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(2015) 07 BOM CK 0090

In the Bombay High Court

Case No : Criminal Appeal No. 339 of 1996

State of Maharashtra — APPELLANT

Vs

Rashid Bagubhai Shaikh and Others — RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 114, 498A

Citation : (2015) 07 BOM CK 0090

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : S.V. Gajare, APP, for the Appellant; Racheeta R. Dhuru, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.M. Thipsay, J—The respondents were prosecuted on the allegation that they had committed an offence punishable under Section 498A of the Indian Penal Code (IPC) read with Section 114 thereof. Respondent nos. 2 and 3 (original accused nos. 2 and 3) are the mother and father of respondent no. 1 respectively, and respondent no. 4 (original accused no. 4) is the sister of respondent no. 1. The prosecution arose on the basis of a report lodged by Smt. Ruksana Shaikh - wife of respondent no. 1 (original accused no. 1) herein, pursuant to which investigation commenced and charge-sheet in respect of an offence punishable under Section 498A of the IPC read with Section 114 of IPC came to be filed against the respondents. The learned Metropolitan Magistrate, after holding a trial, found them not guilty and passed an order of acquittal. Being aggrieved by the said order of acquittal, the State of Maharashtra, after obtaining leave of this court, has filed the present appeal.

2. I have heard Mrs.S.V. Gajare, the learned APP for the appellant - State. I have also heard Mrs. Racheeta R. Dhuru, the learned counsel for Respondent Nos. 1 and 3. With their assistance, I have gone through the relevant evidence. I have carefully gone through the impugned judgment.

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3. For the sake of convenience and clarity, the respondents shall hereinafter be referred to as ''the accused.'' Whenever separate reference to a respondent would be necessary, he / she shall be referred to by his / her number as an accused before the trial court.

4. The case of the prosecution against the respondents was basically that Ruksana was harassed by them by demanding dowry. It was also alleged that the husband of Ruksana i.e. accused no. 1 had, on one or two occasions, beaten her.

5. As per the version of Ruksana and her father, the amount that was being demanded by the accused persons was for enabling Ruksana and accused no. 1 to stay separately from the parents of accused no. 1, as accused no. 1 did not have a separate residence. This, even if true, would not amount to any demand of dowry.

6. The father of Ruksana and accused no. 3 - father of accused no. 1, were related to each other. The marriage was fixed and the engagement ceremony was performed on 10th February 1989. The marriage actually took place on 20th May 1990. It took place at the native place of the accused persons. After the marriage, accused no. 1 immediately went to Nasik, to take training in the Police Training School. When he returned after completing the training, he was posted as a Sub-Inspector of Police in Mumbai, and thereafter, he started living in the house of the father of Ruksana. Accused no. 1 stayed there for a period of about four months. It appears that, thereafter, accused no. 1 left his father in law''s place and went to reside in the official accommodation provided to him, which was, however, a bachelor''s accommodation. From the evidence adduced, it appears that Ruksana wanted to stay separately from her in-laws and wanted to stay with accused no. 1, for which, there was a need to have a separate accommodation.

7. Apart from the fact that the facts alleged do not indicate cruelty of the degree that is required under criminal law, as evident from the explanation to Section 498A of the IPC, the Magistrate also did not believe the versions of Ruksana (PW2), her father Shaikh Abdul Hamid (PW1) and her mother Banubi Shaikh Abdul (PW3). He came to the conclusion that their evidence could not be relied upon. He categorically observed that Ruksana was not a reliable witness. Some of the factors from which the learned Magistrate drew such a conclusion are as follows :

Ruksana had alleged in the First Information Report (FIR) that an amount of Rs. 19,000/- was given to accused no. 1 prior to 12th February 1990. She purported to support this statement by producing extracts of the bank statement. However, these extracts showed withdrawal in cash and that too on 6th March 1990 and 10th May 1990. The Magistrate rightly observed that this could not be linked with the payment of Rs. 19,000/- allegedly made on 12th February 1990. In her evidence, Ruksana had stated that on two occasions, accused no. 1 had attempted to kill her by pouring kerosene over her. This was not stated by her in

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her report lodged with the police. The Magistrate observed, rightly, that this was clearly an afterthought, and that, Ruksana, therefore, was not a reliable witness.

8. The evidence also shows that Ruksana stayed with the accused for a very short time. Most of the part, out of that short time also, was spent by her in her parents'' house. Even when Ruksana resided with accused persons, the house of the accused persons being situate in front of her parents'' house, Ruksana could meet her parents everyday. Infact, Ruksana admitted that while going for work, she used to come in front of the residence of her parents, and pass from there.

9. Ruksana had claimed that she had written a letter from her matrimonial house to her parents in which she had mentioned the instances of cruelty by the accused persons. The Magistrate, in that regard, observed that, when the house of Ruksana''s parents was situate just in front of her matrimonial house, it was not normal for anyone to have written letters instead of meeting and telling her problems / grievances to her parents personally. The Magistrate, therefore, concluded that the letters in question had been written deliberately to create evidence of ill- treatment and cruelty.

10. The reasoning of the Magistrate and the conclusion arrived at by him, does not seem to be suffering from any infirmity or weakness. In any case, the view of the matter as taken by the Magistrate is certainly a possible view. It is well settled that in such cases the appellate court should not interfere in the matter.

11. There is no merit in the appeal.

12. The appeal is dismissed.

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