

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

**CRIMINAL APPEAL NO.1049 OF 2002**

The State of Maharashtra )....Appellant

V/s.

Shashikant Ballkrishna Kadam & Ors. )....Respondents

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Ms.S.V.Sonavane APP for the appellant-State.

None for respondents.

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**CORAM : K.R.SHRIRAM,J**

**DATE : 6.5.2019**

**P.C.:-**

1. The prosecution has impugned an order dated 25.6.2002 passed by the Sessions Judge, Satara acquitting the accused of offences punishable under Sections 306, r/w 498A r/w 34 of IPC.

2. The name of the deceased was Jayashree. She was married to accused no.1. Accused nos.2 & 3 were the brothers of accused no.1. Accused no.3 died before framing of charge. The case proceeded only against accused nos.1 & 2.

3. Deceased and accused no.1 had an intercaste marriage which was performed against the wish of the parents of accused in the

year 1981. It has come in evidence that the parents of the deceased were totally against intercaste love marriage. Deceased was not in visiting or talking terms with her parents and her family had totally severed all connections with the deceased. Deceased and accused no.1 had one daughter. On 13.9.1996, more than 7 years after her marriage to accused no.1, deceased as well as the child were found dead in a Well which was about 11 or 12 k.m. away from her matrimonial home. The prosecution examined 8 witnesses and the star witness of the prosecution was PW-2 who is the younger brother of the deceased. The defence also examined one Shrinivas Krishnath Babar (DW 1), Branch Manager of Yashodeep Credit Society (YCS).

4. The Court after considering the entire evidence of prosecution has come to the conclusion that the prosecution case has miserably failed and the accused cannot be held guilty of abetting the deceased to commit suicide on account of her being subjected to ill-treatment or failure to meet the demand of Rs.50,000/-. The Court has also come to the conclusion that the prosecution has failed to prove that prior to 3 years of 13.9.1996 (the date on which the deceased was found dead), accused no.1 and accused nos.2 & 3 in furtherance of their common intention from time to time subjected deceased to cruelty for not meeting the demand of Rs.50,000/-.

5. Relying on the evidence of PW-2-the brother of the deceased, the prosecution alleged that though the family of the deceased were in inimical terms with her and her husband, over the years the anger had thawed and the deceased used to meet PW-2 of and on in the local market. It is also stated that the deceased used to tell PW-2 about the ill-treatment meted out to her with physical assault by accused no.1 who was demanding a sum of Rs.50,000/- to set up a stationery and cutlery store. It is alleged PW-2 from time to time gave Rs.4000 to Rs.5000 (about 4 occasions) but he could not give any more money because he was constructing a house for himself. The deceased had another brother who was a Medical Practitioner, her mother and sisters. None of them were even in touch with the deceased after she married accused no.1 against their wishes. The prosecution also relied on the evidence of PW-3, Chairman of Mahila Mandal, who stated that the deceased used to work in the shop of her husband, i.e., accused no.1 and whenever she went to the shop, deceased used to keep telling her about the physical and mental ill-treatment meted to her by accused no.1. The prosecution relied upon evidence of one Shivprasad Eknath Kumbhar (PW-4) who claims to have seen accused no.1 physically beat deceased on 10.9.1996 just about 3 days before her suicide and that accused nos.2 & 3 were

present during the incident. The prosecution has also relied upon the evidence of PW-6, Ashok Maruti Lukade, who claims to have heard from his house a quarrel on 10.9.1996 and when he went to find out what the commotion was, he saw deceased was being beaten by accused no.1 in the court yard and she was weeping. PW-6 also claims to have seen accused no.3 but he was silent about the alleged presence of accused no.2. The Court has very well analyzed evidence of each of the witnesses. The Court has come to the conclusion that evidence of none of the prosecution witness can be accepted.

6. As regards PW-2, the Court has observed that even though PW-2 states that his sister used to tell him whenever they met each other in the market about physical and mental torture by accused no.1 and demanding Rs.50,000/- as dowry, PW-2 never thought it fit to mention this to anybody including to his brother who was a medical practitioner or to his mother. The Court has also noted that PW-2 has also not thought it fit to lodge a complaint against accused no.1 to the police for dowry demand and physical assault of his sister. The Court felt that in view of the admitted enmity between the family of PW-2 and accused no.1 for reasons mentioned above, one would have expected PW-2 to lodge a complaint with the police. Even PW-2 would have informed his Doctor brother, his mother and others in the

family, which has not been done. Moreover, the Court has also observed that soon after the marriage of the deceased with accused no.1, PW-2 had also lodged a complaint of theft against the deceased.

7. So far as PW-3 is concerned, the Chairman of the Mahila Mandal, the Court has noted, and rightly so that deceased never went to PW-3 to lodge a complaint about alleged ill-treatment of accused no.1 but purportedly used to inform PW-3 about physical and mental ill-treatment. The Court found it surprising, and rightly so, that being the Chairman of Mahila Mandal, PW-3 did not find it necessary to solve problem of the deceased or even inform the police or any other police officer about ill-treatment of the deceased. The Court had also noted that the deceased never informed PW-3 about the demand of money allegedly made by accused no.1 and on that count he was ill-treating her. The Court has doubted the credibility of the evidence of PW-3 about the alleged ill-treatment meted out to deceased by the accused and also has noted that the accused no.1 and PW-3 belong to rival groups in Gram Panchayat. As regards PW-4 and PW-6 also there is an observation that accused and these witnesses belong to rival groups in the Gram Panchayat. The Court also has found discrepancy in the evidence of these 2 witnesses in as much as PW-4 states beating time was 3.00 P.M. and he saw accused nos.2 & 3 were also present,

whereas PW-6 states that it was around 12.00 to 12.30 P.M. and only presence of accused no.3 is mentioned.

8. The Court has believed the stand of the defence in as much as the relationship between the deceased and accused no.1 was perfectly fine. It was the case of the prosecution that the complainant and the family members of the deceased had severed relation with the deceased in view of the love marriage with accused no.1. It is the case of the defence that after the marriage, the accused no.1 started a shop by erecting a shed at a place on rent and borrowed money from YCS and also repaid the loan. It is also stated that accused no.1 had purchased 2 properties in the name of the deceased and also deposited money in her account and the account of their daughter. The Court has, however, disbelieved the case of the defence that the deceased was on her way to meet her in-laws and got down at Nimsod approach road when she realized she was in a wrong tempo and while she went to drink water, fell in to the Well. The Court has disbelieved the story of the prosecution and has come to the conclusion that there was no evidence to prove that the accused from time to time subjected deceased Jayashree to cruelty and harassment for not meeting the demand of Rs.50,000/- and abetted the deceased to commit suicide for not meeting the demand of Rs.50,000. The Court has also considered

evidence of manager of YCS wherein the fact that accused no.1 had borrowed money from YCS for starting stationery shop and that accused no.1 also repaid loan has come on record. The Court, from the records, has also accepted the fact that accused no.1 purchased 2 properties in the name of his deceased wife and also was making daily deposit in her 4 pygmy accounts. In the background of all these facts, the trial Court has concluded that there was absolutely no possibility that the deceased would have been subjected to harassment and ill-treatment by accused no.1.

9. I have also considered the impugned judgment, the evidence of all the witnesses and I am totally in agreement with the analysis of the trial Court.

10. The Apex Court in <sup>1</sup>***Chandrappa & Ors. Vs. State of Karnataka*** has after considering many judgments, laid down the general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal. Paragraph-42 of the said judgment reads as under :-

*“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of*

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<sup>1</sup> (2007) 4 Supreme Court Cases 415

*acquittal emerge :*

*(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded ;*

*(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law ;*

*(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion ;*

*(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly , the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court ;*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”*

11. Even if we are unable to accept the stand of the accused that deceased with her daughter had gone to meet her in-laws, whereas her in-laws were in village Mayani, still, the burden is on the prosecution to prove beyond reasonable doubt that the accused were guilty of the charges levelled against them. The evidence of PW-2, PW-3, PW-4 and PW-6 does not enthuse confidence. We have already dealt with the lacuna in the evidence of PW-2, PW-3 and the contradiction in the evidence of PW-4 and PW-6.

12. Therefore, applying the principles laid down in ***Chandrappa & Ors.*** (supra) to the case in hand, I do not see any reason why this Court should disturb the findings of acquittal recorded by the trial Court. In my view, if in the light of the facts and circumstances and based on the evidence, the Court held that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. The appeal is therefore, dismissed.

The bail and bond if any, stand cancelled.

**(K.R.SHRIRAM,J)**