

Bombay High Court

Bombay High Court

Rt vs Golmahamad Noormahamad Shaikh on 28 July, 2014

Bench: V.K. Tahilramani

PNP 1/9 ALS75 IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.75 OF 2014 rt

The State of Maharashtra ..Applicant. ou

versus

Golmahamad Noormahamad Shaikh

and others ..Respondents. C

.....

Smt. V.R. Bhonsale, Addl. P.P. for the Applicant - State. None for the Respondents.

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CORAM : SMT. V.K.TAHILRAMANI &

ig A.S. GADKARI, JJ.

Judgment reserved on : 18 th July 2014. H

Judgment pronounced on : 28 th July 2014 ORAL ORDER (PER A.S. GADKARI, J.) : y

This is an Application for leave to file an Appeal as contemplated ba

under Section 378(3) of the Criminal Procedure Code, against the impugned judgment and order dated 26 th September 2013 passed by the Learned District Judge -6 and Additional Sessions Judge, Thane in om

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 under Section 498(A) read with Section 34 of B

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.

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2. The record discloses that the complainant Smt. Tarrannum was rt

married to the Respondent No.2 - Noormahamad Gulmahamad ou

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 C

the Respondent No.4. After marriage the complainant Tarrannum started residing with her husband and in-laws. The husband of the h

complainant Tarrannum owned an Indica car. That after one month ig

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 H

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 y

in-laws again demanded a sum of Rs.10,000/- and the said demand ba

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 om

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 B

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 ::: Downloaded on - 28/07/2014 23:50:06 ::: PNP 3/9 ALS75 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 rt

offence under Sections 376 and 506 against the Respondent No.7. ou

The said complaint was registered as Crime No.I-385/2007.

3. The record further discloses that the investigating agency C

investigated the matter and after completion of the investigation submitted a charge-sheet against the Respondents in the Court of h

Judicial Magistrate, First Class, Thane. The Learned Magistrate ig

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 H

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 y

after recording the evidence and after hearing the parties to the ba

Sessions Case No.158 of 2009 has acquitted all the Respondents from the charges framed against them.

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

along with the notes of evidence.

5. As far as charge under Section 498(A) is concerned, the same :: Downloaded on - 28/07/2014 23:50:06 :: PNP 4/9 ALS75 has been founded on the basis of the allegations made by the complainant Tarrannum against the Respondent Nos.1 to 6. In her rt

substantive evidence she had stated that after two to three months of ou

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 C

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 h

year 2005-06 gave an amount of Rs.5,000/- and Rs.10,000/- to them. ig

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 H

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 y

demand of the Respondents continued. He has further stated that ba

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 om

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 B

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 :: Downloaded on - 28/07/2014 23:50:06 :: PNP 5/9 ALS75 demand was exactly made and when they fulfilled the same. It appears that their evidence is absolutely vague as far as demand of rt

amount and its fulfillment is concerned. It appears to us that there is ou

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 C

charge under Section 498(A) of the Indian Penal Code beyond reasonable doubt.

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6.

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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 H

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 y

sister-in-laws always used to call her as Barren. The evidence of P.W.1 ba

complainant discloses that as far as these utterances are concerned, the same are silent about its specification that means the complainant om

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 B

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 :::: Downloaded on - 28/07/2014 23:50:06 :::: PNP 6/9 ALS75 absolutely vague and on the basis of the same the Respondent Nos.4, 5 and 6 cannot be convicted under Section 498(A). Thus, after rt

evaluating the evidence on record, we are of the firm opinion that the ou

prosecution has failed to prove the charge under Section 498(A) of the Indian Penal Code.

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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 h

has made allegation in the complaint that on 6 th November 2007 her ig

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 H

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 y

and 4 for leaving them at the railway station. The complainant was ba

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 om

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 B

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 :::: Downloaded on - 28/07/2014 23:50:06 :::: PNP 7/9 ALS75 overpowered the complainant and had forcible sexual intercourse with her and thereafter administered threat to her for not disclosing rt

the said act to anybody and left the house. It appears from the ou

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 C

complainant not to disclose about the said incident with anyone. That on 18th November 2007 when the Respondent Nos.3 and 4 returned h

to the house, the Respondent No.2 informed the said fact to them. ig

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 H

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 8 th December y

2007 a complaint came to be registered with the police, while the ba

complainant left the house of the Respondents on 18 th November 2007. After registration of the complaint P.W.8 - Dr. Bhavna Telang om

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. B

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 :::: Downloaded on - 28/07/2014 23:50:06 :::: PNP 8/9 ALS75 contemplated under Section 376 of the Indian Penal Code. It is surprising to note that the complainant did not inform her father rt

immediately after the alleged incident of rape. P.W.3 in his testimony ou

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 C

with each other and both of them have given different versions. The record discloses that the alleged incident of rape is dated 6 th h

November 2007. As per the version of the complainant herself she ig

remained silent upto 18th November 2007. It further appears that the complainant did not make any attempt to inform the said fact even to H

her parents or brothers. It is further important to note that after disclosure of the incident to the parents and brothers on 18 th November 2007 by the complainant, the complaint came to be lodged y

on 8th December 2007 i.e. after a period of twenty days from 18 th ba

November 2007 and after approximately one month and two days from the alleged occurrence of incident. The evidence of prosecution om

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 B

prove the offence under Section 376 of the Indian Penal Code against the Respondent No.7.

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9. After scrutinizing the entire evidence on record, we are of the opinion that the Trial Court has not committed any error while rt

acquitting the Respondents by its judgment and order dated 26 th ou

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.

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(Smt. V.K.Tahilramani, J.)

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ig (A.S. Gadkari, J.) H

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