

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1463 OF 2003

The State of Maharashtra)
 (At the instance of Mhaswad Police station)
 Mhaswad, Dist. Satara)....Appellant
 (Org.Complainant)

V/s.

1) Gulab Baba Narle)
 Age about 24 years)
 2) Ambadas Baba Narle)
 Age about 27 years)
 3) Sarjerao Baba Narle)
 Age about 21 years)
 4) Smt.Parvati Baba Narle)
 Age about 60 years)
 5) Baba Dadu Narle)
 Age about 70 years)

All R/a Paryanti, Tal-Man, Dist. Satara)....Respondents
 (Org.Accused nos.1 to 5)

Ms.Pallavi Dabholkar APP for appellant-State.
 Mr.Prakash D.Gharge a/w Mr.Vivek Patil a/w Mr.Kiran Patil for
 respondent nos.1 to 5.
 [Respondent nos.1 & 2 are present in Court].

CORAM : K.R.SHRIRAM,J
DATE : 27.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 30.7.2003 passed by the Judicial Magistrate First Class, Mhaswad acquitting the 5 respondents (accused) of offences punishable under sections 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*), 312 (*Causing miscarriage*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*), 506 (*Punishment for criminal intimidation*) read with 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2. Mr.Gharge appearing for the respondents points out that respondent no.3 has died on 25.8.2019 and the appeal against respondent no.3 has abated.

3. It is the case of prosecution that PW-1 Lata Gulab Narle married accused no.1 Gulab Baba Narle on 16.12.2000. All the accused were living jointly and at the time of marriage the parents of PW-1 gave household utensils, half tola gold etc. to accused no.1. After the marriage, PW-1 and accused no.1 resided at village Paryanti for 10 days. Thereafter they went to Mumbai and started residing in one room of parents of PW-1 and later moved to an independent room

which was taken on rent. According to PW-1 at the time of marriage, it was agreed between the two families that the cattle grazing license which was in the name of brother of PW-1 will be transferred to the name of accused no.1. Therefore soon after the marriage, accused no.1 started demanding the transfer of cattle grazing license and as it was not possible to transfer the license immediately for at least until Diwali since brother of PW-1 was living at Mahad, accused no.1 was told to hold on. He did not, but started beating and kicking PW-1. Thereafter the father of PW-1 went to the village Paryanti and informed accused no.5, the father of accused no.1 about the ill-treatment meted out by his son on their daughter. Accordingly the father of accused no.1 i.e., accused no.5 took accused no.1 and PW-1 to village Paryanti in May-2001. There also the ill-treatment by accused no.1 continued because the demand for transfer of cattle grazing license was not met and it seems accused no.1 was also demanding an additional amount of Rs.3,00,000/- which was the amount that accused no.5 had spent on accused no.1 to make him Athletic.

4. According to prosecution in the month of June-2001 when PW-1 was 4 months pregnant, on 23.6.2001 accused told PW-1 that her father had deceived him, poured kerosene on PW-1 and threatened to

set her on fire. It seems accused no.1 also kicked on stomach of PW-1 due to which she was bleeding for 3 days and she miscarried the foetus. Thereafter accused no.1 and accused no.4 admitted PW-1 to the hospital of one Doctor Modase (PW-4). PW-1 did not file any complaint as she was willing to cohabit with accused. On 19.7.2001 accused drove PW-1 out of the house as the parents of PW-1 were not fulfilling the demands of accused. Hence, she went to Mumbai. On 24.8.2001 PW-1 filed complaint at Chembur police station followed by further complaint on 1.9.2001 to Devadasi Vikas Mandal and FIR on 11.10.2001 at Mhaswad police station. Thereafter all the accused were arrested and released on bail and charges were framed. The accused pleaded not guilty and claimed to be tried.

5. In the statements of the accused recorded under Section 313 of Cr.PC., the accused had denied the charges totally and according to them a false case is filed.

6. In the charge-sheet 9 witnesses have been listed in addition to complainant including the parents of PW-1 but only 5 witnesses have been examined, one of whom is the Investigating officer. Strangely, the parents of PW-1-complainant have not testified. The 5 witnesses testified are: Complainant Lata Gulab Narle as (PW-1); Sugandhrao

Mohite, Chairman of Devadasi Vikas Mandal as (PW-2); Renuka Devisingh Hajare, Secretary of Devadasi Vikas Mandal as (PW-3); Dr.Rajendra Ratanchand Modase as (PW-4); and Chandrakant Ananda Kambale, Investigating officer as (PW-5). It is noted in the impugned judgment that prosecution has failed to examine the remaining witnesses even though ample opportunity was given.

7. At the outset, I have to note that there are no allegations whatsoever in the evidence of PW-1 against accused nos.2 to 5. Learned APP Ms.Dabholkar in fairness agreed and stated that order of acquittal as against accused nos.2 to 5 cannot be faulted in any manner. That leaves only accused no.1-the husband. The only eye witness to the incident of beating and illegal demand is PW-1 herself. PW-3 Renuka a social worker of course says she saw on one occasion that accused no.1 was beating PW-1 and that she took PW-1 to Chembur police station and lodged a complaint. No complaint is produced and the Chembur police has not been called to depose to prove the said complaint. PW-3 also says that she was a neighbour of PW-1 and she knows PW-1 and her family very well and hence also appears to be an interested witness. .

8. PW-1 says at the time of marriage it was agreed that the cattle grazing license in the name of her brother would be transferred to accused no.1 and because it was not possible to transfer the same immediately, accused no.1 was assaulting and beating her with wire, belt and also poured kerosene on her and threatened to set her on fire. No cattle grazing license has been produced. Secondly, there was no agreement in writing at the time of marriage to prove that there was such an agreement to transfer the cattle grazing license. Therefore, it is difficult to believe that accused no.1 used to beat PW-1 because the cattle grazing license was not transferred in his name.

9. As regards the demand of Rs.3,00,000/- on 23.6.2001 and the beating on that day, there are no complaints filed at all. On 17.7.2001, it is stated the accused drove out PW-1 unless his demands were met. PW-1 says she went to Mumbai on 19.7.2001 along with her father. On 24.8.2001 they filed an application to Chembur police station. On 1.9.2001, they filed an application to Devadasi Vikas Mandal and lastly on 11.10.2001 they filed the FIR in Mhaswad police station. The father and mother of PW-1 has not been examined. Even her sibling/s have not been examined. The complaint/application dated 24.8.2001 to Chembur police station is not produced. The complaint/application dated 1.9.2001 to Devadasi Vikas Mandal is not

produced. Therefore, if you consider all these dates, there is a huge delay. The delay has not been explained and not even an attempt has been made to explain the delay. If PW-1 had gone back to Mumbai with her father on 19.7.2001 she could have immediately lodged a complaint even at Mumbai. But PW-1 says on 24.8.2001 almost 36 days later she filed an application at Chembur police station which is not produced.

10. It is settled law that delay in lodging the complaint cannot be used as a ritualistic formula for doubting the prosecution's case and discarding the same solely on the ground of delay in lodging the complaint. At the same time, delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory. If the prosecution fails to satisfactorily explain the delay, the delay could be fatal to the prosecution. The Apex Court in ***State of Himachal Pradesh Vs. Gian Chand***¹ observed as under :-

“Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version

1 (2001) 6 Supreme Court Cases 71

on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. In the present case, PW1 the mother of the prosecutrix is a widow. The accused is a close relation of brother of late husband of PW1. PW1 obviously needed her family members consisting of her in-laws to accompany her or at least help her in lodging the first information report at the police station. The incident having occurred in a village, the approach of the in-laws of PW1 displayed rusticity in first calling upon the father of the accused and complaining to him of what his son had done. It remained an unpleasant family affair on the next day of the incident which was tried to be settled, if it could be, within the walls of family. That failed. It is thereafter only that the complainant, the widow woman, left all by herself and having no male family member willing to accompany her, proceeded alone to police station. She was lent moral support by Ruldu Ram, the village Panch, whereupon the report of the incident was lodged. The sequence of events soon following the crime and as described by the prosecution witnesses sounds quite natural and provides a satisfactory explanation for the delay. It was found to be so by the learned Sessions Judge. The High Court has not looked into the explanation offered and very superficially recorded a finding of the delay having remained unexplained and hence fatal to the prosecution case. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and therefore there is a reluctance on the part of the family of the victim to report the matter to the police and carry the same to the court. A cool thought may precede lodging of the FIR. Such are the observations found to have been made by this Court in State of Punjab Vs. Gurmit Singh & Ors., (1996) 2 SCC 384 and also in the case of Harpal Singh (1981) SCC CrL. 208. We are satisfied that the delay in making the FIR has been satisfactorily explained and therefore does not cause any dent in the prosecution case”.

11. PW-2 has no personal knowledge and says everything is hearsay.

Therefore, his evidence also has to be discarded.

12. Therefore, charge under Section 498-A of IPC has to fail.

13. As regards section 312 of IPC, it is the case of PW-1 that on 23.6.2001 accused no.1 kicked and punched her on her stomach due to which there was heavy bleeding and she miscarried.

14. PW-1 says after the bleeding for 3 days, accused nos.1 & 4 took her to the hospital of Dr.Modase at Mhaswad. First of all, PW-4 does not say that PW-1 was pregnant or she had conceived for her to miscarry. Secondly, in his cross-examination PW-4 says that in the first 10 weeks of pregnancy a woman may abort or miscarry without anyone giving blows on her stomach. PW-4 says he never saw any visible injuries on the person of PW-1. PW-4 also says PW-1 did not tell him any incident of beating and there can be bleeding within 10 weeks of pregnancy. Therefore, it is difficult to conclude that the bleeding of PW-1 was due to any physical assault by accused no.1. One more fact which is relevant is it was accused nos.1 & 4 who took PW-1 to the doctor when her bleeding did not stop for 3 days. Therefore, there is no substance in the charge under section 312 of IPC which also has to fail.

15. As regards sections 323, 504 & 506 of IPC, PW-1 says that accused no.1 used to beat her with wire and belt. There is no medical report to prove any of that.

PW-2's evidence as noted earlier is hearsay.

PW-3 says she has personally seen accused no.1 at the time of beating PW-1 but says the beating took place one year prior thereto. Therefore, the evidence is rather vague and we cannot rely on this evidence to convict the accused. Moreover, prosecution has not brought on record the exact words used by the accused for causing intentional insult to PW-1. The specific threats are also not mentioned. The evidence of PW-1 is not supported by any other witnesses. There is also huge delay in lodging the FIR and the delay has not been explained at all. A complaint filed at Chembur police station has not brought on record. The version of PW-1 that accused escaped from the clutches of Chembur police has not been proved.

16. In these circumstances, it is very difficult to believe the statement of PW-1 alone and interfere with the order passed by the trial Court.

17. The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***² 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. 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.”

2 (2007) 4 SCC 415

18. 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 they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court which rightly observed that the prosecution had failed to prove its case. The order of the trial Court of acquittal, in my view, need not be interfered with.

19. Appeal dismissed.

(K.R.SHRIRAM,J)