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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1400 OF 2003

The State of Maharashtra ... Appellant

V/s.

1. Santosh Parshuram Kadam
27 Yrs., Occ. Agriculturist.

2. Parshuram Tukaram Kadam,
62 yrs., Occ. Agriculturist,

3. Sou. Anusaya Parshuram Kadam
65 Yrs., Occ. Household work,
All Residing At. Aarale,
Tal & Dist. Satara

... Respondents

Mr Arfran Sait, Addl P.P. for the Appellant.
Shri H.S. Venegavkar, Adv. With Shri Tejas Dhotre, Adv. for
Respondents Nos. 1 to 3.

CORAM : PRAKASH D. NAIK, J.

DATE : 31 May 2017

ORAL JUDGMENT

1. This Appeal is preferred by the State under Sections 378(1) of Code of Criminal Procedure, challenging the judgment and order of

acquittal dated 26th August 2003 passed by the 5th Judicial Magistrate First Class, Satara in Regular Criminal Case No. 40 of 2002.

2. The prosecution case is as follows:-

a. The marriage of the complainant Sou Rupali was solemnized with accused No.1 on 19th April 2000. The marriage expenses were borne by the father of the complainant. The parents of the complainant had given 5 tola gold to the complainant in the marriage.

b. The accused No.1 at the behest of his parents started demanding Rs.25,000/- from the complainant to be brought by her from her parents for purchasing two wheeler and on that count started ill treating her.

c. The accused No.3 was ill-treating the complainant and taunting her that the complainant cannot prepare tiffin properly for accused No.2.

d. The complainant narrated the ill treatment meted out to her by the accused to her father and uncle. The accused No.1 also demanded that the property viz. Bungalow at Sadar Bazar, Satara be transferred to his name. The complainant was scorched by half burnt wood on her right cheek and on her left hand with the hot ladle. The

complainant narrated the above fact to her uncle when he visited her matrimonial house.

e. The parents of the complainant then took her to parental home at Chinchner. Thereafter in February 2001, she lodged the complaint to Mahila Balvikas Kendra, Satara. Attempts were made to compromise but the same were failed. The accused ill treated and subjected the complainant to cruelty from 19th April 2000 to 29th January 2001. Thereafter the complainant lodged the FIR for offences punishable under Sections 498-A, 323 and 504 read with 34 of the IPC.

3. The police carried out the investigation by recording statement of witnesses and collecting necessary evidence. After completion of investigation the charge-sheet was filed and the accused were tried for the said offences.

4. The accused No.1 is the husband of the complainant and accused Nos.2 and 3 are father-in-law and mother-in-law of the complainant respectively.

5. The charge was framed by the Trial Court on 28th November 2002

for the offences punishable under Sections 498-A, 323 & 504 read with 34 of the IPC. The accused pleaded not guilty. The prosecution examined 7 witnesses to prove charge against the accused. P.W. No.1 Smt Rupali Santosh Kadam is the complainant (wife of the accused No.1). P.W. No.2, Shri Vasant Kondiram Nimbalkar is the uncle of the complainant. P.W. No.3, Sulochana Balkrishna Nimbalkar is the mother of the complainant. P.W. No.5, Dr Mahananda Vishweshwar Shete, is the Medical Officer who had examined the complainant at the time of her pregnancy. P.W. 6, Balkrishna Dhondiram Nimbalkar, is the father of the complainant and P.W.No.7, Balasaheb Kashinath Gaikwad is the Assistant Sub Inspector attached to Satara Taluka Police Station who had conducted the investigation.

6. The Trial Court after recording the evidence of the witnesses recorded the statement of the accused under Section 313 of Cr.P.C. After hearing both the parties Trial Court passed judgment and order dated 26th August 2003. The Trial Court had acquitted the accused of the offences for which they were charged. Hence the State preferred this Appeal challenging the said judgment and order of acquittal.

7. Mr Sait, learned APP appearing for the Appellant / State,

submitted that the Trial Court has committed error in acquitting the accused. He submitted that the evidence on record has clearly established the charges against the accused. He submitted that the Trial Court has committed error in not appreciating substantive evidence on record which had proved cruelty and the charge of assault against the accused. He further submitted that the evidence adduced by the prosecution has not been demolished by the defence in the cross examination and therefore the said evidence ought to have been considered by the Trial Court to convict the accused persons. He submitted that the evidence of the Doctor corroborates the testimony of the complainant that she was ill-treated physically as well as mentally which had resulted in abortion. The ocular evidence as well as the medical evidence which was put forth at the instance of the prosecution is sufficient to establish the act of cruelty and the offence under Section 498-A of the IPC. He, therefore, submitted that the judgment of the Trial Court is required to be interfered with in this Appeal against the acquittal. He submitted that the Trial Court has not scrutinized the oral as well as documentary evidence in proper perspective which has resulted in miscarriage of justice. He further submitted that the evidence adduced by the prosecution was sufficient to hold the accused guilty of the offences for which they were charged. The Trial Court has

misconstrued the evidence on record and misinterpreted the provisions of law. It was submitted that the deposition of P.W. No.1 and the testimony of the other witnesses clearly proves the charge beyond doubt and therefore, the accused should have been convicted for the said offences. He submitted that the Trial Court has failed to consider the genuineness and trustworthiness of the evidence of the complainant which was corroborated by the other witnesses and by cross examination the evidence is not shaken in any manner. He submitted that the evidence of P.W. Nos. 1, 2 and 6 clearly establishes the physical and mental cruelty meted out to the complainant. He submitted that the demand as well as the ill-treatment meted out to the complainant has been established by the evidence of the witnesses which has been completely overlooked by the Trial Court. He, therefore, submitted that the judgment of acquittal is contrary to the evidence on record and well established principles of law and therefore, same is required to be set aside and the accused may be convicted for the said offences.

8. Learned Advocate Shri H.S. Venegavkar appearing for Respondents / accused submitted that the FIR was lodged as counter blast to the marriage Petition filed by the accused No.1. He further submitted that the evidence of the witnesses do not inspire confidence

and it suffers from various infirmities and hence, the Trial Court has rightly acquitted the accused. He submitted that the evidence of the complainant and the other witnesses suffered from the infirmities like contradictions and omissions which goes to the root of the matter therefore, no interference is required in the judgment and order of acquittal passed by the Trial Court. He submitted that the prosecution has failed to prove beyond all reasonable doubts the charge of cruelty as well the assault as alleged by the prosecution. He submitted that the evidence of the witnesses is after thought as no such complaints were made at the earlier point of time. He further submitted that the law relating to the Appeal against the acquittal is clear in various decisions of the Supreme Court and this Court. In view of catena of decisions, according to him the order of acquittal can be interfered with in exceptional circumstances. He further submitted that the evidence of the witnesses do not establish the charge under Sections 498-A, 323 and 504 read with 34 of the IPC and the Trial Court has rightly acquitted the accused persons.

9. In the light of the aforesaid submissions made by the prosecution as well as the defence it would be proper to analyze the evidence on record. P.W. No.1 Rupali is the complainant who has deposed that she

was married to accused No.1 on 19th April 2000. She further stated that her parents had given 5 tola gold, household utensils and borne the marriage expenses. After marriage she went to village Aarle for cohabitation. At village Aarle accused Nos. 1, 2 and 3 were residing jointly. Initially for a period of one and half month she was treated well. accused No.1 was demanding Rs.25,000/- for purchasing two wheeler boxer brand vehicle. He insisted that the complainant to bring an amount of Rs.25,000/- from her parents. The mother-in-law used to taunt the complainant that she cannot prepare the tiffin for her father-in-law. accused No.3 was also scolding on that count. She further stated that accused used to abuse her. Thereafter the complainant was left to her parental home. She disclosed about ill-treatment to her uncle and parents. She also disclosed reason for ill-treatment. The father of the complainant, uncle and one Ashok Bhosale went to village Aarle for conciliation. The accused further continued with the demand. The accused No.1 also told the complainant that she should tell her father to transfer the Bungalow which is in the name of her father to his name. The complainant refused to do so. The accused No.1, therefore, scorched her right cheek with a half burnt wood. The accused No.3 also scorched the left hand of the complainant with a hot ladle. Thereafter the uncle of the complainant visited her matrimonial home. The complainant

informed him about the ill-treatment. The accused Nos. 1 and 3 assaulted the complainant by fist and kick blows on her stomach. At that time she was pregnant and was suffering from stomachache. The uncle of the complainant visited the matrimonial home of the complainant and he took her to Chinchner. On account of the stomachache she had to undergo abortion. She stated that she was taken to Nandadeep Hospital by uncle and brother of husband for treatment. She was treated in the said hospital for two days. Thereafter the complainant filed a complaint to Mahila Bal Vikas Centre, Satara to settle the dispute amongst the parties which were futile. The parents and the other relations of the complainant also tried reconciliation, however, they did not succeed. Thereafter the complainant filed a complaint with the police station and FIR was registered, which is exhibited as Exhibit No.17 in the proceedings. In the FIR it is stated that the demand for bungalow was made by accuse No.3. The FIR do not refer to allegations of scorching by husband. There is no reference of abortion.

10. P.W. No.1 was cross examined at the instance of the defence. In the cross examination she deposed that approximately 4 acre irrigated land is owned by the accused. accused No.2 is serving in Cooper Factory, Satara Road, Satara and he is getting salary of Rs.4,000/- per

month. There is a boxer vehicle at her matrimonial home. She further stated that after two day of filing complaint, she issued a notice through her Advocate to accused No.1. The complaint to Mahila Mandal Satara was filed by her father in February 2001. The said Mahila Mandal is in the Police Station, Satara. She stated that the complaint lodged at Mahila Mandal was that she was starved for 15 days. She also deposed that accused No.1 had filed Hindu Marriage Petition No. 23 of 2002 seeking divorce. This fact is known to her parents and uncle. She also stated that at the time of lodging the complaint her parents, Shri Ashok Bhosale and uncle Vasant were present. She admitted that there is no mention in her complaint Exhibit No.17 that accused No.2 assaulted her on her stomach by kick and fist blows and at that time she was pregnant for 2 and half months and that she suffered stomachache and suffered abortion. She also admitted that there is no mention in the complaint that she told her father and uncle that accused demanded Rs.25,000/- and ill-treated her on that count. However several suggestions made at the instance of the defence were denied by her.

11. P.W. No.2, who is the uncle of the complainant has stated that the complainant had informed him that the accused No.1 is demanding Rs.25,000/- for purchase of two wheeler and that the accused was ill-

treating her by abusing. She had also disclosed to him that the accused were taunting that the complainant cannot prepare food. Thereafter she was left to Chinchner by accused Nos.1 and 3. He stated that the incidents of ill-treatment were narrated to him by the complainant. He also referred to attempts made by them for conciliation between the accused and the complainant. He stated that the complainant had resided at her matrimonial home for 1 and half month after the marriage and subsequently for about three months after she was sent back from her parental home to matrimonial home. He further deposed that the complainant had also disclosed to him that the accused No.1 is insisting that the property viz Bungalow at Sadar Bazar, Satara, which is in the name of complainant's father be transferred to the name of accused No.1. She also disclosed to him the scorching incidents. He also referred to the fact that, complainant had to undergo abortion. He stated that the complainant had disclosed to him that she was not provided food and the accused Nos. 1 and 3 assaulted her by kick and fist blows while she was pregnant. He stated that thereafter they went to village Aarle for reconciliation to the matrimonial home of the complainant. However, they could not succeed. In the cross examination said witness has stated that there is no mention in his complaint that they went to meet the complainant and accused were abusing her. So also there is no mention

that the accused Nos. 1 and 3 assaulted the complainant by fist and kick blows on her stomach and at that time she was pregnant for 2 and half months on account of which she suffered abortion at village Aarle. There is also no mention that she was taken to Nandadeep Hospital. The said witness had however stated that the complainant was taken to Government Hospital for treatment and thereafter to Nandadeep Hospital. The prosecution has not brought on record the medical case papers of Government Hospital.

12. P.W. No.3, is the mother of the complainant. She stated that after the marriage the complainant went to Aarle for cohabitation. She came to Chinchner for Solava and thereafter again went to village Aarle. accused Nos. 1 and 3 left her at Chinchner. The complainant then resided there for two to three months with her parents. The complainant disclosed to her that accused Nos. 1 and 3 had ill-treated her. She further stated that the accused were demanding Rs.25,000/- for purchase of two wheeler since the complainant had failed to meet the demand she was ill-treated by the accused. She further deposed that the complainant had resided at parental home for a period of three months. At that time she had disclosed that the accused Nos. 1 and 3 had assaulted her by kick and fist blows which was resulted in abortion at village Chinchner. She

also stated that the complainant had informed her that the aforesaid assault was on account of not meeting the demand of Rs.25,000/-. She also referred to the acts of scorching at the instance of accused Nos. 1 and 3. She also stated that after the abortion the complainant was taken to Nandadeep Hospital at Satara and she was treated for two days. However the accused refused to take her back to matrimonial home. The complainant was thereafter filed complaint to Mahila Mandal Satara. The said witness was cross examined by the defence. In the cross examination she stated that the complainant cohabited at village Aarle in all for two months. During this said period no ill-treatment was given to the complainant. She admitted that it is not mentioned in her statement that the accused was ill-treating and abusing the complainant. She also states that there is no mention that she resided for three months. She also admitted that it is not mentioned in the statement recorded by the police that accused Nos. 2 and 3 given kick and fist blows thereby she suffered stomachache and which had resulted in abortion at village Chinchner. She also admitted that there is no mention that the reason behind this assault was demand for Rs.25,000/- and transfer of Bungalow. There is also no mention about the treatment given to the complainant at Nandadeep Hospital, Satara. There is also no mention about the presence of the said witness, when complainant had undergone abortion.

13. P.W. No.4 is the person who is known to the family of the complainant. He has referred to the fact of solemnization of marriage of the complainant and accused No.1 and the ill-treatment meted out to the complainant. He stated that the complainant had informed him that the accused are demanding Rs.25,000/- for purchasing two wheeler and that since she could not fulfill the demand, she has been ill-treated by them. He was party to the attempts made by the family for conciliation. He stated that thereafter the complainant had cohabited at her matrimonial home but she was again ill-treated by accused persons. He also referred to the incident of scorching the complainant by accused Nos. 1 and 3. He also referred to the incidents of beating by accused Nos.1 and 3 by kick and fist blows and the fact that the complainant had to undergo for abortion. He also referred to the fact of admission of victim to Nandadeep Hospital. Said witness was cross examined by the defence. In the cross examination he stated that he has not stated before the police the portion marked 'A' in his statement. He admitted that there is no mention of demand of Rs.25,000/- for purchasing motorcycle at the instance of accused in his statement. There is also no mention that he, Balkrishna and Vasant went at village Aarle for conciliation. He also admitted that there is no mention in his statement about the fact that they had personally seen the injury marks on the person Rupali and that he

stated that accused nos. 1 and 3 scorched her with half burnt wood and ladle. There is also no mention about the transfer of bungalow and giving of fist and kick blows due to which the complainant suffered abortion. There is also no mention that she was taken to Nandadeep Hospital for treatment and tried to compromise.

14. P.W. No.5, is the medical officer attached to Nandadeep Hospital, Satara. She deposed that on 2nd August 2000, the complainant had been to the hospital for treatment. Her uncle and sister were also accompanied her. She had suffered from incomplete abortion. Process of abortion was started and at that time she was pregnant for two and half months. She examined her and advised admission in the hospital. She stated that the abortion is possible by fist and kick blows given on stomach. She deposed that the family members of the complainant including complainant were her regular patients. The abortion is possible due to mental torture. She issued certificate dated 3rd February 2002. The certificate was marked Exhibit 31. In the cross examination she deposed that certificate is not in her handwriting. She further stated that the hospital always keep records with regard to history of the patients. She deposed that the complainant had informed her that she suffered from pain in abdomen and bleeding and that she came from village Chinchner.

She further deposed that there is no violent marks on the person of Rupali. It was not forced miscarriage. She deposed that there was urgency for curating. She stated that if the patient had not been operated immediately, it could have resulted in her death. She examined the victim personally and seen hemorrhage and blood on her clothes. However, she did not notice any septicemia. She further stated that she did not prescribe any antibiotics. If there was unnatural miscarriage she might have prescribed antibiotics. She stated that if any patient referred to them, they firstly mention the previous treatment on the case paper. There is no such reference of previous treatment on their case paper. She also deposed that in the event of the abortion they consider the opinion of husband of the lady. She also stated that she cannot said firmly that patient to whom she operated was Rupali or not. She also stated that she cannot say whether the abortion was natural or unnatural. She also admitted that the abortion is possible after eating pumpkin, pineapple, curela / bitter gourd etc. She also stated that she knows uncle of the complainant as Vasant Kondiram Nimbalkar as he is her old patient. She further stated that uncle of the complainant told her that patient is Rupali and that she had no personal knowledge about their relations.

15. P.W. No.6, is the father of the complainant. He reiterated the facts narrated by other witnesses. He has stated that on account of demand of bungalow at Sainik Nagar, Satara, accused No.1 scorched complainant on her right cheek with half burnt wood and accused No.3 scorched her hand with a hot ladle. He also stated that complainant was severely beaten by accused Nos.1 and 3 on her stomach. At that time she had suffered abortion. He also referred to the fact that the victim was taken to Nandadeep Hospital, Satara for treatment. He deposed that at the relevant time the victim was beaten by accused persons. In the cross examination said witness stated that after the marriage of Rupali he never went to village Aarle. There is no mention in his statement recorded by police about scorching caused to the complainant by accused Nos.1 and 3 and also about the assault on stomach at the instance of the accused.

16. P.W. No. 7, is the investigating officer who collected the evidence and filed a charge-sheet. The omissions which had come on record in the evidence of witnesses were proved through the said witness. He admitted that he did not investigate about the contention in the complaint that in February 2001 complainant has filed complaint in Mahila Balvikas Centre at Satara.

17. The Trial Court considered the aforesaid evidence and for the reasons mentioned in the judgment, the accused were acquitted. The Trial Court has observed that the prosecution case rests on the evidence of witnesses who are closely related to the complainant. The Trial Court also referred to the improvements made by the witnesses during the recording of evidence. The Trial Court also observed that after getting knowledge of Hindu Marriage Petition No. 23 of 2002, the complaint was filed at the instance of the complainant. The Trial Court referred to the evidence of P.W. No.5 wherein she stated that she had not prescribed any antibiotics and admitted that if there was unnatural miscarriage she might have prescribed antibiotics. The Trial Court further recorded that the complainant was silent at the earlier point of time although there was assault on her stomach by kick and fist blows at the instance of the accused while she was pregnant and therefore, the Trial Court felt that the version of the complainant is after thought. The Trial Court further observed that the complainant through her Advocate had forwarded the notice on 4th February 2002, which was exhibited in evidence at Exhibit 20. However there is no reference to the issue of abortion in the said notice. The Trial Court, therefore, doubted the version of the complainant. The Court also referred to the evidence of other witnesses i.e. P.W. Nos. 2, 3 and 6 and opined that their evidence cannot be

accepted as it suffers from the serious omissions and contradictions. The Trial Court has also criticized the evidence of P.W. No.4 which is contradictory to the evidence of other witnesses. On the basis of the aforesaid observations the Trial Court observed that the prosecution has failed to establish the charges levelled against the accused persons and therefore, they deserve to be acquitted.

18. I have perused the evidence of the witnesses, the documents on record and the reasons assigned by the Trial Court for acquitting the accused persons.

19. It is settled law that the judgment of acquittal has obvious consequences of granting freedom to the accused unless the judgment in Appeal is contrary to evidence, erroneous, the Appellate Court shall be reluctant to interfere with such judgment.

20. Mr. Sait, learned APP for the State placed reliance upon the decision of the Supreme Court in the case of *Jodhan V. State of Madhya Pradesh*¹. In paragraph 12 of the said decision reference is made to another decision of the Apex Court in the case of *Ramesh Babulal*

¹ 2015 Cri. L.J. 3291.

Doshi V. State of Gujarat² in which the Apex Court has taken view that while considering the Appeal against acquittal, the Appellate Court is first required to seek an answer to the question whether the findings of the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable and if the court answers the above question in the negative, the acquittal cannot be disturbed. Reference is also made to another decision of the Supreme Court in the case of ***Ganpat V. State of Haryana***³. In that decision, the Apex Court has laid down the following principles which have to be kept in mind by the Appellate Court dealing with Appeal particularly against the order of acquittal.

- i. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.
- ii. The appellate court can also review the trial court's conclusion with respect to both facts and law.
- iii. While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.
- iv. An order of acquittal is to be interfered with only when

² (1996) 9 SCC 225: AIR 1996 SC 2035.

³ (2010) 12 SCC 59 : (2010) AIR SCW 7032.

there are 'compelling and substantial reasons' for doing so. If the order is 'clearly unreasonable', it is a compelling reason for interference.

v. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration / report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed.”

21. In the paragraph 13 of the aforesaid decisions, the Supreme Court has referred to decision in the case of *State of Punjab V. Karnail Singh*⁴ wherein it was observed that the paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence even where the accused has been acquitted for the purpose of ascertaining as to whether any of the accused committed any offence or not.

⁴ (2003) 11 SCC 271 : (AIR 2003 SC 3609).

22. In the light of the aforesaid observations and the law laid down by the Apex Court in several decision with reference to the principles to be considered while dealing with Appeal against order of acquittal, I am of the opinion that in the present case the prosecution has not been able to establish the case against the accused beyond all reasonable doubt. The prosecution case as stated above suffers from serious infirmities in the form of contradictions and omissions which goes to the root of the matter. I have perused the evidence of the witnesses minutely and I am of the opinion that the benefit of doubt ought to be given to the accused persons considering the nature of evidence brought on record by the prosecution. The evidence of the P.W. No.1 as stated herein above suffers from the infirmities which creates doubt the veracity of her evidence. It is also stated herein above while narrating the evidence of the said witness that the witness has not stated about the serious allegations which were deposed for the first time while recording the substantiative evidence. It is already noted that in the cross examination the said witness has stated that there is no mention in the complaint that accused Nos. 1 and 3 had assaulted her on stomach by kick and fist blows and that she was pregnant of two and half months. She has also admitted that there is no mention in a complaint that she told her father and uncle that accused demanded Rs.25,000/- and ill-treated her on that

count. She could not assign any reason for the said omissions. The learned PP however pointed out that in the FIR there is reference of the demand of Rs.25,000/- at the instance of the accused and in fact there is no omission with regards to demand. The learned Advocate for the Respondents however pointed out that there is contradiction in the FIR and that substantiative evidence of the said witness with regard to the demand of Rs.25,000/-. P.W. No.3 has stated that in his statement that complainant was at her matrimonial house for a period of two months. The evidence also disclosed that there is no reference of the complainant being treated at Nandadeep Hospital and the said fact has come up for the first time in the deposition before the Court. It is also pertinent to note that P.W. No.2 has stated in his evidence that even after the abortion which purportedly had occurred on account of the ill-treatment meted out to the complainant, there was an attempt of conciliation with the accused. It is difficult to accept that in the event of assault on stomach of the complainant resulting in abortion, there would be an attempt of reconciliation at the instance of relatives of complainant. It is also pertinent to note that there is no previous complaint with reference to the incident of scorching her right cheek with a half burnt wood and left hand with a hot ladle at the instance of accused Nos. 1 and 3. It is also noted that in the entire evidence there is no sufficient overact attributed

to accused No.2. The serious allegation of assault on stomach by accused which allegedly resulted in abortion is not reflected in the complaint of P.W. No.1. The demand of bungalow is attributed to accused No.3 in the complaint whereas in evidence it is attributed to accused No.1.

23. P.W. No.6, the father of the complainant had stated that he had never gone to matrimonial house of the complainant and every time the visits were made by his brother i.e. P.W. No.2. P.W. No.2 in the cross examination has admitted that there is no mention in the complaint that when he went to meet the complainant the accused were abusing her. There is no mention in the complaint that accused Nos. 1 and 3 had assaulted complainant by kick and fist blows on her stomach and at that time she was pregnant of two and half months and that she had suffered abortion at village Aarle. There is also no mention that she was taken to Nandadeep Hospital and similarly in the cross examination of P.W. No.3 it has come on record that the complainant has cohabited at village Aarle in all for a period of two months. It is not mentioned in the statement recorded by the police that the accused were ill-treating and abusing the complainant so also there is no mention that she resided there for three months. The witness further admitted that there is no reference to the fact that accused Nos.1 and 3 gave the fist and kick blows and thereby

suffered stomachache and which are resulted in abortion at village Chinchner. There is also no mention that the reason behind this is demand of Rs.25,000/- and the transfer of bungalow in the name of accused. There is also no mention that the complainant was treated at Nandadeep Hospital, Satara. The evidence of P.W. No.4 refers to the fact that he had accompanied Balkrishna and his brother Vasant and also about the attempt of conciliation. Even the evidence of said witness suffered from serious infirmities in the nature of the omission. He stated that in the police statement there is no reference to the fact that the accused was demanding Rs.25,000/- for purchasing motorcycle and that he along with Balkrishna and Vasant went to village Aarle for conciliation. There is also no reference that he had witnessed the injury marks on the person of the complainant and that she had stated that accused Nos. 1 and 3 had scorched her right cheek with a half burnt wood and left hand with a hot ladle. There is also no mention of the transfer of the bungalow and giving of fist and kick blows due to which the complainant suffered abortion.

24. In the light of the above omissions in the evidence of these witnesses it is difficult to accept the version of the said witnesses since it creates doubt about its genuineness and therefore the Trial Court has

rightly given the benefit of doubt to the accused persons. The learned APP has vehemently submitted that the demand of Rs.25,000/- made at the instance of accused is consistently proved by the witness. However, taking in to consideration the nature of evidence of all the witnesses it is difficult to accept the said version of the complainant. The serious allegations which were made at the instance of the complainant and the other witnesses have come on record for the first time in the substantiative evidence of which there was no reference nor there was any such complaint at earlier point of time. In view of the nature of evidence which was put forth by the prosecution it is difficult to convict the accused for the said offences. The prosecution has thereby failed to prove the charge which are framed against the accused persons. It is pertinent to note that the marriage was solemnized on 19th April 2000. According to P.W. No.1, she was treated well for about one and half month. Thereafter she was ill-treated. Thereafter she stayed with her parents for two months. Sh was again brought to matrimonial home and on account of alleged ill-treatment she was taken to her matrimonial home. She was purportedly treated at Nandadeep Hospital on 2nd August 2000. The father of complainant lodged complaint to Balvikas Mahila in February 2001. The witnesses have stated that the complainant had resided in matrimonial house for a short period. From August 2000

she is continuously residing at her parental home and there was no question of ill-treatment during the subsequent period. The FIR was lodged on 2nd February 2002. Surprisingly the FIR do not refer to serious allegation of assault on stomach and resultant abortion. All these circumstances creates doubt about the version of witnesses.

25. The learned APP for the State has strongly relied on the evidence of P.W. No. 5, Dr. Mahananda Shete. He submitted that evidence establishes that P.W. No.1 had to undergo abortion on account of ill-treatment and therefore this can be termed as mental and physical cruelty to the complainant which establishes the charge under Section 498-A of the IPC. While discussing the evidence of P.W. No.5, I have already referred to the nature of the evidence and the admissions given by the said witness in her cross examination first of all there is no reference of the complainant being treated at Nandadeep Hospital by the witnesses in their statements. The allegations of assault on the stomach of P.W. No.1 at the instance of accused Nos. 1 and 3 are not proved because there was no reference of said allegation in the statement before police. It is also pertinent to note that there is no contemporaneous record for examination of the complainant in the government hospital. There is also no record in the form of medical case papers when the patient was

admitted in the hospital of P.W. No.5. However, said witness has placed on record a treatment certificate which shows that the complainant was examined in the hospital. The said certificate was issued on 3rd March 2002. P.W. No.1 was allegedly examined on 2nd August 2000. Further it is a case of prosecution that the patient was treated in the said hospital at the earlier point of time and the certificate has been issued subsequently. In any case the certificate does not reflect the fact that the abortion was resulted on account of assault at the instance of accused persons. The medical officer had also stated in her evidence that there is practice of recording the history given by the patient, while the patient is being admitted in the hospital. No such history was brought on record to substantiate the fact that the patient was suffering from stomachache on account of assault or ill-treatment meted at the instance of accused persons.

26. In view of the nature of the evidence brought on record no reliance can be placed upon such evidence to convict the accused for the offences for which they were charged.

27. In the case of *K. Venkateshwarly Vs. State of Andhra Pradesh*⁵

⁵ AIR 2012 (SC) 2955.

the Supreme Court has held that, if the view taken by Trial Court is a reasonably possible view, the High Court cannot set it aside and substituted it by its own view merely because that view is also possible on the facts of the case. The High Court has to bear in mind that presumption of innocence of an accused is strengthened by his acquittal and unless there are strong and compelling circumstances which rebut that presumption and conclusively establish the guilt of the accused, the order of acquittal cannot be set aside. Unless the order of acquittal is perverse, totally against the weight of evidence and rendered in complete breach of settled principles underlying jurisprudence, no interference is called for with it. Crime may be heinous, morally repulsive and extremely shocking, but moral considerations cannot be substitute for legal evidence and the accused cannot be convicted on moral considerations.

28. In view of the aforesaid circumstances, I am not inclined to interfere with the decision of the Trial Court and I am of the opinion that the Trial Court has taken possible view which is not required to be set aside in the Appeal against acquittal. Hence I pass the following order:-

ORDER

1. Criminal Appeal stands dismissed.
2. No order as to costs.

(PRAKASH. D. NAIK, J.)