

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

CRIMINAL APPEAL NO.1051 OF 2007

The State of Maharashtra

...Appellant

Versus

Dhondu Bala Saigaonkar

...Respondents

.....

Mr. Prashant Jadhav, APP for the Appellant-State.

Mr. Saurabh Butala with Mr. Harshad Sathe for the Respondent No.1.

Mrs. Lakshmi Dhondu Saigaonkar is present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 16th NOVEMBER, 2017.

P.C.:-

Heard Mr. Prashant Jadhav, learned APP for the Appellant-State and Mr. Saurabh Butala for the Respondent. Perused the records.

2. The State has challenged the judgment dated 7th December, 2014 whereby the learned Judicial Magistrate, First Class, Mahad has acquitted the Respondent of offence punishable under Section 498 A of the IPC.

3. Before advertng to the facts of the case, it would be advantageous to refer to the judgment of the Apex Court in *Aruvelu &*

Anr. vs. State represented by the Public Prosecutor, (2009) 10 SCC

206, wherein it is observed thus :-

“39. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009(11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the

definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

4. Reverting to the facts of the present case, the records reveal that the Respondent married to the first informant (PW1) on 20th December, 1995. They resided in the matrimonial home at Alibag and later at Mahad. The first informant had claimed that on 16.8.1997 and again on 9.9.1999 the Respondent had assaulted her. She further claims that the Respondent had demanded dowry in July-2001 and again in August-2001.

5. The learned Judge after having assessed and appreciated the evidence on record, has held that the evidence of the first informant does not disclose that the Respondent had subjected her to cruelty. The learned Judge has further held that mere domestic quarrel does not amount to cruelty within the meaning of Section 498 A of the IPC. The learned Judge has further held that evidence adduced by the prosecution also does not disclose demand of dowry. In view of the

said findings the learned Magistrate held that the essential ingredients of the offence under Section 498 A have not been proved and hence acquitted the Respondent-accused. In my considered view the findings rendered by the learned Judge are based on evidence on record. The view taken by the learned Judge is a probable view. The order does not suffer from any illegality or perversity and hence does not warrant interference.

6. The learned counsel for the Respondent has also submitted that the parties have arrived at a settlement and have resolved the dispute amicably. He has submitted that the consent terms have been filed in DV proceedings pending before the learned J.M.F.C., Panvel. He has placed on record copy of the application under Section 12 of the DV Act as well as the consent terms filed before the Magistrate. The first informant, who is present before the Court also concedes that the dispute is amicably resolved and that they have filed the consent terms before the learned Magistrate at Panvel. Copy of the consent term is taken on record and marked 'x' for identification. The learned counsel for the Respondent, under instructions submits that the Respondent will abide by all the terms and conditions incorporated in the said consent terms filed before the learned Judicial Magistrate,

First Class, Panvel in DV proceedings No.964 of 2012 on 19th August, 2016.

7. In the light of above, I do not find any reason to interfere with the judgment dated 7th December, 2014. Hence, the Appeal is dismissed.

(ANUJA PRABHUDESSAI, J.)