

JPP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION**

CRIMINAL APPEAL NO. 250 OF 2010

The State of Maharashtra
(Through Bhandup Police Station,
C.R.No.65/08,C.C.No.377/PW/2008).

... Appellant
(Orig.Complainant)

V/s.

1. Sandeep Sambhaji Panwal,
Age - 29 yrs., Occu.: Service.
2. Suvarna Sambhaji Panwal,
Age - 50 yrs. Occu.: Housewife

Both are R/WP 4249at $\frac{3}{4}$ Kallubhaya Chawl,
Govind Nagar, Gopodevo Road,
Bhandup (W), Mumbai - 78.

... Respondents.
(Orig.Accused Nos.1 & 2)

**WITH
CRIMINAL APPLICATION NO. 555 OF 2015
IN
CRIMINAL APPEAL NO. 250 OF 2010**

Deepali Sandeep Panwal
@ Deepali Dhondiram Ramchandra Barge.

... Intervener.
(Orig.Complainant)

IN THE MATTER BETWEEN

1. Sandeep Sambhaji Panwal.
2. Suvarna Sambhaji Panwal.

... Appellants.

V/s.

The State of Maharashtra.

... Respondent.

Mr. H.J. Dedhia, APP for the State.
Mr. Niranjana S. Mundargi for the Intervener in Cri.APPA
555/2015.
Mr. Sharad Ghadge for Respondent Nos.1 and 2.

**CORAM : P.V. HARDAS &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.**

APRIL 30, 2015.

ORAL JUDGEMENT (PER P.V. HARDAS, J.) :-

The State being aggrieved by the Judgment of the Additional Sessions Judge, Sessions Court, Greater Bombay, dated 7.9.2009, in Sessions Case No. 649 of 2008, acquitting the Respondents for offence punishable under Sections 498-A, 406 r/w. 34 of the Indian Penal Code and under Section 307 of the Indian Penal Code qua Accused No.1 Sandeep, has filed the present Appeal challenging the acquittal of the Respondents.

2. Facts in brief as are necessary for the decision of this Appeal may briefly be stated thus :-

PW-7 PSI Balkrishna Babajirao More, who on 17.2.2008 was attached to the Bhandup Police Station, received information at 6.30 a.m. on 18.2.2008 about admission of injured PW-2 Deepali in the hospital. The aforesaid information was conveyed to him by the Casualty Duty Constable from the Rajawadi Hospital. On receipt of the said message he proceeded to the Rajawadi Hospital and met the Medical Officer on duty. He enquired from the Medical Officer about PW-2 Deepali and noticed that Deepali was unconscious. He accordingly obtained an endorsement from the Medical Officer. PW-1 Dhondiram was found sitting outside the wall and was then brought to the Police Station where his report at Exhibit 12 was recorded. On the basis of the report at Exhibit 12, an offence vide Crime No.65 of 2008 under Section 498-A r/w. 34 of the Indian Penal Code was registered. PW-1 Dhondiram was then taken to the scene of the incident and in the presence of panchas, the scene of the incident panchnama at Exhibit 21 was drawn. From the scene of the incident, a scarf/odhani was seized. Accused No.1 was arrested and was brought to the Police Station. Further investigation was then handed over to PW-6 PI Namdev Rode.

PW-6 PI Namdev Rode, who was also attached to the Bhandup Police Station was entrusted with the investigation of the crime. He was informed in the evening that PW-2 Deepali had re-gained consciousness and therefore proceeded to the Rajawadi Hospital for recording her statement. On 20.2.2008 he recorded the statements of the witnesses and thereafter, added Section 307 of the Indian Penal Code.

On 1.3.2008 he recorded the statements of other witnesses as well as the statement of the Photographer. Supplementary statement of the complainant, PW-1 Dhondiram was also recorded. Statements of the neighbors as well as the uncle of PW-2 Deepali were recorded. Under Exhibit 34, the ornaments belonging to Deepali had been seized. Subsequently, Section 406 of the Indian Penal Code was added. Further to the completion of investigation, a charge-sheet against the Respondents was filed.

PW-2 Deepali was examined by PW-4 Dr. Mohana Haribhau Dhanunkar, who was attached to the Rajawadi Hospital. At about 3.35 a.m., PW-2 Deepali was brought to the Casualty Department and was admitted in the Hospital. On examination she noticed that Deepali was unconscious and was drowsy and had ligature mark around her neck. On 21.2.2008, Deepali was discharged from the Hospital. The medical case papers are at Exhibit 25. According to her, if Deepali was strangled by a scarf/odhani, the ligature marks as found around the neck of Deepali could be possible.

3. On committal of the case to Court of Sessions, Trial Court vide Exhibit 3 framed charge against the Respondents for offence punishable under Sections 498-A and 406 r/w. 34 of the Indian Penal Code and against Accused No.1 for offence punishable under Section 307 of the Indian Penal Code. The accused denied their guilt and claimed to be tried.

Prosecution in support of its case examined 7 witnesses. PW-2 Deepali is the principal witness on whose testimony the entire prosecution case rests.

4. We have heard the learned APP for the Appellant and Mr. Ghadge, learned Counsel for the Respondent Nos. 1 and 2. An Application has been filed on behalf of PW-2 Deepali seeking to intervene in the present Appeal. In the application, PW-2 Deepali has stated that after the acquittal of the Respondents she herself and the Respondent/Accused Nos.1 and 2 have resolved all their disputes and have started living happily together. Deepali further stated in the affidavit that she has recently given birth to a child and PW-2 Deepali and Accused No.1 are living a happy married life.

5. The Trial Judge while acquitting the Respondents has come to the conclusion that no reliance can be placed on the testimony of PW-1 Dhondiram as admittedly Dhondiram has not proved to any information being conveyed to him by PW-2 Deepali in respect of the ill-treatment. The evidence of PW-1 Dhondiram is hearsay. In fact, according to PW-2 Deepali, she had informed her mother who has not been examined by the prosecution. PW-2 Deepali in her evidence states that after her marriage she was initially treated well

and thereafter, was harassed by the accused. According to her, she was taunted by her mother-in-law. She has further stated that Accused No.1 also was harassing her and was using condom while doing sexual intercourse with her. Deepali has further stated that her mother-in-law used to taunt her by saying that if Accused No.1 had married someone else, Accused No.1 would have got dowry.

6. In cross-examination, an admission is elicited that PW-2 Deepali was employed and was working in the Jaslok Hospital. She has also admitted that earlier also she had been employed. The Trial Judge in respect of evidence of PW-2 Deepali has come to the conclusion that the allegations of ill-treatment were extremely omnibus and vague and did not prove a systematic conduct on the part of the accused to cause cruelty either mentally or physically to Deepali. The Trial Court therefore came to the conclusion that an offence punishable under Section 498-A of the Indian Penal Code was not made out.

7. In respect of an offence punishable under Section 406 of the Indian Penal Code, the Trial Court recorded a finding that all the ornaments had been received by PW-1 Dhondiram and therefore, there was no question of the accused committing breach of trust/mis-appropriation in respect of the ornaments.

8. PW-2 Deepali has further deposed that when she was sleeping, she was awakened and found that she was being strangled by Accused No.1. Deepali was rendered unconscious and regained her consciousness in the hospital. The Medical Officer had deposed that the ligature mark sustained by Deepali could be caused by the odhani/scarf. The learned Trial Judge at paragraph 24 has dealt with the evidence of Dr. Dhanunkar. Dr. Dhanunkar had admitted in her cross-examination that after admission of Deepali, she had not examined Deepali till she was discharged. Admittedly, Dr. Dhanunkar had not stated that she had not examined Deepali before she was admitted in the hospital. The Trial Court therefore found that the implicit reliance could not be placed on the evidence of PW-4 Dr. Dhanunkar. The

Trial Court thus denotes the history which was recorded at Exhibit 25 and found that the said history of strangulation was given by PW-1 Dhondiram. The casualty case papers of Deepali disclosed that the history was “altered behaviour, 2 hrs.”. In the medico-legal case papers of PW-2 Deepali, the provisional diagnosis was “attempted hanging”. The Trial Court further found that in the medical case papers the attempted suicide by hanging while she was asleep was scratched out and it had been written as history of “attempted strangulation by someone”. The Trial Court further found that the scoring out had not been initialed by the doctor.

9. In that light of the matter therefore, the Trial Court came to the conclusion that the prosecution had failed to prove the offence against the accused beyond reasonable doubt and therefore, acquitted them.

10. With the assistance of the learned APP we have perused the depositions of the witnesses. Upon such perusal, we have found that the view taken by the Trial Court is not only a possible view but is the only view to be taken on the

basis of evidence on record. We have not noticed any perversity in the reasoning of the Trial Court to warrant any interference in this Appeal against acquittal. The Trial Court has exhaustively dealt with the evidence of the prosecution witnesses and after appreciation of the evidence has recorded the findings which we found to be based on evidence. In our opinion therefore, the present Appeal is sans merit and is therefore, liable to be dismissed.

11. Accordingly, Criminal Appeal No. 250 of 2010 is dismissed confirming the acquittal of the Respondents.

12. Since we have dismissed Criminal Appeal No. 250 of 2010, Criminal Application No. 555 of 2015 filed by PW-2 Deepali for intervening in the present Appeal does not survive and is accordingly disposed of.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)