

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

CRIMINAL APPEAL NO. 745 OF 1997

The State of Maharashtra
(Through Karveer Police Station)
Vs.

... Appellant
(Org. Complainant)

Babasaheb @ Krishnat
Durgappa Powar
Age 27 Years,
R/o Parite, Taluka Karveer,
Dist. Kolhapur.

... Respondent
(Org. Accused)

...

Mr. J.P. Yagnik, APP for the Appellant-State.
Mr. S.A. Ingawale for the Respondent-Accused.

...

**CORAM : INDRAJIT MAHANTY &
PRAKASH D. NAIK, JJ.**

**RESERVED ON : 22nd NOVEMBER, 2018
PRONOUNCED ON : 7th JANUARY, 2019**

JUDGMENT (PER : PRAKASH D. NAIK, J.)

1. This is an appeal under under Section 378(1) of Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 30th June, 1997 passed by Additional Sessions Judge, Kolhapur in Session Case No. 206 of 1996.
2. The Respondent accused was charged for an offence punishable under section 498-A, 306 of Indian Penal Code. The

prosecution case as emanates from the evidence of P.W. No.3 Hanumant Balu Gadivadar (father of deceased Kamal) is that Respondent/accused is the husband of deceased. Their marriage was solemnized in June, 1995. According to the said witness after the marriage, his daughter Kamal had joined the matrimonial home. The accused was residing with his brother Balu and his wife. After few days from the marriage P.W. No.3 went to the house of his daughter Kamal to invite her and at that time Kamal had stayed with her parents for about seven to eight days and then again returned to her matrimonial home. She was again brought for 'Panchami festival' at parental home and she stayed with her parents for five days. P.W.3 had again visited her daughter's house to invite her for Gauri festival but she was not sent to parent's house. Even on Dasehra, Kamal was not sent to her parental home. About eight days prior to Diwali festival, P.W.3 had gone to her daughter's house to invite her and at that time she had accompanied him to parental home. On inquiry about her well being, Kamal had disclosed to P.W.3 that her husband is assaulting her and she is subjected to ill-treatment. She also disclosed that her husband used to twist her hand and attempted to press throat. The accused told her that if she dies he would perform another

marriage. She also disclosed that she had seen her husband (accused) sleeping with his sister-in-law (wife of Balu i.e Rekha). Accused visited the house of the complainant after about 15 days from Diwali Festival to take Kamal back to her matrimonial home, however she did not accompany him. 15 days thereafter he again came to take Kamal back to her matrimonial home. Since the mediator was not present Kamal was not sent with accused. Thereafter accused came with two persons with him to take Kamal back to his house. P.W. No.3 went to call police patil of village. However, the accused had left the house before his arrival. However, the brother of the accused was waiting at the house of the P.W.3/complainant. Police Patil made inquiry with him. Brother of accused gave assurance that they would give good treatment to Kamal. On the next day, accused and his brother came to the house of the complainant to take Kamal to house. Police Patil was called. The accused and his brother gave assurance that they would treat her well. She was sent with them. On 1st February, 1996, brother of accused, by name Maruti came to house of P.W.3 with tempo. He told PW3 that Kamal is not keeping well and she has been admitted in the hospital. She is insisting that she wants to see her parents and they should

accompany him. P.W. No.3, his wife, mediators Kafanna and Bhima Gargoti and took his mother in law Hanmarra and went to the village of accused i.e Parite. Maruti took them to house of accused. Thereafter they visited CPR hospital, Kolhapur, in different vehicle and saw deadbody of Kamal. There were ligature marks on the throat of deceased. On inquiry P.W. No.3 told the police to hand over the dead body of the deceased to the accused as he was not feeling well. Thereafter dead body was carried to village Parite and funeral was completed and PW 3 had gone back to his village. On the next day, he visited Karveer Police Station, Kolhapur and lodged the complainant against the accused. FIR was registered on 3rd February, 1996. On completing investigation, chargesheet was filed.

3. Charge was framed on 24th February, 1997 for the offences under sections 498-A, 304B and 306 of Indian Penal Code before the trial Court. Prosecution examined nine witnesses. P.W. No.1 Nana Tukaram Chougule is the panch witness for the spot panchanama. P.W. No.2 Subhash Powar is nephew of accused. He provided information to the police about death of Kamal. P.W. No.3 Hanmant Gadivadar had lodged the complaint against the accused. He is father of deceased Kamal. P.W. No.4 Kanfanna

Gadivadar is the mediator. He has not supported to the prosecution case. He was declared hostile. P.W. No.5 Subhash Jadhav is the village Police Patil. P.W. No.6 Smt. Shewanta Gadivadar is the mother of deceased Kamal. P.W. No.7 Smt. Sonabai Gadivadar is the aunt of deceased. P.W.No.8 Shivaji Yadav was PHC posted to Karvir Police Station and P.W. No.9 Madan Patil was attached to Karvir Police Station Kolhapur as Police Inspector.

4. After examination of witnesses and recorded the statement of accused was recorded under Section 313 of Code of Criminal Procedure. The defence of accused reflected in the said statement is that his family is well educated and reputed. He has no concern with incident. At the time of funeral, parents and other relatives of deceased were present alongwith him. On next day, father of deceased demanded an amount of Rs.50,000/-. He also told that atleast accused should make arrangement to pay the amount of Rs.25,000/- otherwise he will lodge the complaint against accused. However, he did not pay the amount. Hanmanta alongwith his brother and relatives visited police station and lodged complaint against accused alleging that he had relations with Rekha etc. which is false. The story has been made out by complainant at the

time of lodging the complaint. Learned 3rd Additional Sessions Judge Kolhapur vide judgment and order dated 30th June, 1997 acquitted the Respondent accused for the offences under Section 498-A, 304B, 306 of Indian Penal Code.

5. The trial Court after analysing the evidence relied by the prosecution had arrived at the findings that the prosecution has not proved the offence beyond reasonable doubt. It was also observed that there are two probabilities, and probability in favour of the accused would prevail. The prosecution has not proved that deceased was subjected to cruelty by the accused beyond all realm of doubt. It was further observed that there is no sufficient evidence to establish that deceased was subjected to cruelty. In the absence of specific act of commission and omission, the Court is not in a position to decide whether the conduct of the accused amounted to cruelty within the meaning of Section 498A of Indian Penal Code. The vague statement that the deceased was tortured to cruelty is not sufficient to attract of said provision. The provision of section 113 A of the Evidence Act could be invoked only when the prosecution discharged its initial onus of proving that accused subjected his wife to cruelty and that she has committed suicide due to cruelty. The prosecution has failed to

establish that the accused was having illicit relationship with wife of his brother. No complaint was lodged in that regard and version of witnesses is coming up after the death of deceased.

6. Learned APP Shri J.P. Yagnik submitted that judgment of the trial Court is erroneous. It is contrary to evidence on record. He further submitted that evidence of P.W No.3, P.W. No.5, P.W. No.6 and P.W. No.7 establishes that deceased was subjected to cruelty by the accused. Said witnesses have deposed that victim was subjected to harassment. She was assaulted by the accused. He was having illicit relationship with Rekha. Deceased had protested about the same. The said fact caused immense mental torture to the deceased. It is further submitted that trial Court has ignored the presumption under Section 113A of Indian Evidence Act which relates to abetment as to suicide by married women. The marriage in this case was solemnized in June, 1995 and the wife had committed suicide on 1st February, 1996. Mr. Yagnik submitted that wife of accused had committed suicide within a period of seven years from the date of her marriage and therefore it will have to presumed having regard to all circumstances of the case that suicide has been abetted by her husband. It is submitted that the presumption under section 113B of the Evidence Act has to be

invoked in the present case. The said presumption relates to dowry death. Minor omissions or contradictions would not demolish the prosecution case. The evidence of independent witness. P.W.5, Police Patil has supported prosecution case. The complainant was in a disturbed state of mind. He was not keeping well and had reached at odd hours at the village of accused and in the circumstances did not lodge complaint on same day and body of deceased was handed over to accused. Death was caused by hanging. Deceased had informed her family about ill-treatment and illicit relationship of accused.

7. Learned counsel for the Respondent accused Shri Ingawale submitted that there is no perversity in the finding of the trial Court. The judgment is based on analysis of the evidence adduced by the prosecution and in the light of the evidence the trial Court has rightly acquitted the accused. It is submitted that trial Court has categorically observed that prosecution has failed to establish that deceased was subjected to cruelty. The trial Court has also arrived at finding that the case of the prosecution that accused was having illicit relationship with wife of Balu is not proved beyond reasonable doubt. Although, it may be proved that wife has committed suicide, the prosecution is required to establish that the

accused has abetted in commission of suicide by wife. The evidence of Police Patil, evidence of father, mother and aunt of the deceased does not inspire confidence. The FIR was lodged belatedly. The complainant had not made any grievance against the accused and he had consented for handing over the dead body of deceased to accused and thereafter funeral was performed at village Parite which was attended by PW 3 and others. The complaint was lodged thereafter which is afterthought. There are no previous complaints. The trial Court has taken a plausible view which do not require interference in appeal against acquittal.

8. Having heard both the sides, we have minutely scrutinized the evidence on record. The prosecution has examined nine witnesses. Although, we find that judgment of the trial Court is not happily worded with regards to finding recorded in relation to issue No.1 with regards to suicide committed by wife of accused by hanging at Parite in the house of accused as not proved, the analysis of evidence and further finding recorded on the basis of evidence qua cruelty, abetment of suicide would not vitiate the impugned judgment and order.

9. P.W. No.2 is the nephew of the accused. He had provided information about the death of the deceased to police vide Exh.21.

In his cross-examination he has deposed that the financial position of the accused was sound. Kamal had told him that she did not allow accused working in stone quarry. He further deposed that there was no trouble on the part of the accused to Kamal. After Postmortem, dead body was handed over to the accused for last rites. Parents of Kamal (deceased) alongwith other relatives were present. On inquiry by the police, the parents told that they have no grievance to hand over the dead body of the deceased to accused. Thereafter cremation was done jointly by the accused and relations of the deceased. P.W. No.3 is the father of the deceased. He has deposed that Kamal had visited parental home and there was attempted by the accused to take her back to matrimonial home. Initially, Kamal was not sent back with accused and subsequently on assurance of providing good treatment, Kamal was sent back to husband's house. After a period of one and half months thereafter Kamal committed suicide. From his evidence, it is apparent that accused was interested in taking Kamal back to matrimonial home. He had repeatedly visited complainant's house in that regard. From his cross-examination, it can be seen that after Diwali, Kamal had stayed with them for a period of about three months. No attempt was made by him to

inform the police about the grievances made by his daughter. He did not lodge any complaint with the Police Patil about the ill-treatment to his daughter. Even Police Patil did not tell him to lodge complaint. Police had asked him as to whom dead body is to be handed over and he had stated that he has no objection to deliver the dead body to accused. He was asked by the police whether he was having any objection to this effect. On stating that he has no grievance against the accused, the deadbody was given to accused. The complainant and his wife attended the funeral. They went to their village and thereafter FIR was lodged on 3rd February, 1996.

10. P.W. No.4 had allegedly acted as mediator. He has not supported the prosecution case. The witnesses was declared hostile. P.W. No.5 is the Police Patil of the village. He has stated that P.W. No.3 had told him that there was a dispute between Kamal and her husband. Her husband had come to fetch her back. The witness met accused and his brother and convinced them to behave properly and to avoid quarrels and allow Kamal to cohabit happily. Accused gave assurance that they would give good treatment to Kamal. In the cross-examination, it is deposed that being Police Patil, he is required to record FIR concerned with

cognizable offence or to give information about the same to the police. He has not recorded the complaint with regards to grievance of Kamal. He had not informed about the same to the police station before 3rd February, 1996 there was no information about cognizable offence to him in connection with Kamal and therefore he had been informed the concerned police station about it. P.W. No.6 is the mother of the deceased. She has reiterated the version of complainant. She has deposed that Kamal had informed her about the illicit relationship of accused with wife of his brother. In the cross-examination she has deposed that on disclosure of alleged ill-treatment by their daughter, she or other family members and even mediators had not gone to the village of accused in that context to ask the accused about the same as he was always involves in quarrels. The witness denied that Kamal had come to the house at the time of Panchami Festival and that son-in-law came to call Kamal after about month and contradicted her statement before the police. She has denied that she had told the police that there is no grievance against the accused on their part and thereafter dead body was given to the accused. However, she has deposed that she had not told the police that the accused is the person who is responsible for death of her daughter and he

should be arrested. They came to hospital in the night. After the funeral, they left the village of accused. Police were there in the hospital when they visited hospital to see their daughter. They attended funeral at Parite. P.W. No.7 has deposed that she is the aunt of deceased. She was residing in the same village. Kamal had told her that accused is having illicit relationship with wife of his brother and she had seen them sleeping on two to three occasions. Kamal told her that once accused had lost his chain and on search it was found in pocket of the accused. She also told that accused gave threats to Kamal. She has stated that she had not come to Parite as well as Kolhapur on death of Kamal alongwith her mother. She had not stated before the police that her brother told her about disclosure of ill-treatment to Kamal and thereafter she made inquiry with her to that effect. P.W. No.8 is PHC attached to Karvir Police Station. He has deposed that on 2nd February, 1996 he recorded the statement of various witnesses. Nothing was transpired about the commission of any offence in these statements and therefore the offence was not registered. He also deposed that on the say of the parents of deceased dead body was given in the custody of the accused. On 2nd February, 1996 there was no grievance of parents against the accused and

therefore the offence was not registered. P.W. No.9 was attached to Karvir Police Station as Police Inspector. He had conducted further investigation. He had recorded the statement of witnesses. In the cross-examination it is stated that he had recorded the statement of number of witnesses to investigate as to whether there is substance in the allegations that the accused had illicit relationship with Rekha. The statement of neighbours were also recorded. However, nothing incriminating was transpired against the accused in those statements.

11. On analysis of the aforesaid evidence, it is apparent that the incident of death of the deceased had occurred within one year after marriage. It is also evident that Kamal (deceased) had visited her parent's house and although accused made attempts to bring her back, initially, the family of the deceased had refused to send back her to matrimonial home. Subsequently Kamal was allowed to go with accused. There are no previous complaints. The evidence of the witnesses does not disclose that the accused had made any demand of dowry at any point of time. P.W 3 has stated that victim had disclosed to him that accused is assaulting her and giving ill-treatment. The reason for ill-treatment stated by victim to P.W.3 is that accused is having illicit relation with Rekha.

The question which falls for consideration is whether the accused have caused cruelty to the victim as envisaged under Section 498A of Indian Penal Code and abetted the deceased to commit suicide or committed the offence of dowry death. The evidence depicts that after the information was provided to the parents of the deceased that victim is ailing and she had been hospitalized the complainant and his wife had proceeded to the village of the deceased. It also apparent that P.W.3 had picked up his relative as well as one mediator while proceeding to house of accused. Thereafter it was learnt that the Kamal has expired and there was ligature mark on her throat. From the cross-examination of P.W. No.3 it can be seen that he did not make grievance against the accused and consented for handing over dead body of deceased to him. The complainant and other relatives of the deceased had participated in funeral rites of deceased and thereafter they left for their village and thereafter the FIR was lodged. P.W.No.6 has deposed that they had grievance against the accused. The evidence of witness shows that police were present in the hospital on the occasion when she alongwith others went to see dead body of deceased. Dead body was given to the accused by police, she attended last rites. Witnesses had not told the police that the

accused is the person who was responsible for death of their daughter and he should be arrested. It is also relevant to note that the evidence of P.W. No.8 refers to recording of statement of various witnesses on 2nd February, 1996 and nothing was transpired about the commission of any offence in those statement and therefore offences was not registered. There was no grievance of parents of the deceased and hence FIR was not registered. From the evidence of P.W. No.9 it is evident that statement of various witnesses were recorded and nothing incriminating regarding allegations that the accused had illicit relationship with the brother's wife was noticed. Thus, there was no evidence to support the allegations that the accused had any illicit relationship as alleged by the complainant and others. Independent witness P.W 4 had turned hostile. Police Patil (P.W.5) has not referred to alleged illicit relationship of accused with Rekha. He has stated that he had no information about cognizable offence before 3rd February, 1996. P.W. No.7 has stated that in her statement she had not stated that her brother (P.W.3) had told her about disclosure of ill-treatment by victim and that she made enquiry to this effect. Thus, the prosecution is trying to establish the case about the alleged illicit relationship on the basis of evidence of the

P.W.3, P.W.5 and P.W.7. This fact is revealed only after death of victim. There was no earlier complaint. There is no corroborative evidence. Considering evidence of P.W.8 and P.W.9 it would be difficult to accept the version of the said witnesses with regards to alleged relationship of accused. Thus, the finding of the trial Court that the prosecution has not established the factum of illicit relationship of the accused with his brother's wife cannot be faulted.

12. Section 113 A of Evidence Act relates to presumption as to abetment of suicide by married women which reads as follows:

“113-A Presumption as to abetment of suicide by a married women

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

On reading the aforesaid provision it is apparent that the presumption can be drawn if it is established that the married women has committed the suicide within a period of seven years from the date of her marriage and that her husband and her

relative had subjected her to cruelty. There has to be evidence that the married woman is subjected to cruelty. The presumption under Section 113A would obviously arise only when the necessary ingredients in order to attract same are established. Legislative mandate of Section 113A is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498A of Indian Penal Code, the Court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof showing that such an offence has been committed by the accused under section 498A of Indian Penal Code is on the prosecution. The prosecution in the present case has not established that victim was subjected to cruelty beyond doubt. On analysis of the evidence in the present case, there is no cogent evidence to establish cruelty or abetment to commit suicide in the present case. Section 498A of Indian Penal Code provides punishment for cruelty by husband or relative of husband to woman cruelty as defined under the said section means any willful conduct which is of such a nature as is likely to drive woman to

commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the women or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Learned APP also relied on presumption under Section 113 B of the Evidence Act. The said presumption can be invoked when the question whether the person has committed the dowry death of women and it is shown that soon before her death such women had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation to the said section provides that for the purpose of this section, "dowry death", shall have the same meaning as in Section 304-B of the Indian Penal Code. There is no cogent evidence with regards to demand of dowry to establish the charge under Section 304B of Indian Penal Code. The prosecution has also failed to prove that accused have abetted suicide. The charge was framed for the offence punishable under Sections 498A, 304B and 306 of Indian Penal Code. The evidence of P.W.3 and P.W.6 or any other

witnesses does not mentioned any demand of dowry at the instance of the accused. Considering the evidence on record none of the requirement to invoke the said presumption are made out.

13. Apart from the aforesaid analysis, we are also conscious of the fact that this Court is dealing with the order of acquittal. It is settled law, if the view taken by the trial Court is plausible view, High Court is not justifiable in reversal merely because a different view is possible. Order of acquittal is not interfered by the Appellate Court where the judgment of the trial Court is based on evidence and the view taken is reasonable.

14. In the case of *A Shankar Vs. State of Karnataka*¹, it was observed in paragraph 19 of the said decision that it is settled legal proposition that in exceptional circumstances the appellate court under compelling circumstances should reverse the judgment of acquittal of the court below if the findings so recorded by the court below are found to be perverse i.e the conclusions of the court below are contrary to the evidence on record or its entire approach in dealing with the evidence is found to be patently illegal leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record of the case. While dealing

1. 2011(4) Mah. Law Journal (Cri) SC 19

so, the appellate court must bear in mind the presumption of innocence of the accused and further that acquittal by the court below bolsters the presumption of his innocence. In the case of **Ganpat Vs. State of Haryana**² it was observed that the following principles have to be kept in mind by the appellate Court while dealing with appeals, particularly, against an 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 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”.

15. Keeping in mind the aforesaid principles and on scrutinizing the evidence which is analysed herein above, we do not find that

2. (2010) 12 SCC 59

appellant has made out case to disturb the judgment of acquittal passed by the trial Court. Thus the appeal is devoid of merits and deserves to be dismissed.

ORDER

Criminal Appeal No. 745 of 1997 is dismissed.

(PRAKASH D. NAIK, J.)

(INDRAJIT MAHANTY, J.)