

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 41 OF 2016
WITH
CRIMINAL APPLICATION NO. 165 OF 2017

Sau. Jayashree Sunil Mali

Age:42 years, Occ. Housewife,
All R/o. C/o. Shri Kailash Baburao
Shinde, Bytco Factory road,
Nashik Road, Tal & Dist: Nashik.

...Appellant
(Ori. Complainant)

Versus

1. The State of Maharashtra

2. Shri. Sunil Eknath Mali

Age: 47 years, Occ. Service,
R/o. Flat No.27, Shakti Nagar,
Hirawadi, Panchawati, Nashik,
Tal & Dist. Nashik.

3. Smt. Ashwini Rajendra Handi

Age:39 years, R/o. Flat No.18,
Amisagar Society, Opp. Burkule Hall,
Near Pavan Nagar, CIDCO,
Nashik.

...Respondents
(Ori. Accused)

....

Ms. Chaitali A. Deshmukh, Advocate for the Appellant.

Mr. Arfan Sait, APP for Respondent No.1-State.

Mr. Nihar S. Ghag a/w Darshan Zagade Advocates for Respondent Nos.
2 and 3.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th JANUARY 2024

JUDGMENT :-

1. This is an Appeal under Section 372 of Cr.P.C. preferred by Original complainant challenging the Judgment and Order dated 30th June 2015 passed by learned Additional Sessions Judge-2, Nashik in Criminal Appeal No. 143 of 2011 and Judgment and Order dated 20th April 2011 passed by learned J. M. F. C., Court No.2, Nashik in Regular Criminal Case No. 441 of 2005.

2. The brief facts which are necessary for adjudicating this appeal are as under:-

The first informant (Appellant) was married to accused No.1 (Respondent No.2) on 26th April 1992. The accused No.1 is serving in Police Department as Police Naik. The accused No.2 (Respondent No.3) is widow, she was serving in Zilla Parishad at Nashik. The accused No.1 and 2 were acquainted with each other. They were in illicit relationship. The accused No.2 was making calls to accused No.1 on his mobile handset or landline phone. Whenever the complainant questioned accused No.1 about his relationship with accused No.2, she was assaulted and abused. She was mentally and physically harassed by accused No.1 and subjected to cruelty. The accused No.1 and 2 were found together in the house of accused No.2.

There was quarrel between the appellant and accused No.1. It was resolved by friend of accused No.1. There was a meeting between informant, accused No.1 and accused No.2. The informant was assaulted by both the accused. The accused No.1 purchased plot and constructed house at Nashik. At that time, he borrowed hand loan of Rs.2 lakhs from brother of complainant. The complainant and accused No.1 were residing along with their children. The Accused No.2 was visiting their residence. Accused No.1 assaulted complainant in the presence of their children. The complainant was assaulted by both the accused on 5th April 2005. She approached the police station for lodging the complaint. Non-cognizable case was registered against accused No.2 at Panchvati Police Station, Nashik. The informant had sustained injuries. She was taken for treatment. The complainant lodged the report with Panchvati police station on 15th April 2005 vide C.R. No. 94 of 2005 for offences under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code, 1860. Investigation proceeded. On completing investigation, charge-sheet was filed.

3. Charge was framed against the accused. The accused No.1 was charged for offences under Sections 498-A of IPC. Both the accused was charged for offences under Sections 323, 504 read with 34 of the IPC. The accused No.2 was charged with the offence under Sections 506 of IPC.

4. The prosecution examined six witnesses. The prosecution preferred an application under Section 311 of Cr.P.C. to summon the witnesses whose names were not cited as prosecution witnesses in the charge-sheet. Vide order dated 8th May 2009, the application under Section 311 of Cr.P.C. was rejected. The said order was challenged by the prosecution before the Sessions Court by preferring Criminal Revision Application No.386 of 2009. The learned Additional Sessions Judge, dismissed the Revision Application vide order dated 11th January 2011. While rejecting the said application it was observed that, the charge was framed on 18th April 2007 since then the case was fixed for recording evidence. The evidence of Investigating Officer reveals that he could not satisfactorily explain as to why he had not recorded the statements of the witnesses mentioned in the application. The evidence of witnesses shows that they failed to state anything in their evidence in respect of the photographs or details of phone calls. Although, the photographs and other documents were produced with charge-sheet, no evidence in respect to those documents was made by the Investigating Officer. The case relates to cruelty to complainant and it was not necessary to examine the bank employees and to bring on record the photographs and other details. The prosecution has to prove that the accused subjected complainant to cruelty.

5. The trial Court as well as Appellate Court has analysed the evidence of witnesses and acquitted the accused. There are concurrent findings of acquittal by the Courts below.

6. Learned Advocate for appellant submitted that the Courts have failed to appreciate the evidence adduced by prosecution. The evidence of the complainant (PW-1) was supported by PW-3 and PW-4. There was sufficient evidence to convict the accused. The evidence discloses that respondent No.2 has assaulted the complainant/appellant. She was subjected to cruelty. The respondent No.3 was involved in abuses, assault and threat. The Courts have failed to appreciate the evidence of Respondent No.2 and 3 was afterthought. The evidence discloses the offence punishable under Section 498-A of IPC. The prosecution has examined the complainant as well as police witnesses, who have supported the prosecution case. In spite of cogent evidence, the trial Court and the Appellate Court have given findings of acquittal. The appellant had referred to the incident of assault by accused No.2. The appellant has also deposed about the incident of assault by accused No.1. On 5th April 2005, both the accused had abused and assaulted the appellant. The evidence of PW-2 and PW-5 indicate that, the informant had disclosed them about mental and physical harassment cause to her by accused No.1. Thus, the trial Court as well as Appellate Court has ignored the evidence adduced by

the prosecution.

7. Learned Advocate for Respondent No.2 and 3 submitted that, there are concurrent findings of two Courts which does not warrant interference. Father of the complainant was retired as police man. The evidence of the witnesses suffers from contradictions. The prosecution has failed to prove that, the complainant was subjected to cruelty by accused No.1 or that both the accused have abused, assaulted and threatened the complainant. The evidence of the complainant and other witnesses is vague. In the absence of any corroborative evidence, the accused cannot be convicted. The trial Court as well as Appellate Court have appreciated the evidence and acquitted the accused by assigning cogent reason.

8. The informant was married to accused No.1 in 1992. They have two children out of wedlock. The accused No.1 is serving in police department. The accused No.2 is serving in Zilla Parishad, Nashik. The accused No.1 was posted at Azad Nagar Police Station Malegaon in 2005. PW-2 Kishor is brother and PW-5 Dnyaneshwar is the father of informant. They are residents at Nashik. PW-5 was serving as Head clerk in I.G. Office at Nashik. He is retired in the year 2002.. Family Court has passed decree of divorce between the accused No.1 and appellant vide judgment and order dated 12th May 2015.

9. PW-1 has admitted in the cross-examination that, the accused No.1 had obtained loan for construction of house. The accused No.2 was surety for the loan. She admitted that, except oral statement, there is no evidence to show that the accused No.2 had called accused No.1 from Malegaon on 5th April 2005. PW-2 Kishor Bhadke is the brother of appellant. He has deposed that, accused No.1 had purchased the plot and since he was in financial constraint, he demanded Rs.1 lakhs. The cheque of Rs.1 lakhs was handed over to him. He again gave the amount of Rs. 1 lakhs for construction of his house. The trial Court has observed that, the aforesaid evidence does not indicate that it was demand within the purview of Section 498-A of IPC. Evidence of PW-2 indicate that, due to financial constraint, the amount was demanded for construction of house. There is no cogent evidence to show that the complainant was subjected to ill-treatment on account of demand of Rs. 2 lakhs by PW-2. The cheque issued by PW-2 was not in the name of accused No.1 and it was issued in the name of Ravaiya. The evidence discloses that, PW-2 gave cheque of Rs. 1 lakhs to accused No.1. There is no evidence to corroborate version of complainant that the accused No.1 was demanding Rs. 2 lakhs from her. The trial Court has observed that, the complaint was filed on 15th April 2005. There is no explanation about delay of 10 days in lodging the complaint. Two constables had come at the place of the assault. The evidence of PW-3 and 4 does not inspired confidence. PW-5 Dnyaneshwar has deposed that, on

6th April 2005 his daughter is made a complaint against the accused No.1. She had suffered injury and she is residing with him. The witness admitted that, he was in police department and for a period about 37 years he was working in I.G. office.

10. The Appellate Court then analysed the evidence as well as considered the findings of the trial Court and opined that, there is no necessity of interfering in the judgment of the trial Court.

11. I do not find any infirmity in the judgment passed by the trial Court as well as Appellate Court. The prosecution has failed to prove its case. There are two findings of the acquittal. While dealing with the order of acquittal, the Court can interfere in exceptional circumstances where it is found that, the judgment of acquittal is perverse or contrary to the evidence on record. In the light of the aforesaid circumstances, the appeal must fail and required to be dismissed.

ORDER

- (i) Criminal Appeal No. 41 of 2016 stands dismissed.
- (ii) In view of dismissal of Criminal Appeal, Criminal Application No. 165 of 2017 does not survives and is accordingly disposed off.

(PRAKASH D. NAIK, J.)