

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.507 OF 2003**

The State of Maharashtra)Appellant

V/s.

1. Hanmant Mahadev Yadav-Solaskar	)	
25 years Occupation – Service	)	
2. Mahadev Dagadu Yadav-Solaskar	)	
60 years Occupation – Agri	)	
3.Hemant Mahadev Yadav-Solaskar	)	
33 years Occupation – Agri	)	
4. Sangita Govind Bhoite	)	
30 years Occupation – Household	)	..Respondents/Accused

Ms Pallavi Dabholkar APP for State/Appellant
Mr. Sharad Bhosale i/b Mr. Dilip Bodake for Respondents

CORAM : K.R.SHRIRAM, J.
DATE : 27th NOVEMBER 2019

ORAL JUDGMENT :

1 This appeal is filed impugning Judgment of acquittal passed on 30-11-2002 by the Learned Judicial Magistrate First Class, Koregaon, thereby acquitting the accused for the offence punishable under Section 498A (*Husband or relative of husband of a woman subjecting her to cruelty*) r/w 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code.

2 It is the case of complainant that she was married to accused no.1 on 21-5-1998. Accused no.2 is the father of accused no.1, accused no.3

is the brother of accused no.1 and accused no.4 is the sister of accused no.1. Accused no.1 was working at Mumbai and he used to go home in the village once in a month. Complainant was residing at her matrimonial home in village Solshi along with accused nos.2 to 4. It is the case of complainant and prosecution that the accused started ill-treating complainant two months after the marriage because complainant was physically challenged or was handicapped, what was the challenge or handicap is not stated, but in one of the statements, I found "complainant was a lungdi". Lungdi in Marathi means lame. The Accused were harassing and ill-treating complainant because she was unable to do any domestic work, they were giving stale food to her, they also threatened complainant that they will perform second marriage of accused no.1 etc. Complainant by letter dated 15-12-1999 (Exhibit -39) told all these things to her father. After getting the letter, complainant's father along with some respectable persons went to the house of the accused and tried to make them see reason. The attempt of complainant's father to persuade the accused not to ill-treat complainant and to permit accused no.1 and complainant cohabit peacefully, were in vain. As the accused did not listen to them, the father of complainant took away complainant to his house and she has been residing at her paternal house since then. Complainant then lodged a complaint and the police after due investigation filed the charge sheet. The charges were framed under Section 498A read with Section 34 of the IPC. All the accused pleaded not

guilty. In his statement recorded under Section 313, accused no.1 has admitted that he was the husband of complainant, accused nos.2 to 4 are his relatives and he got married to complainant on 21-5-1998, that he was working at Mumbai and complainant was residing at the matrimonial home at village Solshi and accused nos.2 to 4 were also residing there and that he was visiting his village once in a month. Accused no.1 has, however, denied the allegations that complainant's father with three of his friends namely P.W.-2, P.W.-3 and P.W.-4 visited the matrimonial home to convince the accused to live peacefully with complainant. According to accused no.1, complainant did not want to cohabit with him and therefore, this case has been filed. All the accused, therefore, denied the allegations and claimed to be tried.

3 After considering the evidence, the Trial Court has acquitted all the accused and this appeal is filed impugning that order of acquittal.

4 P.W.-1, who is complainant, in her deposition has stated that the accused were ill-treating her saying that she was handicapped and could not do domestic work and the accused were giving her stale food. P.W.-1 states that she sent a letter on 15-12-1999 to her father because accused nos.2 to 4 were threatening her that they will be performing second marriage of accused no.1. P.W.-1 also states that accused nos.2 and 3 demanded

Rs.5000/- for a flour mill, which father of P.W.-1 paid and they again demanded Rs.10,000/- for purchasing a tractor. Even in circa 1999, I don't think a tractor could be bought for Rs.10,000/-. P.W.-1 states that these facts have been stated in her letter dated 15-12-1999 (Exhibit 39). After receiving the letter, father of complainant together with P.W.-2, P.W.-3 and P.W.-4 visited the matrimonial home and tried to convince the accused to permit complainant to live peacefully with accused no.1. The accused did not pay any heed to them. It is also stated that accused no.2 informed complainant's father and P.W.-2, P.W.-3 and P.W.-4 that he was performing second marriage of accused no.1 and complainant was sent away to her paternal home and a complaint came to be lodged by complainant.

5 What is glaring here is that there is no allegation that accused no.1 husband made any demand for money. The father, who is alleged to have paid Rs.5000/- for flour mill to accused nos.2 to 4, has not been called to give evidence. Therefore, on this point alone, the charge of Section 498A cannot stick against accused no.1. Complainant states at the time of marriage a sum of Rs.60,000/- was given as dowry to the accused. But admittedly, there is no evidence even for that.

6 P.W.-1 also states that when her father and P.W.-2, P.W.-3 and P.W.-4 visited the matrimonial home, after receiving the letter (Exhibit 39),

they never discussed about the letter (Exhibit 39). It is the case of defence that Exhibit 39 is a document, which has been cooked up to make out a case under Section 498A. P.W.-1 also states that this complaint was lodged three months after she left the matrimonial home. The complaint is dated 23-4-2000. P.W.-2, who is supposed to have accompanied the father of complainant, has parroted the demands as listed by complainant. P.W.-2 does not say anywhere that these demands were made in his presence. P.W.-2 also does not say anywhere that complainant was harassed or ill treated in his presence. P.W.-2 states that the accused were beating complainant and kept complainant in the cattle shed. Strangely, complainant does not say she was beaten or kept in the cattle shed. P.W.-2 says that in 1999 he along with P.W.-3, P.W.-4 and complainant's brothers Suresh and Sunil has been to the house of the accused. None of other witness have mention the presence of Suresh and Sunil at the time of the alleged settlement meeting. Suresh and Sunil, the brothers of complainant are also not called to give evidence. Therefore, neither father or the brothers of complainant have been called to give evidence and P.W.-2, P.W.-3 and P.W.-4 are outsiders.

7 P.W.-2 also admits that in his statement made in the examination in chief that the accused were beating and keeping complainant in the cattle shed, has not been mentioned in his statement

recorded by the police. Therefore, there is a clear omission here.

8 Similarly, P.W.-3 has reproduced the so called demands, but does not say he ever saw complainant being ill-treated or the demands were made in his presence. Like P.W.-2, P.W.-3 also states that the accused were keeping complainant in the cattle shed, which is not stated by complainant in her examination in chief. P.W.-3 says that all these things were told to him by complainant, which means he has not personally seen the demands being made or complainant being ill-treated. P.W.-2 says that when they went to meet the accused along with the father of complainant, complainant's brothers also accompanied them. P.W.-3, however, does not mention anything about the brothers Suresh and Sunil. Strangely, P.W.-3 says once he had been to convince the accused and in next sentence he says we tried 3 to 4 times to convince the accused. When P.W.-3 has gone only once, even assuming that is correct, how does he say "we tried 3 to 4 times" ? P.W.-3 states on the last occasion the accused flatly refused to cohabit with complainant and abused them. P.W.-3 has gone only once and none of the other witnesses have stated that the accused abused them. P.W.-3 states the letter at Exhibit 39 was received on 15-4-1999 and he read it on the next date. Letter is dated 15-12-1999. How does he receive a letter dated 15-12-1999 on 15-4-1999, when Exhibit 39 has been addressed by complainant to her father, who is supposed to have received the letter. But

the letter is not produced through the father because the father has not been called to give evidence. There is no re-examination either. P.W.-1 states her father, P.W.-2, P.W.-3 and P.W.-4 visited the matrimonial home after receiving the letter "Exhibit-39" and as the accused did not agree to treat complainant to live peacefully with accused no.1, complainant went to her parental home. Complainant also says that she filed this complaint three months after the letter was written. P.W.-1 says that this complaint was lodged three months after complainant left the matrimonial home. The complaint is dated 23-4-2000, which means the letter would have been received at least three months before. How does P.W.-3 says that the letter was received on 15-4-1999 ?. This witness also is unreliable. Moreover, P.W.-3 also admits that his statement in his examination in chief that the accused gave stale food to complainant and were keeping her in cattle shed, is not mentioned in his police statement.

9 P.W.-4 like P.W.-2 and P.W.-3 also states that the accused kept complainant in the cattle shed, when complainant does not say she was kept in the cattle shed. P.W.-4 states that the accused stated that they will permit complainant to cohabit with accused no.1 if, her father pays them. None of the other witnesses have stated that during the meeting any of the accused stated that they will allow complainant to cohabit with accused no.1 only if father of complainant pays them. P.W.-4 also does not say who made that demand or put the condition.

10 The best witness would have been the father of complainant and for some strange reasons, he has not deposed. The witnesses listed with the charge sheet are P.W.-2, P.W.-3, P.W.-4, Shivaji Bhoite, Chabutai Shivaji Bhoite, Suresh Shivaji Bhoite and Sunil Shivaji Bhoite, Vatsala Bhoite and A. V. Deshmukh, Police Fauzdar. None of these other witnesses have been examined and there is no explanation as to why they were not produced as witness. Suresh Bhoite and Sunil Bhoite appear to be the brothers and Shivaji Bhoite appears to be the father of complainant. Chabutai Bhoite appears to be the mother of complainant.

11 It is settled law that if prime witnesses are not examined, it would result in miscarriage of justice. Considering the above, I see no error in the Trial Court's judgment.

12 I must also mention that the Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

*“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;
(1) An appellate Court has full power to review, reappraise and*

1 (2007) 4 SCC 415

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 emphasize 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 the accused. Firstly, the presumption of innocence 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 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."

13 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused 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, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court has rightly observed that the prosecution had failed to prove its case.

14 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)