

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

CRIMINAL APPEAL NO.877 OF 2003

The State of Maharashtra	)Appellant/Complainant
V/s.	
1. Hiru Dhondiram Malusare	)
Age – 25 years resident of village Kiye,	)
Dambewadi, Taluka – Mahad, District –	)
Raigad	)
2. Dhondiram Ramchandra Malusare	)
Age – 57 years resident of village Kiye,	)
Dambewadi, Taluka – Mahad, District –	)
Raigad	)
3. Leelabai Dhondiram Malusare	)
Age – 47 years resident of village Kiye,	)
Dambewadi, Taluka – Mahad, District –	)
Raigad	)Respondents/Accused

Ms. Anamika Malhotra, APP for appellant.
None for respondents.

CORAM : K.R.SHRIRAM, J.
DATE : 10th DECEMBER 2019

ORAL JUDGMENT :

1 The accused, who are three respondents, were facing charge under Section 306 (*Abetment of suicide*), Section 498 (A) (*Husband or relative of husband of a woman subjecting her to cruelty*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC). The accused were facing these charges for abetting the commission of suicide by one Chandra Hiru Malusare, wife of accused no.1, by subjecting her to cruelty within the meaning of Section 498 (A) of IPC.

2 Chandra Hiru Malusare (deceased) is alleged to have committed suicide on 12th March 2001 by jumping into a well and drowning. It is the case of prosecution that deceased and accused no.1 got married on 18th March 1998. On the same day as accused no.1 and deceased got married, the cousin of deceased, i.e., Sanjay Balkrishna Dhanavade, who is PW-1, also got married at the same venue and his wife is PW-3 – Sushma Sanjay Dhanavade. PW-3 belonged to the same village to which the accused belonged to. For the first two years, the relationship was absolutely cordial but later soured. The problem according to prosecution arose because two years after their marriage, PW-1 and PW-3 became parents to a son, whereas deceased did not conceive. Prosecution says that was the beginning of harassment of deceased by the accused, who used to call her “Vanzoti” (which in English means barren or infertile). According to prosecution, the accused thereafter barred deceased from speaking with anybody or visiting anybody’s house and if at all she disobeyed those prohibitions, she would be beaten. It is also stated that the accused also suspected her character.

3 Prosecution says that when deceased visited her parental home, which was a joint family, in which PW-1, PW-2 and PW-3 also lived with the parents of deceased and another uncle and his family, deceased informed them about the harassment. I have to note all these are general statements being made and nothing specific. According to prosecution, at the time of Ganpati festival in the year 2000 deceased lamented to the

family her harassment at the hands of the accused and PW-1, PW-2, father and other relatives of deceased advised accused not to ill-treat the deceased. However, ill-treatment continued. It seems deceased also expressed to the witnesses that if such ill-treatment continued, she may even commit suicide. The family seems to have consoled deceased by saying that once she delivered a baby everything will be alright. It also alleged that the ill-treatment was to such an extent that when an uncle of deceased died, the accused did not even allow her to attend the funeral. When PW-2 went to the matrimonial home of the deceased to bring her to the parental home for celebrating Holi festival, the accused insulted him and drove him out of the house and deceased was fed up because of the ill-treatment. On 12th March 2001, father-in-law of deceased, i.e., accused no.2, went to the parental home of the deceased and informed them about the incident and when the family members of deceased rushed to the spot, they saw the body of deceased floating in the well. Intimation about the incident was given to the police on the same day, investigation started, body was removed, inquest panchnama and spot panchnama was prepared and the body was sent for postmortem. Police registered the offence under Section 498 (A), Section 306 read with Section 34 of IPC, recorded statement of witnesses and after completion of investigation, charge sheet was submitted. As the offences charged were triable only by the Court of Sessions, the learned Magistrate of Mahad committed the case to the Court of Sessions. All the accused pleaded

not guilty and claimed to be tried. In the statement recorded under Section 313 of the Code of Criminal Procedure, the accused have denied that there has been any ill-treatment to deceased and according to them her leg might have slipped while fetching water from the well and she had fallen in the well accidentally and drowned.

4 To bring home the guilt of the accused, prosecution led oral testimony of four witnesses, viz., Sanjay Balkrishna Dhanavade (PW-1), the cousin brother of deceased, Sadanand Balkrishna Dhanavade (PW-2), another first cousin of deceased and brother of PW-1 and Sushma Dhanavade (PW-3), wife of PW-1 and P.S.I. Vasant Jadhav (PW-4), the Investigating Officer. The complaint is at Exhibit 13, inquest panchnama Exhibit 15, spot panchnama Exhibit 16, cause of death certificate Exhibit 17, postmortem notes Exhibit 18 and first information about the incident given by the Police Patil Exhibit 22.

5 The Trial Court after considering the evidence passed the order of acquittal on 29th June 2002 acquitting all the accused. It is that order of acquittal which is impugned in this appeal.

6 Having considered the evidence, I am not inclined to interfere with the impugned judgment. The Trial Court has listed many contradictions and omissions. For the sake of brevity, I would highlight here only some of them as reasons for my conclusion.

7 PW-1 says that his father (who is also the father of PW-2), father of the deceased and one Vitthal were brothers and all of them were living together as joint family under one roof. PW-1 says that for two years after the marriage, deceased was treated properly by the accused but after PW-3, who is the wife of PW-1, delivered a son, the accused started harassing the deceased calling her barren or infertile and she was not allowed to speak to strangers or visit anybody and if she disobeyed, she was beaten. PW-1 also says that the accused suspected the character of deceased. PW-1 goes on to say that during the Ganpati festival in the year 2000 he went to the house of the accused to bring the deceased to the parental home and during that home visit, deceased informed him and the family about the harassment by the accused. PW-1 says everybody consoled her and suggested that things will be in order once she conceives. After Ganpati festival, PW-1 and his brother went to the house of the accused to reach the deceased and they also spoke to the accused and other family members and requested them not to ill-treat the deceased.

PW-2 in his evidence says that after Ganpati festival he, his father and PW-1 had taken the deceased to the matrimonial home, whereas PW-1 is silent about their father having accompanied them. As against this, PW-3, who is the wife of PW-1, in the cross examination says the deceased never visited their house during the Ganpati festival in the year 2000.

PW-1 says that when the maternal aunt's husband Sakharam Shirke expired, the accused did not send deceased for the funeral. PW-2 improves on that to say that when the husband of paternal aunt, as against maternal aunt stated by PW-1, died and when they were proceeding towards the house of the aunt, they met deceased on the way and asked her whether she was coming to funeral and she said she was not allowed to go by her father-in-law and mother-in-law. PW-1 is totally silent about this alleged meeting. PW-1 says that when PW-2 went to the house of the accused to bring the deceased to the paternal home for Holi festival in 2001, i.e., 5th March 2001, the accused did not send deceased with his brother and sent the brother back by insulting him and also deceased was nervous because she was not sent. PW-1 also states that deceased informed PW-2 that because of the ill-treatment she will do an untoward act. This portion of the evidence of PW-1 is hearsay and cannot be looked at.

8 PW-2 in his evidence, though he says what PW-1 had stated about the deceased not being sent for the Holi festival and that her husband abused and drove him out of the house, he does not say about deceased telling him that she will do something untoward because of alleged ill-treatment. On 12th March 2001 PW-1 says accused no.2, father-in-law of deceased, came to their house at 7.00 a.m. and inquired as to whether the deceased had been there and within two minutes thereafter, his relatives including his uncle gathered and intimated that deceased has jumped into

the well and committed suicide. PW-2, however, says on 10th March 2001 accused no.2 came to their house at about 7.00 a.m. to 7.30 a.m. and asked where is the deceased and immediately after two minutes stated that she drowned herself in a well and committed suicide. 10th March 2001 appears to be a typographical error. What I am driving at is PW-2 does not say what PW-1 says, that within two minutes thereafter their relatives including uncle gathered and intimated that Chandra (deceased) had jumped into the well and committed suicide.

PW-1 also says that though they went to the spot, where the deceased had committed suicide, they did not wait for the funeral because there was quarrel by villagers. As against this, PW-2 states that they all attended the funeral. In his cross examination, PW-2 says “..... *Thereafter, after the panchnama was prepared the body was sent for postmortem and then performed funeral and myself, my brother Sanjay, my father also there.*” PW-1 also admits in his statement recorded by the Police that it is not recorded that after his wife delivered a son and deceased had not delivered, the accused were calling her barren/infertile and they used to beat the deceased if she happened to visit any place. PW-1 also says that it is not recorded in his statement to the Police that on the day of incident when accused no.2 had been to their house he asked as to where the deceased had been and immediately thereafter their relatives gathered and thereafter, he told that Chandra jumped into the well. This is a serious omission and only

makes it clear that the witness has improved his case while recording his testimony. PW-1 also agrees that in his statement recorded by the Police, he has not stated after Ganpati festival he had taken the deceased to the house of the accused and that time they persuaded them. This is another omission. Similarly PW-2 also agrees that in his statement recorded by the Police it is not stated that after Ganpati festival he had been to the house of the accused to reach deceased and then persuaded the accused not to ill-treat the deceased.

9 PW-3 has stated that during Ganpati festival deceased never visited their house. PW-3 also states, most importantly, that the accused and deceased had even gone to the Hospital at Mahad when she delivered a baby. PW-3 also states that no quarrel took place between their family and family of the accused and their relations were cordial with accused till the incident and they were on visiting terms with each other.

10 If the deceased was being harassed by the accused, I would have expected more details in the evidence. Such general statements are not enough to make out a case of cruelty under Section 498 (A) of the said Act. Strangely none of the witnesses state that there was any illegal demand. Strangely the parents of the deceased have not stepped into the box to give evidence. Apart from the complainant, in the charge sheet the prosecution has given a list of 16 witnesses, as against which, only four witnesses have been examined, one of whom is the Investigating Officer. Even the father of

PW-1 and PW-2 is listed at item 5 in the list of witnesses but he has not been called to give any evidence.

11 In the circumstances, it does create a doubt whether the evidence of PW-1, PW-2 and PW-3 are really truthful. The onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused and prosecution has failed. As noted earlier, for the sake of brevity, I am not listing many other contradictions and omissions, which have been mentioned in the impugned judgment.

12 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, 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 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.

1. (2007) 4 SCC 415

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, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court 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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)