

(2016) 04 BOM CK 0177

In the Bombay High Court

Case No : Criminal Appeal No. 161 of 1999.

**The State of Maharashtra, Through P.S.O. Umarkhed - Appellant @HASH
Rajeshwar S/o. Govindrao Sangewar, Aged about 43 years, R/o.
Nanded, Datta Nagar, Nanded**

Date of Decision : 21-04-2016

Acts Referred:

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

Citation : (2016) ALLMRCri 4836

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri Sumit Joshi, Advocate, for the Applicant; Shri S.S. Doifode, A.P.P, for the Non-applicant No. 1.; None, for the Non-applicant No. 2.

Final Decision : Dismissed

Judgement

Z.A. Haq, J.(Oral) - These two matters are disposed of by common judgment as the judgment passed by the Judicial Magistrate First Class in Regular Criminal Case No.87 of 1996 on 27th July, 1998 acquitting the respondent-accused Rajeshwar Govindrao Sangewar of the offence punishable under Section 498A and 323 of the Indian Penal Code is challenged in these two matters. The Appeal is filed by the State of Maharashtra and the Revision Application is filed by the complainant/wife Sau. Sandhya Rajeshwar Sangewar.

2. Heard Shri S.S. Doifode, A.P.P. for the appellant/State of Maharashtra and Shri S.G.Joshi, advocate for the complainant Smt. Sandhya Sangewar.

3. The case of the prosecution is :

The marriage between the complainant and the accused was solemnized 13 years prior to the lodging of the complaint by the complainant, that after some time the accused started ill-treating the complainant and used to beat and assault her and made monetary demand. According to the prosecution, 15 days prior to lodging of the report dated 7th August, 1996 the accused had beaten the complainant in their house at Nanded in presence of Pramod (brother of the

complainant), that Pramod had brought the complainant to Umarkhed, that the accused came at Umarkhed on 6th August, 1996 at about 9.00 p.m. and demanded Rs. 20,000/- and on refusal by the parents of the complainant to fulfil his demand, the accused assaulted the complainant and Pramod. The report was lodged on the basis of which Crime No.117 of 1996 came to be registered for the offence punishable under Section 498-A and 323 of the Indian Penal Code.

The investigation was undertaken, Smt. Sandhya was referred for medical examination, statements were recorded and charge-sheet came to be filed. The contents of the charge framed against the accused were explained to the accused in vernacular, the accused did not accept the guilt and claimed to be tried. The learned Magistrate conducted trial and by the impugned judgment concluded that the prosecution has failed to prove that the accused had subjected his wife to mental and physical cruelty and that the accused had voluntarily caused hurt to complainant Sandhya on 6th August, 1996 at about 21.00 hrs. and acquitted the respondents. The State of Maharashtra and complainant Smt. Sandhya, being aggrieved by the judgment passed by the learned Magistrate acquitting the accused has filed this appeal and revision application.

4. The learned Additional Public Prosecutor and the learned advocate for the complainant have submitted that the learned Magistrate has committed an error in discarding the evidence of Pramod (P.W.3) and Annapurna-mother of the complainant (P.W.6) on the ground that they are closely related to the complainant and therefore, they are interested witnesses. It is submitted that Pramod and Annapurna are natural witnesses and they witnessed the incident and therefore, their evidence could not have been discarded. It is submitted that the learned Magistrate should have considered their evidence applying the normal rule that the evidence of interested witnesses should be examined with due care and caution. It is further submitted that the evidence of Ramrao (P.W. 4) is also discarded wrongly only because he happens to be the tenant of father of the complainant. It is argued that Ramrao is also natural witness and he was present at the time of the incident as he occupied part of the house of the complainant's father as a tenant. The learned APP and the learned advocate have referred to the evidence of Pramod (P.W. 3), Annapurna (P.W. 6) and Ramrao (P.W. 4) and have submitted that the evidence of the above referred witnesses prove it beyond doubt that the complainant Sandhya was given cruel treatment by the accused and Sandhya and Pramod were assaulted on 6th August, 1996 by the accused. It is prayed that the impugned judgment be set aside and the accused be convicted for the offence punishable under Sections 498-A and 323 of the Indian Penal Code.

5. With the assistance of the learned A.P.P. and the advocate for the complainant, I have examined the record. The submissions made on behalf of the appellant and the complainant that the learned Magistrate has committed an error in discarding the evidence of Pramod (P.W. 3), Annapurna (P.W. 6) and Ramrao

(P.W. 4) cannot be accepted as the learned Magistrate has not discarded the evidence of the above referred witnesses at the threshold but has considered their evidence and has found that their evidence does not prove beyond doubt that the accused has committed the offence. The learned Magistrate has considered the evidence of Dr. Bhujangrao-Medical Officer (P.W. 7) who had examined Sandhya and Pramod. The evidence of Dr. Bhujangrao (P.W. 7) shows that no injury/abrasion was found on the person of Sandhya and Pramod. The learned Magistrate has also considered the evidence of Gopal (P.W.1) and Ganpat (P.W.5) who acted as panchas. The learned Magistrate has considered the evidence of Investigating Officer H.C. Suresh (P.W.8) and has expressed doubt about the spot panchnama.

The learned Magistrate has also considered the evidence on record which shows that Sandhya was employed as nurse and was getting salary of Rs. 4,000/- per month and the accused was an auto-rickshaw driver and Sandhya did not like the accused. The learned Magistrate has also recorded that the father of the complainant Sandhya was poor and found it difficult to maintain his family and it is difficult to accept that the accused had demanded amount of Rs. 20,000/- from father of the complainant Sandhya.

6. It cannot be said that the learned Magistrate has committed any error or has not considered and appreciated the relevant evidence. The judgment passed by the learned Magistrate is proper and does not require any interference.

7. The criminal appeal and criminal revision application are dismissed. In the circumstances, the parties to bear their own costs.