
(2014) 07 BOM CK 0244
In the Bombay High Court
Case No : Criminal Application No. 75 of 2014

The State of Maharashtra

APPELLANT

Vs

Golmahamad Noormahamad Shaikh

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Penal Code, 1860 (IPC) — Section 34, 376, 498(A), 506

Citation : (2015) ALLMR(Cri) 3120

Hon'ble Judges : V.K. Tahiramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : V.R. Bhonsale, Addl. P.P, Advocate for the Appellant

Final Decision : Dismissed

Judgement

A.S. Gadkari, J.—This is an Application for leave to file an Appeal as contemplated u/s 378(3) of the Criminal Procedure Code, against the impugned judgment and order dated 26th September 2013 passed by the Learned District Judge-6 and Additional Sessions Judge, Thane in Sessions Case No. 158 of 2009 thereby acquitting the Respondents for the offence charged against them. The Respondent Nos. 1 to 6 were charged for the offence u/s 498(A) read with Section 34 of the Indian Penal Code and the Respondent No. 7 was charged for committing an offence under Sections 376 and 506 of the Indian Penal Code.

2. The record discloses that the complainant Smt. Tarrannum was married to the Respondent No. 2-Noormahamad Gulmahamad Shaikh in the year 2004. The Respondent Nos. 1 and 3 are the in-laws of the complainant. The Respondent Nos. 4, 5 and 6 are the sisters-in-law of the complainant and the Respondent No. 7 is the husband of the Respondent No. 4. After marriage the complainant Tarrannum started residing with her husband and in-laws. The husband of the complainant Tarrannum owned an Indica car. That after one month of the marriage, the in-laws of the complainant started taunting her on one or the other counts. After some days as the vehicle of her husband required repairs, her in-

laws asked her to bring Rs. 5,000/- from her parents. Therefore her brother gave an amount of Rs. 5,000/-. The record further discloses that as per the complaint, the in-laws again demanded a sum of Rs. 10,000/- and the said demand was also fulfilled with. The Respondent Nos. 1 to 6 used to ill treat and abuse the complainant. The complainant has further stated that on 6th November 2007 the Respondent No. 7 i.e. the husband of her sister-in-law (Respondent No. 4) left his wife and her mother-in-law on the railway station as they were to go to Gujarat and came to the house and while the complainant was alone in the house, he had forcible sexual intercourse with her. The complainant thereafter lodged a complaint dated 8th December 2007 at Thane Nagar Police Station for the offence under Sections 498(A) read with 34 of the Indian Penal Code against the Respondent Nos. 1 to 6 and for the offence under Sections 376 and 506 against the Respondent No. 7. The said complaint was registered as Crime No. 1-385/2007.

3. The record further discloses that the investigating agency investigated the matter and after completion of the investigation submitted a charge-sheet against the Respondents in the Court of Judicial Magistrate, First Class, Thane. The Learned Magistrate committed the said case to the Court of Sessions. After committal of the said case the Trial Court framed charge below Exhibit 8. The said charge was read over to the Respondents in vernacular language to which they denied and claimed to be tried. The prosecution examined in all eight witnesses in support of its case. The Learned Trial Court after recording the evidence and after hearing the parties to the Sessions Case No. 158 of 2009 has acquitted all the Respondents from the charges framed against them.

4. Heard Smt. V.R. Bhonsale, the learned APP appearing for and on behalf of the State and scrutinized the record produced by her along with the notes of evidence.

5. As far as charge u/s 498(A) is concerned, the same has been founded on the basis of the allegations made by the complainant Tarrannum against the Respondent Nos. 1 to 6. In her substantive evidence she had stated that after two to three months of her marriage, her husband and his parents started beating and assaulting her. She has further stated that her husband owned an Indica car and whenever there was any defect in the said car, her husband and his parents forced her to bring money from her brother for repairs of the car. That her brother Sajid on two occasions in the year 2005-06 gave an amount of Rs. 5,000/- and Rs. 10,000/- to them. As the complainant could not give birth to a child, her sister-in-laws used to taunt her has barren. In the evidence of P.W. 3- Mohd. Rafiq Abdul Karim who is the father of the complainant he has stated that he paid Rs. 5,000/- once and Rs. 10,000/- twice to the Respondent No. 2- Noormahamad Gulmahamad Shaikh and despite the fact the demand of the Respondents continued. He has further stated that the Respondents used to torture the complainant. The evidence of P.W. 4 and P.W. 5 who are the brothers of the complainant also discloses that the Respondents used to demand from the

complainant to which they have fulfilled and despite the fact the demand from the Respondents used to continue. After scrutinizing the evidence of P.W. 1-complainant Tarrannum, P.W. 3-Mohd. Rafiq Abdul Karim the father of the complainant and P.W. 4 and P.W. 5-the brothers of the complainant, it is clear that they are unable to state when the demand was exactly made and when they fulfilled the same. It appears that their evidence is absolutely vague as far as demand of amount and its fulfillment is concerned. It appears to us that there is material inconsistency in the versions of these witnesses about the demand made by the Respondents and its alleged fulfillment by them. Thus, according to us the prosecution has utterly failed to prove the charge u/s 498(A) of the Indian Penal Code beyond reasonable doubt.

6. The complainant has further alleged that the Respondent Nos. 4, 5 and 6 i.e. her sister-in-laws used to taunt her as the complainant could not give birth to a child. They used to address her as "Khali Khoka Hai" and "Banz Hai" and thereby caused mental cruelty to the complainant. In the testimony the complainant has stated that her sister-in-laws always used to call her as Barren. The evidence of P.W. 1 complainant discloses that as far as these utterances are concerned, the same are silent about its specification that means the complainant has not specifically mentioned which of the Respondents taunted her and at which point of time. It is difficult to accept the version of the complainant that all Respondent Nos. 4, 5 and 6 i.e. her sister-in-laws at one and the same point of time had uttered the said utterance thereby causing mental cruelty to the complainant. We are of the opinion that the evidence of P.W. 1 complainant on this aspect is absolutely vague and on the basis of the same the Respondent Nos. 4, 5 and 6 cannot be convicted u/s 498(A). Thus, after evaluating the evidence on record, we are of the firm opinion that the prosecution has failed to prove the charge u/s 498(A) of the Indian Penal Code.

7. As far as the charge as against Respondent No. 7 under Sections 376 and 506 of the Indian Penal Code is concerned, the complainant has made allegation in the complaint that on 6th November 2007 her husband left the house in the morning at 5.00 a.m. Other family members also left for their respective duties. That her mother-in-law i.e. the Respondent No. 3 and sister-in-law i.e. the Respondent No. 4 were to go to Gujarat and therefore the Respondent No. 7 i.e. the husband of the Respondent No. 4 accompanied the Respondent Nos. 3 and 4 for leaving them at the railway station. The complainant was alone at home. At around 1.30 p.m. the Respondent No. 7 came back at home. The complainant and the Respondent No. 7 had talks. The Respondent No. 7 asked the complainant to fetch water for him and therefore she went in the kitchen. When she returned back to the hall, the complainant found that the Respondent No. 7 had closed the door and windows of the house. When she questioned him about the said act, he caught her hand. When the complainant was about to raise shouts, the Respondent No. 7 gaged her with Odhani and overpowered the complainant and had forcible sexual intercourse with her and thereafter administered threat to her for not disclosing the said act to anybody and left the

house. It appears from the evidence of the complainant that when she informed the said fact to her husband i.e. the Respondent No. 2, he assaulted her and said that the Respondent No. 7 cannot do any such thing and he also told the complainant not to disclose about the said incident with anyone. That on 18th November 2007 when the Respondent Nos. 3 and 4 returned to the house, the Respondent No. 2 informed the said fact to them. The Respondent Nos. 3 and 4 said that the Respondent No. 7 cannot do such an act and thereafter the Respondent No. 2 i.e. the husband of the complainant beat her. Thereafter the in-laws of the complainant called the father of the complainant i.e. P.W. 3 and asked him to take his daughter back. It appears from the record that on 8th December 2007 a complaint came to be registered with the police, while the complainant left the house of the Respondents on 18th November 2007. After registration of the complaint P.W. 8-Dr. Bhavna Telang examined the complainant on 11th December 2007 and after conducting the various examinations P.W. 8-Dr. Bhavna opined that the patient is habituated to sexual intercourse.

8. It is to be noted here that the evidence of P.W. 3 i.e. the father of the complainant is absolutely vague with respect to the offence as contemplated u/s 376 of the Indian Penal Code. It is surprising to note that the complainant did not inform her father immediately after the alleged incident of rape. P.W. 3 in his testimony did not specify when the incident occurred or when his daughter told him about the said incident. It further appears that the evidence of P.W. 4 and P.W. 5 i.e. the brothers of the complainant is not consistent with each other and both of them have given different versions. The record discloses that the alleged incident of rape is dated 6th November 2007. As per the version of the complainant herself she remained silent upto 18th November 2007. It further appears that the complainant did not make any attempt to inform the said fact even to her parents or brothers. It is further important to note that after disclosure of the incident to the parents and brothers on 18th November 2007 by the complainant, the complaint came to be lodged on 8th December 2007 i.e. after a period of twenty days from 18th November 2007 and after approximately one month and two days from the alleged occurrence of incident. The evidence of prosecution is absolutely silent about the delay which has caused in lodging of the First Information Report. The prosecution has not explained the delay caused in lodging the F.I.R. The prosecution has totally failed to prove the offence u/s 376 of the Indian Penal Code against the Respondent No. 7.

9. After scrutinizing the entire evidence on record, we are of the opinion that the Trial Court has not committed any error while acquitting the Respondents by its judgment and order dated 26th September 2013 passed in Sessions Case No. 158 of 2009. Hence, the present Criminal Application for leave to file an Appeal is dismissed. Leave rejected.