

Presented on : 07.03.2016
Registered on : 08.03.2016
Decided on : 07.08.2019
Duration : 03Y 05M 00D

IN THE COURT OF SESSIONS JUDGE, THANE, AT : THANE

(Presided over by P.P.Jadhav)
District Judge-6 and
Additional Sessions Judge, Thane

Sessions Case No.89/2016
CNR No. MHTH01-001695-2016

Exh.No.41.

State of Maharashtra
(through Mumbra Pol.Stn.
Thane, Cr.No.I-126/2013)

...Complainant

Vs.

- 1. Shahir Kasim Shaikh,**
Age 22 years, Occ.: Service,
- 2. Bilkis Mohammad Kasim Shaikh,**
Adult, Occ.: Household,
- 3. Masiha Mohammad Kasim Shaikh,**
Adult, Occ.: Service,
- 4. Nagma Mubin Shaikh,**
Adult, Occ.: Household,
- 5. Rashma Fiyaj Shaikh,**
Adult, Occ.: Household,

All R/at.Suhana Building,
Near Bhanusagar Talkies, Kalyan (W)

...Accused

*For the offence punishable u/s.498A
406, 313 r.w. 34 of I.P.C.*

*APP Mr.Vivek G.Kadu for the State
Adv.Mr.Edgar Braganza for accused*

: J U D G M E N T :

(Delivered on this 07th day of August, 2019)

Accused are prosecuted for the offence of subjecting the informant Shirin Shahir Shaikh to cruelty to coerce her to fulfill unlawful demand and causing miscarriage of her pregnancy by assaulting her.

2] The facts are as under :

It is alleged by prosecution that, the marriage of informant Shirin Shahir Shaikh with accused No.1 Shahir Shaikh was performed on 27.05.2012. The accused no.2 Bilkis Shaikh is mother-in-law, No.3 Masiha Shaikh is brother-in-law, No.4 Nagma Shaikh and No.5 Rashma Shaikh are sisters-in-law of the informant. At the time of fixing of marriage accused had told that the accused No.1 Shahir was serving in call centre and was having salary of Rs.40,000/- per month. It was also told that he is running optics shop at Karjat and earning Rs.20,000/- per month from said business. In the marriage informant's parents had offered two platinum rings, 17 tolas gold ornaments and electronic and furniture items. They had also shared the marriage expenses.

3] It is further alleged by prosecution that, after the marriage the informant resumed cohabitation at the house of accused situated at Flat No.301, A-Wing, Dadi Colony, Garden Villa, Mumbra. The informant came to know that accused No.1 was not having any job and was doing nothing. When she inquired with accused No.1 about the same, he abused and assaulted her. Merely after two days of the marriage all accused started to harass the informant. The accused No.1 used to insult the informant in the name of boys whose proposals were made to her for marriage before her marriage with the accused No.1. On one occasion in a quarrel the informant had cut her wrist by knife. The accused No.2 was not allowing the informant to wear ornaments offered in the marriage by her parents. All accused used to abuse and assault the informant by asking her to bring money and gold from her parents. On said demand they had drove her out of their house. However, after a meeting the matter was settled and informant resumed cohabitation. On 15.08.2012 the accused No.2, 4, and 5 made false allegations against the informant that she had taken all her ornaments while going to her parents' house. The accused No.1 got angry and kicked the informant in stomach with intention to cause miscarriage of her pregnancy. The informant suffered serious pains and bleeding. On 16.08.2012 she approached Dr.Minaj Dongre. The doctor had opined that the informant had sustained injury

to her fetus. Even after medicines prescribed by Dr.Minaj Dongre there was no improvement and the informant suffered miscarriage. Thereafter on 15.11.2012 all accused again abused and quarreled with the informant and drove her out of their house. They refused to handover the gold ornaments offered by informant's parents in the marriage. Lastly on 08.02.2013 the informant lodged complaint against all accused in Mumbra police station.

4] After receiving complaint offence u/s.498-A, 406, 313 r.w. 34 of the Indian Penal Code came to be registered against the accused. After investigation charge sheet came to be filed against all accused for said offences.

5] Charge is framed against accused at Exh.5. Accused pleaded not guilty of the offence and claimed to be tried.

6] Statements of accused u/s.313 of Code of Criminal Procedure are recorded at Exh.33 to Exh.37. The defence of accused is that informant lodged false complaint against them.

7] After going through the prosecution story, evidence on record and hearing arguments of both sides, following points arise for my determination. I record my findings thereon for the reasons as given below.

POINTS**FINDINGS**

- | | |
|---|-----------------------|
| 1] Does prosecution prove that from 29.05.2012 to 15.11.2012 at Flat No.301, A-Wing, Garden Villa, Dadi Colony, Mumbra the accused No.1 being husband and Nos.2 to 5 being relatives of accused No.1 in furtherance of their common intention subjected Shirin to mental and physical cruelty to coerce her to fulfill their unlawful demands of gold ornaments and cash amount ? | ...Not proved. |
| 2] Does prosecution further prove that during above mentioned period and place all accused in furtherance of their common intention misappropriated the gold ornaments belonging to informant and committed criminal breach of trust ? | ...Not proved. |
| 3] Does prosecution further prove that on 15.08.2012 at above mentioned address all accused raised quarrel with Shirin, accused No.1 Shahir kicked in the stomach of Shirin having knowledge that she was pregnant and caused miscarriage of her pregnancy ? | ...Not proved. |
| 4] What order ? | ..As per final order. |

: REASONS :**As to the Point Nos.1 to 3 :-**

- 8] To bring home the guilt of accused, the prosecution has examined informant Shirin Shahir Shaikh as PW1 at

Exh.12. The complaint lodged by her against the accused is at Exh.13. Her brother Sayyed Jahangir Kasim Pasha is examined as PW2 at Exh.25. The prosecution has examined investigating officer Smt.Usha Prashant Suradkar as PW3 at Exh.29. After registration of crime the household articles given in the marriage by parents of informant Shirin were returned to her and said panchanama is at Exh.30.

9] In present case the marriage of informant with accused No.1 and relations with other accused with her is not disputed. It is not disputed that at present the informant is not cohabiting with the accused. As admitted by PW2, informant Shirin has performed second marriage and she is residing at Dubai. In view of these admitted facts, we have to scrutinize the evidence on record.

10] PW1 Shirin Shaikh narrated almost all facts alleged in the complaint. She specifically deposed that before the marriage it was told that accused Shahir was having salary of Rs.40,000/- per month from call centre job and was earning Rs,20,000/- per month from optics shop. However, after marriage it was revealed that accused Shahir was not doing any work. She further deposed that in marriage her parents had offered 17 tolas gold, electronic articles, platinum rings, furniture and even born expenses of marriage. She has further

stated that soon after the marriage when she asked accused Shahir about his job, he raised quarrel and assaulted her. The other accused used to instigate accused Shahir and thereupon he used to beat her. Accused Shahir used to keep knife with him during nights. Due to harassment at the hands of accused, she had cut her wrist. All accused used to demand cash amount and gold ornaments from her. The accused had made false allegations against the informant that she had taken gold ornaments to her parents house. On 15.08.2012 while she was pregnant by two months all accused severely beat her by demanding Rs.10,00,000/-. Accused Shahir kicked her in stomach. Thereupon, she had suffered bleeding and fainted. Thereafter all accused had called her father and asked him to take her away. There after at 02.00 midnight accused Shahir, Bilkis and Masiha had taken her to her parents house. At that time accused Shahir had tried to strangle her saying that they were not desiring the child and the informant should fulfill their demand of amount. The informant further deposed that her mother had taken her to Dr.Minaj Dongre. The doctor had told that she had sustained injury to her fetus. Dr.Dongre had advised to lodge complaint against the accused in police station. As accused had asked her to pay Rs.10,00,000/- and were not allowing her to cohabit with them, she was residing at her parents' house. Dr.Dongre had advised her to abort fetus. However, due to bleeding she suffered miscarriage. She

was also admitted in Kalwa hospital for two days. Thereafter she lodged complaint Exh.13 in Mumbra police station.

11] PW2 Sayyed Jahangir Kasim Pasha also corroborated PW1 in respect of offerings in the marriage. He further deposed that, after fifteen days of the marriage the accused started to raise quarrels with Shirin by demanding amount to purchase house. They used to convince Shirin and send her to resume cohabitation. However, there was no improvement in the behaviour of the accused. Shirin used to tell about the harassment at the hands of accused on phone. On 15.08.2012 Shirin had phoned them and told that she was pregnant. On informing said fact to accused No.2, she had asked to abort said pregnancy. Thereupon Shirin had returned to parents' house, but they had convinced her and dropped at the house of accused. Thereafter after about 7-8 days accused again quarreled with her. Shirin told him on phone that accused Shahir had kicked her in stomach saying that he do not want any child. At about 02.00 midnight accused had sent Shirin to their house with two unknown persons. They had taken Shirin to doctor and she suffered miscarriage. The doctor had advised them to lodge complaint.

12] PW3 P.I., Smt.Usha Suradkar being investigating officer her evidence is formal in nature. However, the

important fact that household articles offered in the marriage were returned to the informant vide panchanama Exh.30, is proved through this witness.

13] Relying upon the evidence of PW1 and 2 A.P.P. Mr.Kadu argued at length and submitted that the informant has stated how she was cheated about the income of accused No.1. He further argued that the deposition of informant to the extent of ill-treatment on demand of money and her miscarriage is corroborated by the evidence of PW2. Both have stated the incidents of ill-treatment and particularly incident dated 15.08.2012. Hence the prosecution has proved its case.

14] It is pertinent to note here that, except the informant PW1 and her brother PW2 no independent witness is examined by the prosecution about the ill-treatment at the hands of accused. As pointed out by advocate Mr.Braganza the allegations about the demand of Rs.10,00,000/- by the accused as deposed by the informant PW1 is not mentioned in the complaint Exh.13. No single documentary evidence about medical treatment or miscarriage suffered by the informant is produced on record. There is no oral or documentary evidence about the abortion/miscarriage of the informant. It is pertinent to note here that the incident of alleged miscarriage took place on or about 16.08.2012. However, as admitted by

informant PW1, she used to visit the clinic of Dr.Minaj Dongre, even prior to 16.08.2012. As admitted by informant, on 06.10.2012 she had gone to Hubali alongwith accused Shahir to attend the marriage of relative. On 09.08.2012 also she had visited the clinic of Dr.Dongre for check-up. Thus even after alleged incident of assault in stomach and miscarriage, the informant was happily accompanied accused No.1 in the marriage of relative. This fact shows that even after 15.08.2012 the relations between accused No.1 and the informant were good and she had no grudge against him.

15] It is pertinent to note here that there was specific allegations that all accused used to harass the informant on demand of money and gold ornaments. However, as admitted by informant in her cross examination accused Nos.3, 4 and 5 were already married before her marriage with accused No.1. So also she has specifically admitted that the accused Nos.3, 4 and 5 are having their own separate flats and were residing in their respective flats with their families. Under such circumstances apparently there is no question of demanding any amount for purchasing house as accused No.1 was also having separate flat wherein the informant was residing with him alongwith mother-in-law i.e. accused No.2. Under such circumstances the allegations of demand of money for purchasing house are not reliable.

16] As already mentioned there is no independent oral evidence about the ill-treatment at the hands of accused to informant Shirin. As pointed out by advocate Mr.Braganza merely because of section 313 of the Indian Penal Code the matter is committed for trial to this Court. However, there is no independent oral or documentary evidence on record to show that the informant had suffered abortion or miscarriage. In the absence of any medical evidence showing assault and miscarriage, the allegations levelled against the accused cannot be said to be proved. Thus there is no evidence on record to show that the accused ill-treated the complainant and caused her miscarriage. So far as criminal breach of trust is concerned, there is no evidence on record to show that 17 tolas gold and platinum rings were offered in the marriage and those are fraudulently kept by the accused with them. On the contrary after registration of crime all household articles offered in the marriage are returned to the informant with yadi and panchanama. Thus the allegations of misappropriation are also not proved against any of the accused. Hence answering point Nos.1 to 3 in the negative following order is passed.

ORDER

- 1. Accused No.1. Shahir Kasim Shaikh, No.2. Bilkis Mohammad Kasim Shaikh, No.3. Masiha Mohammad Kasim Shaikh, No.4. Nagma Mubin Shaikh and No.5.**

Rashma Fiyaj Shaikh are hereby **acquitted** u/s.235(1) of the Code of Criminal Procedure for offences punishable u/s.498-A, 406, 313 r.w. 34 of the Indian Penal Code.

2. The bail bonds of accused stand cancelled.
3. Accused are directed to furnish personal bond of Rs.5,000/- each, in terms of sec.437-A of the Code of Criminal Procedure.

Thane.

Date : 07.08.2019

Sd/-..xxx
(P.P.Jadhav)
District Judge-6 and
Addl. Sessions Judge, Thane.