

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.933 OF 2001**

The State of Maharashtra	)	Appellant/Complainant
V/s.		
Jitendra Gajanan Karve	)	
Age 29 years,	)	
R/at 1 Satya Laxmi, 29,	)	
Pestam Sagar Road No.4,	)	
Chembur, Bombay	)	Respondent/Accused

Ms. Anamika Malhotra, APP for State.
Mr. M.K. Kocharekar for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 15th NOVEMBER 2019

ORAL JUDGMENT :

1 This is an appeal challenging an order of acquittal delivered on 18th July 2001 by the IInd Ad-Hoc Asstt. Sessions Judge, Raigad at Alibag. The accused was charged for offences punishable under Sections 498(A), 304(B) and 306 of the Indian Penal Code.

2 The complainant (PW-1) is a cousin brother of the deceased Mariya Jitendra Karve (hereinafter referred to as “the deceased”). The deceased got married to the accused in May 1995 after falling in love with him. It is alleged that initially for a period of six months both were living happily but things took an ugly turn when accused started beating the deceased. According to the prosecution, the reason for the accused beating the deceased was to force her to transfer a shop, that she was running to his name and also to hand over her jewellery etc. The deceased committed suicide by consuming poison on 3rd November 1997. According to the

complainant, the deceased had also, in August 1996, consumed poison and was admitted to a hospital where she was treated for 4-5 days and discharged. Even after that the deceased went to live with the accused but as the harassment continued, the deceased returned to live with PW-2, her aunt, who was looking after her since the death of the mother of the deceased.

3 On 2nd November 1997, it seems the deceased was in good mood and went to her boutique but did not return. On the instructions of PW-2, PW-1, who was the cousin of the deceased, lodged a complaint with Panvel Police Station. It seems on 3rd November 1997, at about 4.30 a.m. the accused called up PW-2 and informed her that the deceased has been admitted to Patel Hospital. When the complainant with a relative went to the Patel Hospital, they did not find the accused there and on enquiry were informed by the Doctor that the deceased was shifted to MGM Hospital at Kamothe. When they reached MGM Hospital, they came to know that the accused had died and they were informed that the cause of death was due to poisoning. According to PW-1, who was the complainant, the deceased died due to harassment, ill-treatment and provocation given to her by the accused. In this factual background, a complaint came to be filed by PW-1 with the Panvel Police Station, who after necessary investigation, filed the charge.

4 After committal of the case to the Court of Sessions, charge was framed and contents were read over and explained to the accused in

Marathi. Accused pleaded not guilty and claimed to be tried. The defence of the accused is that of total denial. He has denied that he ever ill-treated or harassed or asked the deceased to transfer the shop to his name. His further defence is that the complainant and the witnesses used to pressurize him to convert to Christianity because the deceased was christian and the accused was a hindu. According to the accused, since he refused to convert, is being accused falsely by the complainant and the witnesses.

5 To prove its case, the prosecution led evidence of five witnesses, viz., Malvin Thomas Decosta (PW-1), Lily Robert Fernandes (PW-2), Parveen Jahangir Pantaki (PW-3), Denis Josheph Almera (PW-4) and Vikram Bhimrao Patil (PW-5). PW-1 is the complainant and a cousin of the deceased. PW-2 is the aunt of the deceased. PW-3 is an ex-colleague of the deceased. PW-3 and the deceased were working together in 1995/1996. PW-4 is the father of the deceased and PW-5 is the Investigating Officer.

6 The accused admitted the spot panchnama (Exhibit 15), inquest panchnama (Exhibit 16), arrest panchnama (Exhibit 17), seizure panchnama (Exhibit 18), the copy of cause of death certification (Exhibit 19), postmortem notes of the deceased (Exhibit 20) and chemical analysis certificates (Exhibit 21 and 22) under Section 294 of the Code of Criminal Procedure.

7 After considering the evidence, the Trial Court acquitted the accused on the ground that the prosecution failed to prove beyond reasonable doubt that the accused treated the deceased with such a cruelty

as was likely to drive her to commit suicide. The Trial Court has also held that the prosecution has failed to prove that the suicide was occasioned by cruelty which was of sufficient gravity so as to lead the deceased, to such circumstances where there was no option but to commit suicide. Having considered the evidence, I do not find any reasons to find fault with the impugned judgment.

8 PW-1 has in his examination in chief alleged that the accused was harassing the deceased because the accused was not doing any job. There was a quarrel that took place between the deceased and the accused. Both of them came to the parental home of the deceased by quarreling all the way. The accused also gave a fist blow to the deceased. The deceased then consumed baygon spray and was admitted to hospital and after some days again a quarrel took place and the deceased was brought back to her parents house by her cousin, one Santosh Almera. The deceased then told them that the accused wanted to have control over her shop and was also harassing her. There are no details in this evidence given. Firstly, PW-1 has not stated anywhere that he has seen or witnessed accused harassing the deceased. PW-1 has not stated anywhere that he saw the accused giving fist blow. PW-1 does not say when or on what date the accused consumed baygon spray or how does he know it was baygon spray that was consumed and to which hospital the deceased was admitted. PW-1 does not even say when his cousin brother Santosh Almera, who has not been examined, brought the deceased back to her parent's house. PW-1 says that the accused

used to harass the deceased because he wanted to take control of a shop which the deceased had. There is no evidence whatsoever as to which is that shop or whether the deceased was the owner of the shop or whether the property, which is a shop, was in the name of the deceased. In the cross examination, PW-1 admits that he did not tell anything to the police of the harassment or demand of money by the accused. In the complaint, it is stated that the accused wanted to take over the shop and hand over the same to his brother but that was not so stated in the examination in chief. PW-1 also in cross examination states that he did not know whether the deceased committed suicide due to demand of money and it is not his case that the deceased committed suicide as accused was trying to take control over her shop. PW-1 also states that it was not his case that the fact of the beating was cause of her suicide. Therefore, the evidence of PW-1 has to be totally discarded because there is nothing to indicate the ingredients required to prove the charges under the provisions of Sections 498(A), 304(B) and 306 of I.P.C. have been fulfilled.

9 PW-2, who is the aunt of the deceased, has alleged that after six months of marriage, the deceased and the accused started quarreling and that she came to know from the deceased and the deceased also told her that the accused used to beat her. PW-2 states that when the accused and the deceased came to her house one day, they had a quarrel in which the deceased was beaten by the accused. PW-2 also says that the reason for the quarrel, which the deceased informed her, was that the accused wanted her

to transfer her shop to his name by saying that he would run the shop. PW-2 also says that on 2nd November 1997 the deceased went to her shop but did not return and about 4.30 a.m. on 3rd November 1997 the accused rang up and asked “us” (we do not know who are the “us”) and asked to bring Rs.25,000/- saying that deceased was in hospital. In the cross examination, PW-2 says that she does not remember whether she had informed the police that the accused had beaten the deceased in her house in her presence. PW-2 also says that the boutique was started after marriage and both the accused and the deceased were running the shop jointly. If that was the case, where is the occasion to have the shop transferred in his name. Again there is no evidence as to which was the shop or whether the deceased was the owner of the shop. PW-2 also states that she had not stated before the police that the accused used to ask the deceased to transfer the shop to his name, which is a glaring omission. PW-2 also admits that she had not stated before the police that the accused had asked to bring Rs.25,000/- in the hospital. I have to note that she does not state anywhere that she took Rs.25,000/- or sent Rs.25,000/- to the hospital. Most crucial answer in cross examination by PW-2 is that she says “I cannot say why the deceased Mariya consumed poison”. Therefore, there is nothing in the evidence of PW-2 to indicate the ingredients required to prove the charges under the provisions of Sections 498(A), 304(B) and 306 of I.P.C. have been fulfilled.

10 PW-3 is a colleague of the deceased with whom she worked in 1995-1996. PW-3 says that the accused and the deceased initially resided

well but she was told that she is being harassed by her (deceased's) mother in law, accused and whole family members, the accused was not doing any work, used to demand moneys and was depending on the deceased. PW-3 does not say who told her all this. PW-3 also says that the accused had also threatened the deceased, that accused would torture the deceased physically and mentally if property like shop and gold ornaments were not transferred in his name. PW-3 does not say that threats or torture were made in her presence. I have to also note that the other witnesses have not stated anything about gold ornaments or the ill-treatment by the mother in law of the deceased or other family members of the accused. In the cross examination, PW-3 says that she had not stated before the police that the mother in law of the accused and all family members of the accused harassed the deceased, which is again a glaring omission. This is an unreliable witness. The evidence of this witness also does not indicate the ingredients required to prove the charges under the provisions of Sections 498(A), 304(B) and 306 of I.P.C. have been fulfilled.

11 PW-4 is the father of the deceased. PW-4 was a sailor and was on ship for six months at a time. PW-4 also says that the deceased used to tell him about the harassment by the accused. PW-4 does not say anywhere that he ever saw the accused harassing the deceased. PW-4 says that the deceased had taken a shop, which according to him, the accused used to ask her to transfer the shop to his name. It seems more like his opinion or assumption. PW-4 again does not say that he ever saw the accused demand

that the shop be transferred to the name of the accused. PW-4 also does not say accused ever demanded any dowry or money from him. In fact none of the witness say accused demanded dowry. PW-4 says that on 29th August 1996, he came to know that the deceased had consumed poison and that she was admitted to Rajawadi Hospital. There is no evidence to show that due to any harassment even at that stage, the deceased had consumed poison. Moreover, there is no evidence that the deceased was ever admitted to Rajawadi Hospital. PW-4 says that the deceased informed him that the accused used to beat her and harass her and on the date of consuming poison, the deceased was brought by beating all the way from the house of the accused to the house of PW-2. Again this cannot be accepted because PW-4 has not seen the accused beating the deceased. PW-4 also says that he was not in Mumbai when the incident of death happened and he was informed over telegram as he was in Mangalore visiting his sister. PW-4 does not say anywhere that being a father he tried to speak to the accused, inquire why was he assaulting or harassing the deceased or tried to make efforts to see that both lived happily. In the cross examination, PW-4 says he cannot say whether the deceased herself had consumed poison or somebody administered poison. PW-4 also says that the alleged demand of money or the admission of the deceased in Rajawadi Hospital was all told to him by PW-2 and not the deceased. Therefore, that evidence of PW-4 also has to be discarded. The evidence of this witness also does not indicate the ingredients required to prove the charges under the provisions of Sections

498(A), 304(B) and 306 of I.P.C. have been fulfilled.

12 PW-5 is the Investigating Officer and that is nothing in his evidence to talk about.

13 The postmortem reports and the forensic report analysis indicate that the death was caused by consuming organo phosphorus insecticide fenitrothion and petroleum hydrocarbon. That does not mean that the Court can presume that the accused abetted suicide of the deceased. We need to go into the expression 'soon before her death' used in Section 304 (B) of the I.P.C. or the presumption under Section 113 (B) of the Evidence Act to consider the idea of proximity only if the prosecution, at the outset, had proved that there was any harassment by the accused. The prosecution first has to prove that the accused treated the deceased with cruelty or harassment and such a cruelty or harassment was inflicted upon the deceased in respect of demand of dowry and then comes the next point as to whether there is proximate nexus between the death of the deceased with cruelty or harassment inflicted upon her in respect of the demand of dowry.

14 As observed above, none of the evidence relied upon by the prosecution entices any confidence for this Court to conclude that the accused inflicted cruelty or harassment upon the deceased. The most glaring omission in the prosecution's case is that they have not bothered to investigate where the deceased was and what she was doing from the time she left the house on 2nd November 1997 until her body was brought to the

Patel Hospital on 3rd November 1997. Infact the postmortem report says that there are no bodily injury marks also on the deceased for this Court to even consider whether the cruelty or harassment happened soon before her death.

15 Another glaring error is that there is no evidence to show that the deceased was taken to Patel Hospital and later to MGM Hospital. There is no evidence to show in what condition the deceased was when she was first brought to Patel Hospital, and what was her condition when she was taken out of Patel Hospital, what was her condition when she was brought to MGM Hospital. The fact that the deceased was moved from Patel Hospital to MGM Hospital would mean (one could safely assume) that atleast when the deceased was in Patel Hospital, the deceased was alive. Why did Patel Hospital ask the deceased to be shifted to MGM Hospital is a mystery. Who were the Doctors who examined the deceased in Patel Hospital and later in MGM Hospital also is a mystery. If the deceased had only consumed poison, why could Patel Hospital not have flushed her stomach without sending her away, why was the deceased asked to be taken away to MGM Hospital also is a mystery. Coming to MGM Hospital, whether the deceased was alive when she was taken there or dead on arrival, nothing is noted in the evidence. It is also not clear who moved the deceased from Patel Hospital to MGM Hospital. None of the Doctors in both Hospitals have also been examined. None of the panchas of the spot panchnama or inquest panchnama or arrest panchnama or seizure panchnama have been

examined.

16 The onus is on the prosecution to prove the accused to be guilty of offence beyond reasonable doubt. 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 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.”

17 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to

1. (2007) 4 SCC 415

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, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

18 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. The appeal is without any merits.

19 Appeal dismissed.

(K.R. SHRIRAM, J.)