
(2004) 01 BOM CK 0063
In the Bombay High Court
Case No : Criminal Appeal No. 102 of 1989

State of Maharashtra

APPELLANT

Vs

Dr. Vijaykumar Nagnath Bargaje and Another

RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A

Citation : (2004) 1 DMC 775

Hon'ble Judges : A.S. Aguiar, J

Bench : Single Bench

Advocate : D.R. More, app, for the Appellant;

Final Decision : Dismissed

Judgement

A.S. Aguiar, J.—Heard the learned A.P.P. None present for the respondents though served. This Court, therefore, heard the learned A.P.P. in the absence of the respondents.

2. In this appeal, the applicant State of Maharashtra has challenged the judgment and order dated 17.10.1988 passed by the Judicial Magistrate First Class Court, Pune, acquitting the accused of the offences u/s 498(A) of the I.P.C. The accused No. 1 Dr. Vijaykumar Nagnath Bargaje is the husband of the complainant Swati P.W. 6. Accused No. 2 Nagnath Annaji is the father-in-law of Swati i.e., father of Accused No. 1.

3. The case of the prosecution is that Swati P.W, 6 married accused No. 1 Dr. Vijaykumar Bargaje some time on 9.5.1984 at Aurangabad. After marriage, she resided with the accused at Sangvi, Shitolenagar, Pune. Satyanarayan Pooja was performed on 16.5.1984. After the said Pooja Swati resided with her husband up to 13.6.1984. On 13.6.1984 the mother of Swati came and took Swati along with her to Aurangabad for medical treatment. Swati resided at Aurangabad upto 20.8.1984. She wrote some letters to Vijaykumar, her husband P.W. 1 who was residing at Sangvi. The said letters are on record at Ex. No. 5. It is the case of

the prosecution that soon after the marriage both the accused started demanding T.V., scooter, cooking gas, gold locket and Rs. 5,000/- in cash from the parents of the complainant Swati and started pressurizing her and harassing her in all possible ways to get the demands fulfilled. It is alleged that the accused caused cruelty, both physically and mentally, to the complainant with a view to get their demands satisfied. It is further alleged that both the accused assaulted and threatened to kill the complainant in case their demands were not met. It is also alleged that the accused kept complainant starving and did not allow her to take food. On these allegations, complainant Swati filed a complaint Ex. 30 with City Chowk Police Station, Aurangabad on 13.6.1987. Since the offence took place within the jurisdiction of Chaturshringi Police Station, Pune the complaint was transferred from Aurangabad to Chaturshringi Police Station, Pune on 19.6.1987. Both the accused were arrested by the Chaturshringi Police Station on 19.6.1987 and released on bail. The offence came to be registered under C.R. No. 130 of 1987 of Chaturshringi Police Station. After completion of investigation the charge-sheet was filed in the Court of the judicial Magistrate First Class Court, Pune. The charges were framed, read over and explained to the accused. Both the accused denied their guilt and claimed to be tried. Upon consideration of the evidence and documents, accused came to be acquitted by the Trial Court by a reasoned order dated 17.10.1988. The present appeal is filed by the State from the said order dated 17.10.1988 acquitting the accused.

4. The State challenges the said order on several grounds inter alia that the learned trial Judge erred in holding that the prosecution has failed to prove beyond reasonable doubt charges levelled against the accused, in discarding the evidence of the prosecution witnesses and appreciating the evidence of the defence. The learned A.P.P. before this Court has contended that P.W. 6 has proved the factum of marriage. She has established the illegal demands for gold, T.V. set, scooter etc. and the ill-treatment and harassment by the accused by not giving her sufficient food and starving her and that she has narrated that she has informed the neighbours P.W. 2 Mrs. Jyotsana Joshi and P.W. 3 Mrs. Jyoti Dabhade about the ill-treatment at the hands of the accused. It is contended that evidence on this aspect has gone unchallenged and hence same has to be taken as proved.

5. However, on going through the judgment and order of the learned trial Judge, it is seen that the trial Judge has considered the evidence of the prosecution witnesses and found material contradictions in their evidence and come to the conclusion that the prosecution story of demand of dowry to be false. He has observed that the alleged cruelty in the year 1984 has not been mentioned by any of the witnesses and that there was no complaint to the police or anyone else. There was no medical or any other evidence of any physical assault on the complainant. So far as the accused No. 2 is concerned the learned A.P.P. has fairly conceded that there is no evidence against him. The letter Ex. 23 allegedly written by the accused No. 1 Vijaykumar to Swati's father i.e., his father in law regarding non-fulfillment of certain demands made at the time of marriage, in no

way implicates accused No. 2, father of accused No. 1. Hence the appeal so far as the accused No. 2 is concerned at the outset itself must stand dismissed.

6. As far as the accused No. 1 husband is concerned, the prosecution has examined 9 witnesses and accused has examined himself defence witness. The important witness on behalf of the prosecution is Prakash Laxmanrao Langote, P.W. 1 uncle of Swati. He has stated in his evidence that he had visited the house of Swati at Sangvi and at that time accused No. 2 did not allow him to meet Swati telling him that he could not meet Swati because T.V., gold locket, cooking gas were not given to his son accused No. 1 Vijaykumar, as promised at the time of marriage by Swati's father. However, on promise given by Prakash Langote that he will inform Swati's father, Suresh Langote, about the said demands, he was allowed to see Swati. Prakash Langote however said that on meeting Swati, she told him that she was confined by the accused persons and she was not allowed to take food on account of non-fulfillment of the said demands. She also told him that accused Vijaykumar used to assault her as his demands were not fulfilled. P.W. 1 Prakash Langote further stated that he came to know through his other brother that Swati was continuously harassed by the accused persons. Prakash Langote has further stated that 5 months after the marriage of Swati, he received a message on telephone from a neighbour of Swati namely, Jyoti Dabhade, that Swati was assaulted by her husband, therefore, she should be taken from the house of her husband. The learned trial Judge has disbelieved this evidence as being improbable. The learned trial Judge has noted that Prakash Langote received the telephonic message at 1 p.m. whereas the neighbour Jyoti Dabhade P.W. 3 has deposed that she telephoned to P.W. 1 uncle of Swati i.e., Prakash Langote at about 11.30 a.m. This contradictory evidence regarding telephonic conversation by Prakash Langote with Jyoti Dabhade P.W. 3 becomes more doubtful when considering the fact that Swati P.W. 6 has stated in her evidence that Mrs. Dabhade had telephoned to her uncle at about 9 a.m. to 10 a.m. and on receiving telephonic message her uncle Prakash Langote came to her house at Sangvi at 12.30 p.m. The evidence of Swati about the time of arrival of her uncle is contradicted by the evidence of Prakash Langote himself who, as per his evidence, received the telephonic message at about 1 p.m. Hence it is not possible to reach Swati's house at Sangvi before 1 p.m.

7. The conclusion of the learned trial Judge are not without merit. If according to the Prakash Langote he came to know about the harassment of Swati from another brother, Satish Langote, there is no reason why the prosecution could not examine Satish Langote who allegedly gave information about Swati's harassment to Prakash Langote. The evidence of P.W. 1 Prakash Langote so far as Swati's harassment is concerned, is hearsay and cannot be taken into consideration. Moreover, the timings of the alleged receipt of the telephonic message and his alleged visit to Swati's house at Sangvi from his residence which, is at a distance of 12 k.m. makes his visit to Swati extremely doubtful.

8. Prakash Langote in his evidence has stated that he had mentioned in his

statement before the police that he saw Swati crying and her face swollen. However the same does not find place in his statement recorded by the police. This is, therefore, an improvement made by P.W. 1 in his evidence before the Court. Further the fact that no action was taken by Prakash Langote to render any medical assistance to Swati for her alleged injuries makes his evidence about having seen Swati with swollen face, doubtful. In view of the above contradictions and omissions, the evidence of Prakash Langote cannot be relied upon.

9. So far as P.W. 2 Jyotsana Ashok Joshi is concerned, she claims that she came to know about Swati's ill-treatment and starvation since Swati had told her about the same. However, from her evidence itself it is clear that the story of Swati being starved for food, is improbable. There were no restrictions on Swati preparing food for herself because accused No. 1 Vijaykumar was most of the time not at home. He was busy in conducting his two dispensaries from 8 a.m. to 3 p.m. Therefore, there was no one in house to prevent Swati from utilising the ration kept in the house and preparing food for herself. P.W. 4 Prabhakar Mahadev Langote who is also a brother of Prakash Langote had deposed that accused No. 1 used to keep the articles of foodgrains under lock and key and, therefore, it was not possible for Swati to prepare food in the absence of Vijaykumar/accused No. 1. However, this is not mentioned by the Swati herself. Swati herself has not stated that foodgrains and utensils were kept under lock and, therefore, she could not cook. Evidence of P.W. 4 is, therefore of no consequences and requires to be rejected. At the most evidence of P.W. 4 could be considered to be mere hearsay as he did not have any personal knowledge of the household affairs of the accused and complainant Swati.

10. In the circumstance entire story of Swati being prevented from cooking food and being starved appears highly improbable. If there were some differences of opinion between the accused No. 1 and Swati regarding the amount of rations to be consumed, that would be a minor domestic dispute and not a matrimonial problem sufficient to constitute cruelty as envisaged in Section 498(A) of the I.P.C.

11. The learned trial Judge has noted that the letters at Exs. 48, 49 and 50 which are in the handwriting of Swati show that she was living happily with her husband though for a short while. The said letters, therefore, clearly belie the allegations of the complainant of harassment, starvation and confinement.

12. On the question of confinement of Swati, prosecution has examined P.W. 7 Tony Barrier, a friend of Satish Langote. He has stated that he had gone to the house of Swati in the month of September, 1984. At that time he saw that Swati was confined in the house, the door of the house was locked from outside and that Swati told him that she was confined by her husband after assaulting her. The evidence of this witness also appears highly unreliable as he took no steps to release Swati if she was kept locked up in the house. P.W. 7 took no steps to open the door nor did he lodge any complaint with the police. Furthermore,

complainant Swati herself has nowhere stated that P.W. 7 had come to her house and found her locked up. Moreover, P.W. 7 has not given any date on which he visited Swati's house and found her to be confined to the house.

13. So far as the demands of dowry and articles are concerned, it is pointed out that a maintenance application bearing Application No. 207 of 1986 was filed by Swati in the J.M.F.C. Court at Aurangabad. However, there is not a single word in the application about any demands having been made by accused Nos. 1 and 2 for said dowry or articles. On the other hand defence of the accused is that he was asked by the complainant to stay at Aurangabad where the parents of Swati are staying. In support, the accused examined himself at Ex. 46. According to him Swati wrote letters in the handwriting which are at Exs. 47 to 50. The letter at Exh. 51 was sent to him by Usha Langote, Swati's mother. The said letters at Exhs. 48 to 50 clearly show that Swati was living with her husband happily and there was no complaint against her husband and father-in-law. It may be pointed out that Swati had never made any complaint of cruelty of any kind against her husband or her father-in-law until she filed the maintenance application at Aurangabad Court in the year 1986. She lived with the accused No. 1/husband at Pune for a short period between 9.5.1984 and 27.9.1984. Cruelty if any must refer to this period only. Letters Exhs. 48 and 49 show the good relations between accused/husband and Swati.

14. In view of the failure of the prosecution to prove cruelty on the part of the accused or any illegal demands made for dowry or articles and in view of positive evidence by letters showing good relations between Swati and her husband/accused No. 1, the learned trial Judge has rightly acquitted the accused of the offence u/s 498(A) of the I.P.C. There is no need to interfere in the findings of the learned trial Judge, Hence the order of the trial Judge acquitting the accused is upheld and appeal is dismissed.

Ordinary copy of the order duly authenticated by Court Sheristedar is allowed.