whereas the Complaint under Exhibit 82 has been filed for the first time in May 2014 pursuant to which FIR below Exhibit 84 is registered after investigation. The above discussion clearly shows material difference in time between the alleged date of unlawful demand made in January 2012 followed with the second unlawful demand made in September 2012 after which the FIR was registered. The learned trial Court has come to the conclusion that the allegation of the alleged incident of 7th January 2012 of the Respondent No.1 having assaulted the Appellant by a blade is unbelievable and unacceptable in view of the plea not supported by cogent evidence.

11. In view of the evidence led by the prosecution both the Courts below have returned appropriate finding that the prosecution has proven the guilt of the accused, there are clear discrepancies and doubt with respect to the evidence and depositions of the three prosecution's witnesses on the material aspect of the twin unlawful demands which have found favour with both the Courts below. It is seen that both PW-2 and PW-3 are interested witnesses. Resultantly, learned trial Court while delivering its judgment in paragraph Nos.14 to 31 has analysed and scrutinized the evidence on record and concluded that prosecution has failed to prove its case beyond all

reasonable doubts. As a result of which the learned trial Court by its judgment dated 18th January 2019 has exonerated Respondent Nos.1 to 9 from the offences alleged in the FIR dated 26th May 2014.

12. The learned Appellate Court while dealing with Criminal Appeal No. 11 of 2019 in paragraph Nos.9 to 18 has considered the evidence at its disposal and has not found favour with the prosecution's case with respect to subjection of the Appellant to cruelty on account of any unlawful demand or for causing any voluntarily intentional hurt to the Appellant. In view of the findings returned by both the Courts below, case of the prosecution on account of Section 323 r/w. Section 498A fails miserably as having not been proved.

13. I have perused the record of the case and the twin judgments passed by the trial Court and learned Sessions Court. I do not find any discrepancies whatsoever to cause any interference or interfere in the judgments. Hence the decision of the learned Appellate Court i.e. Court of Sessions stands upheld. Equally decision of the trial Court dated 18th September 2021 also stands upheld.

14. Resultantly, the Appeal is dismissed. There shall be no order as to costs. In view of dismissal of the Appeal, pending Interim Application No.1576 of 2024 is disposed.

[MILIND N. JADHAV, J.]

Ajay

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