

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 870 OF 2006**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

Raoso Balaso Shinde
Age : 40 years, Occ.: Service,
Resident of Dudhgaon,
Taluka – Miraj, District - Sangli

....Respondent
(Orig. Accused)

Ms. P.N. Dabholkar, APP for State/Appellant.
Mr. Vinod Sangvikar i/b Mr. Umesh Mankapure for Respondent.

**CORAM : K.R.SHRIRAM, J.
DATED : 14th DECEMBER 2020.**

ORAL JUDGMENT :

1. At the outset Mr. Vinod Sangvikar i/b Mr. Umesh Mankapure for Respondent sought adjournment saying that he has not received paper book from the appellant. Mr. Sangvikar had no explanation as to why for 13 years when the vakalatnama was filed in 2007 as stated by Mr. Sangvikar, they did not even write to the appellant seeking a copy of the appeal paper book. Since the court had already gone through the record and proceedings, the court refused the adjournment that Mr. Sangvikar was seeking. The court went through the record and proceedings with the assistance of learned APP.

2. This is an appeal against the order and judgment dated 24th April, 2006 passed by the 4th Ad-hoc Additional Sessions Judge, Sangli acquitting the accused (Respondent) of offence punishable under Section 306 (*Abetment of suicide*) and Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) of the Indian Penal Code.

3. The complainant in this case is one Pravin Vilas Katkar (P.W. 1). P.W. 1 had sister who was called Manisha. Manisha was wife of Respondent. Manisha and Respondent were married for 13 years to each other. At the time of marriage, amount of Rs.5,000/- was given as dowry and some household articles were also given. For three years Manisha and accused lived happily. But thereafter, accused used to consume alcohol and would beat Manisha. Manisha brought this to the notice of P.W. 1 who went to matrimonial home of Manisha in order to take up the issue with accused. When P.W. 1 met accused, accused scolded Manisha asking her why she had to disclose matrimonial disputes to her brother or family members. The accused is alleged to have beaten under the influence of liquor at that time and continued to beat Manisha.

4. It is also the prosecution case that on 24/03/2000 Vilas Katkar, father of Manisha and P.W. 1 died. Before that accused got job in Kasturba Walchand College as a peon for which he needed money. Accused therefore

started harassing Manisha demand an amount of Rs.40,000/- be brought from her parents. Manisha informed accused that the financial condition of complainant P.W. 1 or her father was not good but still Vilas Katkar, father of Manisha and P.W. 1 gave a sum of Rs.26,000/- to accused.

5. Manisha had two daughters and one son. Despite having three children Manisha had to undergo lot of physical torture primarily due to addiction of accused to liquor. Manisha used to tell any family member who has visited her matrimonial house about harassment by accused.

6. It is also prosecution case that five years before the incident Manisha had moved to Sangli and was residing in a rental room at Yashvantnagar with accused. Two years thereafter she moved to a room in Chaitanyanagar, Sangli and incident happened three years thereafter.

7. It is also prosecution case that after demise of Manisha's father accused wanted Manisha to get him the M-80 motorcycle which belonged to Manisha/complainant's father. Accused was also demanding a key to a cupboard that belonged to father of Manisha and complainant, and as the key and also the motorcycle was not given, accused became very annoyed with Manisha. It is also stated that three months prior to the incidence in the month of Shravan there was Vastu Shanti programme at the house of complainant in village Chitali and Manisha and accused were invited for the

function. Accused, however, did not attend the function but Manisha alone attended. During the function dress for accused and Manisha was given to Manisha which after eight days were returned by accused with a demand that gold ring along with dress should be given.

8. According to prosecution, at about 11.30 p.m. on 19/10/2005 complainant P.W. 1 had received a call from accused and accused informed P.W. 1 that Manisha has suffered burn injuries and he has taken Manisha to the Civil Hospital, Sangli where Manisha was getting treated. It is further case of the prosecution that when complainant reached hospital and asked Manisha as to how she got burn injuries, Manisha told him that accused had not stopped consuming liquor get inebriated and frequently would beat her up and as she has fed up with the constant beating by accused she poured kerosene on her person and set herself on fire. It is also alleged that Manisha informed complainant P.W. 1 that when her statement was being recorded by the police, accused asked her to tell police that a lamp fell on her which caused the fire and she got burn injuries. It seems accused also threatened her that if she did not state what he had told her to say, she would have to face his wrath. The complaint came to be lodged on 23/10/2005 by P.W. 1 when the incident happened on 19/10/2005.

9. It is also the case of prosecution that before registering the offence police received an intimation about Manisha being admitted in Civil Hospital for burn injuries and accordingly preliminary enquiry was

conducted by one PI Shingate. After the case was registered, P.W. 4 Investigating Officer registered the offence, collected the documents including Inquest panchanama and Dying Declaration of Manisha, Statement of witnesses were recorded, Postmortem report collected and the accused was arrested. Charge-sheet was later filed and the Judicial Magistrate First Class, Sangli committed the case to Sessions Court, Sangli since one of the offence charged was under Section 306 of the Indian Penal Code.

10. Statement of accused under Section 313 of the Criminal Procedure Code was also recorded and the defence was of total denial. Accused denied that even Rs.5,000/- has given dowry at the time of marriage and according to accused he and Manisha led a happy married life. Accused has stated that on 19/10/2005 a lit lamp fell on Manisha accidentally and Manisha suffered burn injuries. Accused and his neighbour one Shantabai Kamble, who has not been examined by the prosecution, rushed Manisha to the Civil Hospital for treatment. He has denied that he had tutored or threatened Manisha to make a statement that she made as recorded by D.W. 1.

Accused in his defence has examined two witnesses namely Ramnath Sitaram Mengal who was Head Constable (D.W. 1) and one Dr.Nikhil Prakash Patil (D.W. 2) who was witness to the Dying Declaration recorded by D.W. 1.

11. To prove the charge, prosecution examined P.W. 1 Pravin Vilas Katkar, brother of Manisha, P.W. 2 Sudhir Ganpati Shinde, Manisha's mother's brother (Mama), P.W. 3 Namdeo Ambadas Rasankar, Spot Panch and P.W. 4 Jalindhar Bapurao Gavali, Investigating Officer. Defence lead evidence of two witnesses as noted earlier.

12. One of the point which went against the prosecution was that the incident occurred on 19/10/2005 and the accidental death was admittedly registered before registering the offence. Inquest panchanama was prepared on 20/10/2005 in which there is a reference to the accidental death. The dead body of Manisha was also identified by complainant P.W. 1 at which time complainant had the liberty to put forth his grievance to the police. Complainant however did not say anything to the police but then lodged the complaint on 23/10/2005. Another point which tilted the scale against the prosecution was that Manisha was married 13 years ago and had two daughters and one son. The oldest daughter was nine years and she was present at the time of incident at home but was never examined by the prosecution. P.W. 1 and P.W. 2 are both relatives of Manisha and we will see how there are contradictions or omissions or inconsistency in their evidence. No independent witness has been examined. Moreso because the case of prosecution an inebriated accused would always beat Manisha. Manisha was living in a single room with people living in the neighbourhood but no one has come forth to give evidence about the alcoholism of accused or his

beating Manisha after getting drunk.

13. It is settled law that for an offence under Section 498 A of the Indian Penal Code even if cruelty by itself is established and the fact of suicide is also established, it would still not be sufficient to bring home the guilt of committing cruelty as defined in Explanation (a). A reasonable nexus has to be established between the cruelty and the suicide in order to make out an offence of cruelty or in the alternative, cruelty established has to be of such a gravity as likely to drive a woman to commit suicide. If suicide is established then it has to be established that it was on account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide.

14. Even mere harassment or mere demand for property may not fall under the meaning of cruelty. The harassment has to be with a definite object, normally to force a woman or any person related to her to make an unlawful demand. It is only where harassment has shown to have been committed for the purpose of coercing a woman to meet the demands, i.e., cruelty becomes punishable under Section 498 A of the Indian Penal Code.

15. Let us see, whether the prosecution has cross these threshold. The crucial question is whether Manisha sustained burn injuries due to lit lamp falling on her while she was asleep or whether she poured kerosene on

her person and set herself on fire with matchstick. We also have to see whether Manisha was subjected to ill treatment and harassment by accused to satisfy his illegal demands under the influence of liquor. P.W. 2 Uncle of Manisha states that P.W. 1 mentioned to him that accused was demanding an amount of Rs.25,000/- to get a job and therefore he paid the amount of Rs.25,000/- to P.W. 1 who in turn paid that amount to accused. He also says that Manisha never went to his house but he came to know about harassment through P.W. 1. P.W. 2 has admitted that he has not given any documentary evidence to the police to show that he paid amount of Rs.25,000/- to P.W. 1. Evidence of P.W. 2 also shows that he has not stated before police that he had given amount of Rs.25,000/- to P.W. 1 and also that at the time of Vastu Shanti programme Manisha told him that accused was quarreling and abusing her for money. P.W. 4 Investigating Officer states that when he recorded statement of P.W. 2, P.W. 2 never mentioned that he had given amount of Rs.25,000/- to P.W. 1 or that P.W. 2 mentioned to him about the grievance raised by Manisha against accused at the time of Vastu Shanti programme. Investigating Officer has even admitted that he did not prepare spot panchanama or even arrest panchanama while arresting accused.

16. Now, let us juxtapose the evidence of prosecution witnesses about harassment meted out and the cause of burn injuries orally mentioned by Manisha to P.W. 1 with the evidence of D.W. 1 and D.W. 2.

D.W. 1 – Police Head Constable Ramnath Sitaram Menghal in his evidence has deposed that he was on duty in Civil Hospital, Sangli from 9.00 p.m. on 19/10/2005 to 9.00 a.m. on 20/10/2005. He has also deposed that PC Patil was his assistant in the said duty period and Manisha was admitted in Civil Hospital at about 10.45 p.m. to 11.00 p.m. in the burn ward. D.W. 1 was informed by the doctor incharge, i.e., D.W. 2 about patient admitted in the burn ward and doctor requested him to record the statement of patient Manisha. D.W. 2, Dr. Nikhil Patil, was present in the burn ward when D.W. 1 went there. D.W. 2 informed D.W. 1 that patient was in a condition to speak and D.W. 2 has given endorsement to that effect on a blank paper and also put his signature. D.W. 1, in the presence of D.W. 2, recorded statement of Manisha as per her version on the paper on which D.W. 2 had given endorsement. D.W. 1 says that after completing said statement, he read over the same to Manisha. He asked Manisha whether she wanted to say anything more and obtained signature of Manisha on the said paper. Thereafter, D.W. 1 handed over the statement to D.W. 2 who again put his endorsement in English and also put his signature once again. D.W. 1 has stated that Manisha informed him that after taking meal, family had gone to sleep and when they were asleep, a kerosene lamp fall on her because of which she caught fire and sustained injuries. D.W. 1 further deposed that accused had admitted Manisha in the hospital and while recording statement of Manisha D.W. 1, his assistant, doctor and accused were present in the ward. D.W. 1 has specifically deposed that while recording statement

he did not feel that Manisha has given statement under pressure from anybody.

17. D.W. 2 – Dr. Nikhil Parakash Patil has stated that when Manisha was brought to burn ward, he examined her and started treatment and also had a talk with Manisha. D.W. 2 says that Manisha told him about history of sustaining burn injuries and informed him that a lamp had fallen on her body and her dress and body caught fire. D.W. 2 has specifically deposed that Manisha did not make any complaint against any person. D.W. 2 has also stated that Manisha was giving her statement verbally and nobody interrupted Manisha when she was giving her statement. In his cross-examination D.W. 2 has explained the description of the burn injuries and according to him, the burn injuries on the head, face and neck was 7%, burn injury on right upper limb was 8%, burn injury on left upper limb was 8%, burn injury on anterior trunk was 16%, burn injury on back portion was 18%, burn injury on left lower limb was 16%, burn injury on right lower limb was 17% and thus total percentage of the burn injury was 90%.

D.W. 2 has also stated that 90% burn injuries was unlikely in case of adult patient, considering the nature of lamp, though 90% is possible due to accident. I would say this is mere speculation because there is nothing to indicate that the lamp was produced. Learned APP stated that lamp has not been produced and there is no evidence on the kind of saree or peticoat or any other garment that Manisha was wearing.

18. P.W. 1 states that accused has demanded Rs.40,000/- for procuring job in Kasturba Valchand College but accused was in that job five years prior to the alleged incident. Therefore, it is difficult to believe that accused demanded Rs.40,000/- for securing job and that it had any nexus to the incident that occurred in the year 2005. Prashant was another brother of P.W. 1 and Manisha who attended her funeral but Prashant has not been examined by the prosecution. It is come in the evidence that Manisha's mother had an occasion to reside for two days at Sangli when she was taking some treatment under one Dr. Purandare. The prosecution, however, has not examined mother of Manisha to prove behaviour on the part of the accused and to prove that the accused was an alcoholic.

19. P.W. 2 in his cross-examination states the police met him for the first time on 23/10/2005 and for that purpose police had gone to his village at Ped to record his statement. But this is inconsistent with the evidence given by P.W. 4 Investigating Officer who in his cross-examination has admitted that on 23/10/2005 he has not visited the village Ped or Chitali.

P.W. 2 in his cross-examination has admitted that on the day after funeral, P.W. 2, his father, mother, sister, Prashant were present in Vishram Baug Police Station and when they went to police station police made enquiry with them but the statement was not recorded by police. This means on the day after funeral all of them have gone to Vishram Baug Police Station. If that was the case, then why did P.W. 1 not lodge the

complaint to Vishram Baug Police Station but waited till 23/10/2005 to lodge the report. P.W. 1 had also collected the Inquest panchanama which was prepared on 20/10/2005 in Civil Hospital, Sangli by the police and also identified the dead body while preparing the Inquest panchanama. These points raised a question mark on the alleged oral dying declaration Manisha gave to her brother P.W. 1 after giving written dying declaration to the police where Manisha has made no allegations against the accused.

20. The Apex Court in ***Ghurey Lal V/s. 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 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.

1. (2008) 10 SCC 450

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.

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 he is proved guilty by a competent court of law. Secondly, 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.

22. 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.

23. Appeal dismissed.

(K.R. SHRIRAM, J.)