
(2015) 02 BOM CK 0208

In the Bombay High Court

Case No : Criminal Revision Application No. 75 of 2003

Shivanand

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

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

Citation : (2015) ALLMR(Cri) 2181

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

Bench : Single Bench

Advocate : V.P. Kadam, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.

1. By this Revision, the applicant is questioning his conviction and sentence imposed upon him by the learned Judicial Magistrate, First Class, Nanded in Regular Criminal Case No. 919 of 1997, whereby the learned trial court recorded a finding of guilt against the applicant that he has committed offence punishable under Section 498A of the Indian Penal Code and directed that he shall suffer rigorous imprisonment for one year and fine of Rs. 2,000/-, in default to suffer further rigorous imprisonment for three months. Being dissatisfied by the said conviction, an appeal bearing Criminal Appeal No. 69 of 1998, was filed before the learned Sessions Judge, Nanded, who, on 10.2.2003 dismissed the appeal and confirmed the judgment and order of conviction. Against the said judgment, the present Revision is filed.

2. None for the applicant. I have heard Shri V.P. Kadain, learned Additional Public Prosecutor for the State and with his able assistance I have gone through the record and proceedings.

3. The first information report was lodged by Kamalahai, wife of present applicant on 28.1.1997 (Exh. 27) with police station Ardhapur, District Nanded.

Since the said first information report was disclosing commission of a cognizable offence, crime was registered under Section 498A, 323 r/w 34 of the Indian Penal Code against the present applicant and all his family members.

4. During the course of the investigation, the spot panchanama of the place of occurrence namely house of the present applicant was drawn by the investigating officer. It is at Exh. 39.

After completion of usual investigation, a challan was presented before the learned Magistrate by the investigating officer and case was registered as Regular Criminal Case No. 919 of 1997.

The learned Magistrate framed the charge against the applicants under Section 498A r/w 34 of the Indian Penal Code and also under Sections 323 r/w 34 of the Indian Penal Code. The accused abjured their guilt and claimed to be tried.

5. In order to bring home the guilt against the accused, the prosecution examined in all six witnesses. After appreciation of the prosecution evidence, the learned Magistrate acquitted the original accused Nos. 2 to 5 of all the offences. The learned Magistrate also acquitted the present applicant for the offence punishable under Section 323 of the Indian Penal Code, however, recorded a finding of guilt against him for the offence punishable under Section 498A of the Indian Penal Code.

6. The first information report (Exh. 27) discloses that the marriage of the first informant was performed with the applicant on 9.3.1993 and the couple is having one daughter by name Sonu, who at the relevant time was aged 2 1/2 years. The first information report further proceeds that she was given nice treatment by all the accused for 5-6 months. Thereafter, the applicant started demanding Rs. 10,000/-, to be brought from her father, for obtaining R.M.P. (Registered Medical Practitioner) degree. She disclosed the said fact to her father, and her father gave Rs. 10,000/- to the applicant and thereafter he obtained the degree of R.M.P. from Chandrapur. It is further alleged that thereafter her father established one dispensary at village Maltekadi.

The first information report further states that greed of the applicant was not satisfied and he started demanding Rs. 25,000/- from the first informant for establishing a big dispensary, which was refused by her father. Therefore, she was subjected to all sorts of atrocities at his hand, resulting into holding a meeting by her father. In the said meeting various independent respectable persons from the society participated and they tried to prevail upon the mind of the applicant that he should not continue his acts of illtreatment upon the first informant, however, the applicant did not budge and he was insisting that the first informant should give signature on blank stamp paper.

The first information further proceeds that on 21.11.1997 her brother Uttam came to her matrimonial house. At that time, demand was made for Rs. 25,000/- for establishing dispensary and at that time in his presence the first informant

was assaulted and was driven out from her matrimonial house.

7. In the present case, the witnesses examined, apart from the first informant are the close relatives of the first informant being her brother, parents and uncle. Merely because the witnesses are in close relation with the victim or the lady, that by itself does not render their testimonies worthless. The court should examine their evidence with great care and caution and also search for corroboration from other attaining circumstance.

If the prosecution case is to be believed, the demand started after 5-6 months of the marriage and demand was for specific reason namely for obtaining a degree of R.M.P. According to the prosecution, the said demand was fulfilled by the father Yadav (P.W. 3). Therefore, the prosecution was under obligation to bring said R.M.P. degree on record because it is the specific case of the prosecution that in pursuance to the fulfillment of the demand the applicant obtained the degree from Chandrapur and then he started his medical practice. From the record, it shows that no attempts were made to procure the said degree.

Further the house of the applicant was also visited at the time of drawing the spot panchanama (Exh. 39). The spot panchanama does not reveal any reference of the degree being found in the said house. Thus, the very foundation of the prosecution case that in pursuance to the fulfillment of the demand by the parents of the first informant the applicant obtained degree and started practice, appears to be doubtful. It is the further case of the prosecution that after obtaining degree, the father established dispensary for the applicant at village Maltekadi, however, there is nothing on record to substantiate the said claim.

8. If the prosecution case is to be believed, lastly the first informant was assaulted in presence of her brother Uttam (P.W. 2) and she was driven away from the matrimonial house. In spite of the fact that she was assaulted and she was driven away from the matrimonial house on 21.11.1997, the first information report is filed on 28.11.1997. So there is a delay of good seven days. There is no explanation in the entire prosecution case about the said delay in lodging the first information report. Even a latitude is given to the lady that she was unable to file first information report immediately, however, we cannot forget that she was assaulted in presence of her brother Uttam (P.W. 2) and there was no reason why Uttam should not immediately approach the police station and file the first information report.

Further, from the evidence of Uttam (P.W. 2) there is nothing on record to show that when his sister was assaulted in his presence, any steps or any attempt was made on his behalf to resist the applicant from making such assault. It is really unbelievable that a lady will be assaulted by the husband in presence of brother and the brother will remain silent spectator. Presence of Uttam on 21.11.1997 at the spot of the incident is doubtful.

9. The first information report clearly states that a meeting was held in order to prevail upon the mind of the present applicant to desist himself from causing

illtreatment to the first informant. It appears that the first information report shows that the said meeting was attended by Shivaji Ingole, Laxman Parde, Ram Gaikwad and others. Shivaji Ingole and Laxman Parde are not examined or no other independent witness was examined. No doubt this Ram Gaikwad is examined by the prosecution as P.W. 5.

Evidence of Ram Gaikwad (P.W. 5) reveals that the first informant is his niece. Further, in so far as meeting part is concerned, his evidence would show, it is an improvement and he did not state about the said meeting in his police station. In that view of the matter, whether really the meeting was held or not is not at all proved by the prosecution.

All the aforesaid aspects were not properly considered by the courts below, thereby resulting in the miscarriage of justice. Evaluation of the aforesaid evidence clearly shows that the prosecution has failed to bring home guilt against the accused beyond reasonable doubt. Therefore, he is entitled for benefit. Accordingly, it is extended and that leads me to pass the following order.

ORDER

- (i) Present Criminal Revision Application is allowed.
- (ii) The judgment and order of conviction, passed by the Judicial Magistrate, First Class, Nanded, dated 31.8.1998 in Regular Criminal Case No. 919 of 1997 convicting the applicant for the offence punishable under Section 498A of the Indian Penal Code and confirmed by the judgment and order, passed by the Sessions Judge, Nanded on 10.2.2003 in Criminal Appeal No. 69 of 1998 are hereby quashed and set aside.
- (iii) The applicant is acquitted for the offence punishable under Section 498A of the Indian Penal Code. He shall be set at liberty forthwith.
- (iv) Bail bonds executed by the applicant stand cancelled.
- (v) Fine amount, if any paid by the applicant, be refunded to him.
- (vi) Rule is made absolute in above terms.