

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1048 OF 2004

The State of Maharashtra)....Appellant
(Org.Complainant)

V/s.

1) Vilas Vishnu Patil)
Occu.: Agriculture, R/o Satave, Tal.)
Panhala, Dist.Kolhapur.)
2) Suhas Vishnu Patil)
Age-20 years, Occ.Education)
R/o Satave, Tal.Panhala)
Dist. Kolhapur)
3) Vishnu Keshav Patil)
Age-77 years, Occ. :Agriculture)
R/o. Satave, Tal.Panhala,)
Dist. Kolhapur)
4) Indubai Vishnu Patil)
Age-65 years, Occ.: Household)
R/o. Satave, Tal.Panhala)
Dist.Kolhapur)....Respondents
(Org.Accused nos.1 to 4)

Mr.Sagar Agarkar APP for appellant-State.
Mr.S.A.Ingawale for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 3.3.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 26.5.2004 passed by the 3rd Adhoc Assistant Sessions Judge, Kolhapur

KJ

acquitting the respondents (accused) of offences punishable under section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) and section 306 (*Abetment of suicide*) of the Indian Penal Code (IPC).

2. On the basis of report that was filed by the Uncle of the deceased, (Exh.17) the offence under sections 498-A, 304-B read with section 34 of the IPC came to be registered and after completion of evidence, charge-sheet against the accused in the court of Judicial Magistrate First Class (JMFC), Panhala under Section 498-A, 304-B read with section 34 of the IPC was filed. As offence under section 304-B was exclusively triable by the Court of Sessions, JMFC, Panhala committed the case to the Court of Sessions for trial. The Sessions Court however, framed charges under Sections 498-A, 306, read with 34 of the IPC. The framing of charge under section 306 instead of 304-B was never challenged by the prosecution.

3. The informant-Krishnat Narayan Patil (PW-2) along with his family was residing at village Koge, Taluka-Karvir. He was also looking after the family of his late brother Bajirao. Bajirao had 2 daughters, viz., Amita & Smita and a son Satish. The widow of Bajirao was PW-3 Mangal. Amita was given in marriage to accused no.1 Vilas

Vishnu Patil on 13.7.2002 at village Kerle in Karvir Taluka. The wedding was solemnized in the Datta Mandir and at the time of marriage, a 'Yadi pe shadi' was entered into. Yadi pe shadi in effect, is the document which both the families write and exchange indicating the articles/gifts given by the bride's family to the groom and groom's family and from the groom to the bride and bride's family. It also indicates how the expenses of the marriage could be shared. After the marriage, Amita started living at the matrimonial home with the accused. Accused no.2 is the brother of accused no.1 and accused no.3 and accused no.4 are the father and mother respectively, of accused no.1 and accused no.2.

4. On the 5th day of marriage, PW-1's Uncle Bhagwan Shiva Patil (PW-4) and cousin Ashok Krishna Patil, Akaram Tukaram Patil and nephew Satish and their brother, (none of whom has been examined) went to the house of accused for offering sweets and as per the custom, to bring Amita to her parental home for few days. At that time, accused no.1 is alleged to have asked the visitors as to why they have not brought 'Sansar set' with the sweets and unless the sansar set is provided, he would not even open the box of sweets and picked up a quarrel. Sansar set means house hold articles. Therefore, (PW-4) went and took a loan of Rs.3000/- from his brother-in-law Rangrao

More (PW-6), purchased sansar set and presented it to accused no.1. Thereafter the accused opened the box of sweets. (PW-6) has been declared hostile. Thereafter accused no.1 allowed PW-4 to take Amita to the hosue of PW-2 her Uncle. After living there for 5 days, Amita returned to her matrimonial home along with Madhukar who is another brother of Amita's late father.

5. It is also alleged that at the time of Gauri-Ganpati, PW-2 Krushnat Narayan Patil called accused no.1 over telephone and requested to permit him to take Amita home for Gauri-Ganpati festival. Accused no.1 and his mother declined saying that even they have Gauri-Ganpati festival in their house and told PW-2 that he did not take the trouble of going to the house of accused no.1 to take Amita. It is also prosecution's case that 15 days prior the incident of Amita's body being found in the well, accused no.1 brought Amita on his motor cycle to the hosue of PW-2 and left her there for delivery because Amita was in advance stage of pregnancy. It is alleged that at that time Amita informed PW-2 that accused no.1 removed all her ornaments before dropping her to the house of PW-2. It seems immediately after 2 days, accused no.1 went to the village Koge to the house of PW-2 and took Amita away to his house. At that time it is alleged that accused no.1 told Smita (who also has not been

examined) that she should tell her mother to send two tolas of gold and Rs.10,000/- and this was told by Smita to her mother Mangal Bajirao Patil-(PW-3). Two days later, Krushnat Patil (PW-2) allegedly telephoned accused no.1 and informed him that he will provide the ornaments at the time of marriage of Satish, the brother of Amita. Allegedly Amita phoned 2 to 4 times to PW-2 thereafter and informed him that accused was abusing her, assaulting her to meet the demand of Rs.10,000/- and gold ornaments of 2 tolas. Again on 7.7.2003 Amita sent message to PW-2 and requested him to take her to his house because the accused were harassing her.

6. It is also the case of prosecution that one month before the incident, Amita came to know that accused no.1 was arrested by the police as he had quarreled in a hotel and when Amita tried to explain to accused no.1 that he should not be indulging in such quarrel, accused no.1 kept her outside the house without food the whole night and even assaulted her.

7. On 9.7.2003 at about 7.00 a.m. somebody telephoned PW-2 from village Satave and informed that Amita was missing. PW-2 immediately telephoned accused no.1 but he was not found at home but somebody else attended his phone and informed PW-2 that even

they were searching for Amita and Amita was not found. Then PW-1 along with friends and relatives went to Satave and they noticed chappal of Amita and one plastic pot near the well. When they searched in the well, they found body of Amita at the bottom of the well. Based on this, as noted earlier, offence came to be registered, charge-sheet filed and charges framed.

8. All the accused pleaded not guilty and claimed to be tried. In fact, accused no.1 himself stepped into the witness box and gave evidence and it is the case of accused that even Amita disliked the conduct of her mother PW-3 who being a widow was in a relationship with one Nivas Dadu Patil, who would come over in the night to have illicit relationship with her mother. It is also the case of accused no.1 that he took back Amita for delivery because doctor advised that she needed care and doctor who had examined her for 9 months had a nursing room. Accused No.1 (DW-1) has totally denied all the allegations of abusing and demand.

9. It is also the case of DW-1 that PW-2, after Amita was cremated, asked for Rs.50,000/- to accused no.1 and threatened that if that amount was not paid, he will file a complaint against accused no.1 and his family. Accused no.1 refused to pay the amount

demanded by PW-2 and therefore, this complaint came to be lodged.

10. Prosecution in its charge-sheet had listed 21 witnesses but examined only 7 witnesses of which, PW-5 and PW-7 were police personnel. The witnesses are: Namdev Vasant Kamble Panch to the spot as (PW-1); Krushnat Narayan Patil, Uncle of complainant as (PW-2); Mangal Bajirao Patil, mother of deceased as (PW-3); Bhagwan Shiva Patil-Uncle of deceased as (PW-4); Arun Bhagwan Dhanawade-Police Head Constable as (PW-5); Rangrao Shamrao More -relative of deceased as (PW-6); and Mahadev Shivaji Patil-Investigating officer as (PW-7).

11. The Apex Court in ***Ghurey Lal Vs. State of U.P.***¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was

¹ (2008) 10 SCC 450

before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads

to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

12. The Apex Court in many other judgments including ***Murlidhar Vs. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

13. The Apex Court in ***Ramesh Babulal Doshi Vs. State of Gujarat***³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even reappraise the evidence and arrive at its own conclusions.

14. The date of marriage, location of marriage, entering into an agreement for 'Yadi pe shadi', the death of Amita's father, the fact that the marriage was conducted by PW-2 etc. are not disputed.

15. As regards the 1st allegation of PW-2 that along with others going to the house of accused no.1, accused no.1 refusing to touch the sweets and demanding 'Sansar set' etc., we have to note that Bhagwan Shiva Patil (PW-4) was not residing with the informant-Krushnat Patil (PW-2) or Mangal Patil (PW-3). Bhagwan Patil (PW-4) strangely does not contact PW-2 and PW-3 to inform him about the demand of sansar set and harassment of accused no.1. PW-4 on his own accord went to Rangrao More (PW-6), borrowed Rs.3000/-, purchased the sansar set and gifted it to accused no.1. No documentary evidence is produced to show that such sansar set was

purchased. No evidence has been shown that he borrowed Rs.3000/- from his brother-in-law (PW-6) to purchase sansar set. If it was true that on the 5th day after marriage if such a demand had been made, one would have expected PW-4 to immediately contact PW-2 or PW-3 the Uncle and mother of Amita. That has not been done. The evidence of PW-6 also does not support what PW-4 says. PW-6 says in the month of July-2002, Bhagwan had taken Rs.2000/- from him. PW-6 says he does not know why that money was taken. I would have expected PW-4 to tell the reason why he wanted Rs.3000/- so urgently. In fact in his examination-in-chief PW-6 says “it did not so happen that daughter of Bhagwan had been given in marriage at Satave and as the accused demanded sansar set, so Bhagwanrao had taken Rs.2000/- from him”. In his cross-examination PW-6 says “it is not true to say that on 5th day of marriage of Amita Bhagwanrao alongwith his nephew & daughter had come to village Satave at the house of accused with sweets. It is not true to say that on that day Bhagwanrao came to my house & informed me that the accused persons are demanding sansar set & he demanded Rs.3000/- to me & I had given the same to him. It is not true to say that Bhagwanrao purchased sansar set from amount that I had given to accused no.1.”

Therefore, the evidence of PW-4 has to be discarded.

16. The other allegation is accused no.1 left Amita at the house of PW-2 for delivery but within 2 days took her away only to harass her. But it has come on evidence of PW-2 and PW-3 that when accused no.1 took Amita with him, accused told Smita-sister of Amita to send PW-3 with two tolas of gold and Rs.10,000/- and PW-3 informed PW-2. Strangely, Smita has not been examined. The evidence of PW-2 and PW-3 on this account is certainly hearsay.

17. PW-2 says Amita personally informed him about ill-treatment and just few days before the incident, she told him that she was not feeling safe in the house of accused no.1. PW-2 claims to be a father figure to Amita and he conducted the marriage of Amita. Such a benefactor, however, does not consider it necessary to rush to the house of accused no.1 to find out why Amita was feeling unsafe and if his concern for Amita was genuine, he should have taken Amita to his house. He does not do anything. If Amita was really subjected to cruelty, PW-2 would have disclosed it to PW-3 and both would not have sent Amita at the house of accused no.1. It has come in the cross-examination of PW-2 and PW-3 that during Dasera, Smita and her maternal Uncle had been to the house of accused where Smita stayed for few days. Though PW-2 denied that Smita stayed for 8 to 10 days and that accused no.1 gifted her Punjabi dress, one thing is

certain, Smita stayed in the matrimonial home of Amita. PW-2 and PW-3 also admitted that during Diwali, aunt of Amita had also gone to the house of accused with sweets. If Amita was being treated with cruelty as alleged by PW-2, accused would not have extended the hospitality to Smita by allowing her to stay in the matrimonial home of Amita and would not have entertained the aunt of Amita during Diwali.

18. The trial Court has listed various such omissions and contradictions to dismiss the case of prosecution that Amita was treated with cruelty as defined under Section 498-A. For the sake of brevity I do not wish to introduce all those points. Suffice to say those observations have the approval of this Court.

19. As regards section 306, it has come on record that the well in which the dead body of Amita was found, was not in proper shape and there was no parapet wall. It has also come in evidence that ladies in that area would go before sunrise to answer nature's call because there was no public toilet in the vicinity. There is no evidence to indicate that Amita committed suicide except that there was a legal presumption under section 113-A of the Evidence Act. One should keep in mind that just 10 days before the unfortunate date, Amita had

delivered a baby boy and I would not expect a mother to go and commit suicide within 10 days of delivering a child. We must also note that in the evidence of DW-1 it has come on record that DW-1 was depositing Rs.150/- every month in the post office savings plan in the name of Amita. He would not have been investing in her name if there was any illegal dowry demand. It has also come on record that during the 'Oti-bharane' function which was conducted in the house of accused no.1 the family members of Amita including (PW-3) were present and from the photographs it appears that Amita was dressed up well and all, including PW-3, were in happy mood.

20. Therefore, I am unable to gather myself to interfere with the order of the trial Court and hold that Amita was treated with such level of cruelty that she committed suicide and accused were guilty of abetting Amita to commit suicide.

21. 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. For acquitting the accused, the Sessions Court rightly observed that the prosecution had failed to prove its case.

22. Appeal dismissed.

(K.R.SHRIRAM,J)