
(2014) 06 BOM CK 0049

In the Bombay High Court

Case No : Criminal Revision Application No. 166 of 2000

Shivaji

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 498A

Citation : (2014) ALLMR(Cri) 3657

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : Satej S. Jadhav, Advocate for the Appellant; V.H. Dighe, A.P.P,
Advocate for the Respondent

Judgement

V.M. Deshpande, J.—Applicant-Shivaji along with his parents and brother were prosecuted and the learned Judicial Magistrate, First Class, Vaijapur on 27.8.1996 in Regular Criminal Case No. 70 of 1995 found that they were guilty for the offences punishable under Sections 498A, 323 r/w 34 of the Indian Penal Code, and therefore, they all were convicted for the offence punishable under Section 498A r/w 34 of the Indian Penal Code and were directed to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/- by each of them, in default to suffer simple imprisonment for a period of one month each; as also, they all were convicted for offence punishable under Section 323 r/w 34 of the Indian Penal Code and directed to suffer rigorous imprisonment for a period of three months and to pay a fine of Rs. 500/- by each of them, in default they were directed to suffer simple imprisonment for a period of one month each.

The appeal was carried by them before the Sessions Judge, Aurangabad vide Criminal Appeal No. 79 of 1996. The learned 5th Additional Sessions Judge, Aurangabad vide judgment, dated 22.6.2000 partly allowed the appeal acquitting the parents of Shivaji and his brother, however, maintained the conviction and order of sentence passed against the present applicant Shivaji. Hence, this

Revision.

I have heard learned counsel for the applicant and the learned Additional Public Prosecutor for the respondent/State in extenso. Both of them took me through the impugned judgments and also the record and proceedings.

2. Undisputedly, marriage of Anita and present applicant took place prior to four years from the date of the incident. Anita started residing in the house of the applicant at village Bhaygaon in Vaijapur Tehsil. For initial period of two years, according to the prosecution, she was given good treatment, however, thereafter all the accused started, harassing Anita and demanded Rs. 5,000/- and a bicycle from her. As per the prosecution, the said fact used to be conveyed by Anita to her parents, however, due to poor financial condition, demand of Rs. 5,000/- and bicycle was not fulfilled resulting in continuance of illtreatment.

3. It was further case of the prosecution that on 4.7.1995 at about 7.00 a.m. at Bhaygaon, all the accused persons assaulted Anita by means of foot wear and stick in presence of father and uncle of Anita. The report lodged by Anita is at Exh. 25.

4. During the course of trial, prosecuting agency examined in all six witnesses, namely complainant Anita PW 1, Sakharam PW 2 father of Anita, Kashinath PW 3 uncle of Anita, Kachru PW 4 another uncle of Anita, Shankar PW 5 Head Constable, and PW 6 Dr. Virendra Gaikwad.

5. The evidence of PW 1 Anita shows that on the date of the incident, she was beaten by all the accused persons. The role ascribed to the present applicant was that he gave beating to her by means of chappal i.e. foot wear. PW 6 Dr. Virendra Gaikwad, who examined PW 1 Anita found following injuries on her person:-

i) Contusion 3" x 3" on lateral aspect of left thigh brownish red in colour.

ii) Contusion 5" x 4" on right thigh, anteriorly extending to lateral side bluish brown in colour.

(iii) Contusion 2" x 2" on right lumber region brownish in colour.

According to the doctor, all the injuries are caused by hard and blunt object. The evidence of doctor shows that the injuries can be possible by means of stick blow.

6. In the present case, according to the prosecution and according to the evidence of PW 1 Anita, stick blow was given to her by original accused No. 4 and not by present applicant. Accused Nos. 2 to 4 are already acquitted by the learned Sessions Court. Their acquittal is not questioned by the State. The role ascribed to the present applicant is that on the day of the incident i.e. on 4.7.1995 the applicant gave beating to Anita by foot wear (chappal). Interestingly, during the course of investigation the said foot wear namely chappal was not seized under seizure panchanama by the investigating agency, thereby we are at loss to know the type of the said foot wear, coupled with the fact that the doctor has stated in his cross-examination that the injuries found on

the person of Anita could be by stick blow. Thus, the evidence of the prosecution shows that, the injuries appearing on the person of Anita in the alleged assault on 4.7.1995 cannot be attributed to the present applicant and the applicant cannot be held as an author of such injuries.

7. According to the prosecution, for initial period of two years Anita was given good treatment by all the accused persons, however, after the said period she was subjected to cruelty at the hands of all the accused persons including the present applicant.

8. According to the evidence, on previous occasion also Anita was subjected to beating by the present applicant. In fact, the said fact has weighed greatly, while deciding the appeal filed on behalf of the present applicant, by the learned Sessions Court. However, it is to be noted that there is no specific evidence about the particulars of such beating by the applicant to Anita. The allegations appear to be general in nature.

According to the prosecution, all the accused persons including the applicant used to demand Rs. 5,000/- for purchasing field, however, in cross-examination Anita PW 1 has admitted as under:-

"Financial condition of the accused persons is good. Five Thousand rupees demanded for purchasing the field. Accused persons demanded Rs. 5,000/- after the purchase of field."

With such evidence available on record, it is doubtful as to really the amount was demanded by the applicant along with other accused persons. The learned lower Appellate Court has acquitted the other accused persons on the evidence brought on record by the prosecution and at the same time has convicted the present applicant on the same set of evidence resulting into miscarriage of justice.

Looking to the nature of evidence and looking to the fact that the prosecution has not proved that on the day of the incident i.e. on 4.7.1995 the applicant gave any beating to his wife Anita, I find that interference at the hands of this court is called for. Hence, I pass following order.

ORDER

i) The judgment and order, passed by the learned Judicial Magistrate, First Class, Vijapur on 27.8.1996 in Regular Criminal Case No. 70 of 1995; together with the judgment and order, passed by the learned 5th Additional Sessions Judge, Aurangabad in Criminal Appeal No. 79 of 1996, dated 22.6.2000 is quashed and set aside and the applicant is acquitted.

ii) The bail bond of the applicant stand cancelled.

iii) Revision allowed.

iv) Rule is made absolute.