

(2015) 02 BOM CK 0316
In the Bombay High Court
Case No : Criminal Appeal No. 508 of 2003

State of Maharashtra

APPELLANT

Vs

Abdul Karim Abdul Kadar

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 498 (A), 504

Citation : (2015) ALLMR(Cri) 2523

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : S.S. Pednekar, APP, for the Appellant; Paras Yadav, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sadhana S. Jadhav, J—The State of Maharashtra, being aggrieved by the Judgment and Order passed by 2nd Ad-hoc Assistant Sessions Judge, Solapur, thereby acquitting the respondent for offence punishable under section 498 (A) of Indian Penal Code vide Judgment and Order dated 25/11/2002, has filed this appeal. Learned counsel Mr. Paras Yadav is appointed by this Court to espouse the cause of the respondent. Such of the facts necessary for the decision of this appeal are as follows.

2. That the prosecutrix i.e. wife of present respondent had lodged a report on 17/02/2000 at the police station alleging therein that respondent was working as teacher. That she got married to the respondent on 15/05/1994. After marriage, for 4 months, couple resided with the parents of the complainant. Thereafter, they had taken a house on rent. That her father had given initial deposit for the rented premises. Principal allegation against present respondent was that he did not give funds to meet the daily expenses. Complainant had to bear all the expenses. It is further alleged that there was a demand of Rs. 15,000/- from two persons from the village Pan Mangalur, since respondent had taken hand loan from villagers. According to the complainant, respondent had assaulted her on

two occasions. There was a demand of Rs. 2,00,000/- to open a school and the respondent was expecting the complainant to fetch the said amount from her parents and on account of failure, she was being harassed and ill-treated. On the basis of her report, crime No. 51 of 2000 was registered at Sadar Bazar Police Station, Solapur for offence punishable under section 498 (A), 323, 504 of Indian Penal Code. Case was registered as R.C.C. No. 34 of 2000. Prosecution has examined three witnesses to bring home the guilt of the accused.

3. Upon recording her substantive evidence, learned Judicial Magistrate First Class, Solapur vide Judgment and Order dated 03/02/2001 was pleased to convict the accused for offence punishable under section 498 (A) of Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs. 3,000/- i.d. to suffer rigorous imprisonment for one year. Being aggrieved by the Judgment and Order passed by Judicial Magistrate First Class, accused/appellant had filed Criminal Appeal No. 10 of 2001 before Assistant Sessions Judge, at Solapur. Learned Sessions Judge vide Judgment and Order dated 25/11/2002 has been pleased to allow the appeal and set aside the Judgment passed by learned Magistrate vide Judgment and Order dated 03/02/2001. Hence, this appeal.

4. Perused records and proceedings. Complainant i.e. P.W. 1 has deposed before the Court that her husband i.e. present respondent was working as a teacher, but he was not receiving the salary. Entire expenses were being borne by her and her father at times. A vague allegation is made that there was a demand of Rs. 2,00,000/-. It is pertinent to note that complainant has not deposed before the Court in respect of nature of harassment and ill-treatment meted out to her. It prima facie appears that a discordant note had struck between the spouses since respondent could not bear the expenses due to non payment of salary.

5. P.W. 2 happens to be father of the complainant. According to him, he had paid the deposit and rent for the house which was occupied by his daughter and son-in-law. In fact, it is the case of complainant that soon after marriage, couple was residing in the house of P.W. 2.

6. Learned Sessions Judge has observed that there is no independent evidence to corroborate the allegations levelled by the complainant. A woman is subjected to harassment and ill-treatment within four walls of the house and it cannot be expected that she would be able to adduce any independent evidence. Learned APP submits that neighbours would normally not interfere with the matrimonial affairs of a couple and would not depose against the couple. As against this, learned counsel for the respondent submits that apart from independent evidence, complainant has not been able to give specific date and time when the alleged demand of Rs. 2,00,000/- was made for opening a school. That she was not harassed on that count. That the complainant has not even mentioned the date and time of any ill-treatment. According to learned counsel for the respondent, the quarrel between the couple was because he could not afford domestic expenses due to non payment of salary. Learned counsel for the respondent further submits that allegations levelled by the complainant are not

contemplated in the definition of section 498 (A) of Indian Penal Code. Learned counsel has demonstrated that complaint was made before the Jamat and understanding was given to the couple. That the respondent had also given an undertaking that he would not ill-treat the complainant. Respondent has been acquitted by the Judicial Magistrate First Class for offence punishable under section 323 of Indian Penal Code as there is no medical evidence to corroborate the allegations that the respondent had caused any physical violence to the complainant. Learned Sessions Judge has assigned justifiable reasons for recording acquittal in favour of the respondent and acquitting him of offence punishable under section 498 (A) of Indian Penal Code. No interference is warranted. Learned counsel appointed for the respondent has extended efficient co-operation to the Court in deciding the present appeal. He has put in best of efforts. His professional fees are quantified to the tune of Rs. 2,000/- to be paid to him within 3 months from today.

ORDER

"(i) Appeal, being sans merits, is dismissed.

(ii) The Judgment and Order dated 25/11/2002 passed by 2nd Ad-Hoc Asstt. Sessions Judge, Solapur in Criminal Appeal No. 10 of 2001 is hereby upheld.

(iii) Appeal stands disposed of."