

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.83 OF 2004**

The State of Maharashtra)
(At the instance of Thane nagar)
Police Station) ..Appellant

Versus

1. Habib Saiyyad Ahamad Jamkhandi)
Adult)

2. Smt. Aminabi Saiyyad Ahamad)
Jamkhandi, Adult)

3. Sou Shabnam Saiyyad Bashir)
Jamkhandi, Adult)

4. Sou. Madina Saiyyad Badruddin)
Jamkhandi, Adult)

5. Saiyyad Bashir Ahamad Jamkhandi,)
Adult)

6. Saiyyad Badruddin Ahamad Jamkhandi,)
Adult)

All R/at, IInd Rabodi, Jamkhandi House)
Thane, Dist. Thane) ..Respondents
(Original Accused Nos.1 to 6)

Ms Pallavi Dabholkar APP for Appellant

**CORAM : K.R.SHRIRAM, J.
DATE : 14th FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 28-8-2003 passed by the Chief Judicial Magistrate, Thane, acquitting

respondents (accused) of offence punishable under Sections 498A (*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 Indian Penal Code.

2 It is the case of prosecution that one Afroz Jamkhandi (PW-2) - complainant, married to accused no.1 on 10-5-1998. Other accused were husband's family members, who all lived together. After marriage, PW-2 went to her matrimonial home and started residing with the accused at Thane. Immediately after 4 to 5 days after marriage, accused no.1 told PW-2 to get Rs.50,000/- from her parents for the purpose of his shop. PW-2, tried to convince the accused that her parents cannot afford to pay that amount, resulting in the accused abusing her and beating her. It seems, within 15 days when mother of PW-2 visited the matrimonial home of PW-2, PW-2 narrated this fact to her mother. The mother of PW-2 also tried to convince the accused, but there was no change in their attitude. The mother of PW-2, who is also the wife of PW-1, has not been examined. The accused again demanded Rs.50,000/- and started abusing and beating PW-2.

3 In the month of September 1998, the shop of the accused was demolished in the road widening, at which time, the accused abused PW-2 that her arrival in the family has only brought them ill-luck and they lost their shop because of that. The accused also warned PW-2 to bring

Rs.50,000/- from her parents. PW-2 alleges that accused no.1, who is her husband, had an illicit relationship with his sister-in-law (brother's wife), who is accused no.3 and brother is accused no.5. PW-2 informed about the illicit relationship to her mother when she visited her matrimonial home. The mother of PW-2 reprimanded accused no.1 for his illicit relationship with his sister-in-law, resulting in the accused giving severe mental and physical torture to PW-2. On 29-10-1998, the accused had sent PW-2 to Pune to attend the wedding of a relative and in that wedding also, the accused picked up quarrels with PW-2 and sent her away to her parents house. Since then, PW-2 has been residing in her parents house. When repeated attempts for conciliation failed and as the accused did not take PW-2 back into their house, PW-2 lodged a complaint and offence under Section 498A read with Section 34 of IPC, was registered. During the course of investigation, the Investigating Officer recorded the statements of witnesses and after completion of investigation charge sheet was submitted. Charges were framed and the accused pleaded not guilty and claimed to be tried. The defence of the accused as recorded in the statement under Section 313 of CrPC, is that PW-2 was already married, which was suppressed and she has filed this false case.

4 To prove their case, prosecution, though had listed 6 witnesses, examined only 3 witnesses, i.e., Shahnawaz Abdul Rehman, father of complainant, as PW-1; Afroz Habib Hamkhandi, complainant, as PW-2, and

PSI Jaising Patil, Investigating Officer, as PW-3. It is the case of prosecution that the accused demanded Rs.50,000/- from PW-2 and on failure to satisfy their demand, subjected her to cruelty and harassment.

5 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 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

1 (2008) 10 SCC 450

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.

6 The Apex Court in many other judgments including ***Murlidhar & Ors. 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

2 (2014) 5 SCC 730

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.

7 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 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 re-appraise the evidence and arrive at its own conclusions.

8 I have perused the impugned judgment, considered the evidence and also heard Ms. Dabholkar, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

9 Law on what would amount to an offence under Section 498A, has been well discussed in catena of judgments. It is settled law that under Section 498A of IPC, every cruelty is not an offence. The cruelty must be of such a degree as contemplated by the Section, i.e., in the facts and

3 1996 SCC (cri) 972

circumstances of this case, the harassment must be with a view to coercing the woman or any person related to her to meet any unlawful demand for any property or on failure of her to meet such demand.

10 The Division Bench of this court in ***Kamlesh Ghanshyam Lohia and Ors. Vs. State of Maharashtra, through the commissioner of police & Ors.***⁴ in paragraphs 12 to 15, has observed as under:

“12. The allegations against the petitioners are, therefore, required to be appraised through the aforesaid backdrop. If we take the allegations in the FIR at par, qua the petitioners, at best, the following three allegations can be attributed to the petitioners :

(i) After the first informant and Krishna shifted to Juhu in June 2012, the petitioners occasionally visited them and during those visits, insulted the first informant by calling her fat and dark complexioned.

(ii) On every festive occasion, the family members of Krishna demanded clothes, ornaments and money from her parents and those demands were met.

(iii) All the family members humiliated the first informant by calling her, "infertile" and made her to demand money from her parents.

13. Whether the aforesaid allegations, even if taken at par, would warrant the prosecution of the petitioners is the moot question. It is indisputable that the cruelty under [section 498-A](#) of IPC has a specific legal connotation. Ordinary quarrels, differences of views and wear and tear of life, which every home witnesses, do not fall within the mischief of cruelty which [section 498-A](#) of IPC punishes. Nor, every ill-treatment or harassment falls within its dragnet. To fall within the tentacles of [section 498-A](#), the married woman must have been subjected to cruelty which would drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, or with a view to coerce her or any person related to her to meet an unlawful demand of property. Mere demand of money or property, unaccompanied by any harassment, would also not fall within the mischief of [section 498-A](#). There has to be a nexus between the demand and the consequent harassment.

14. On the anvil of the aforesaid legal position, if the allegations enumerated above, are weighed, it becomes evident that the first allegation of insulting the first informant after she shifted to Juhu in the year 2010, is of general nature. The allegation is stale as well. By no stretch of imagination, it can be stated that the alleged conduct had the propensity to drive the first informant to commit suicide or

4 2019 SCC online Bom 1762

cause harm to herself.

15. The second allegation of all the family members of Krishna demanding money, clothes and ornaments on each of the festive occasions is also of general nature and bereft of any specific instance and authorship. The said allegations, at the highest, would indicate that on festive occasions certain articles were demanded. In the absence of the allegation that the first informant was subjected to harassment either in order to meet the unlawful demands of property or on her failure to meet such demands, the second allegation loses the incriminating tendency. “

11 A Learned Single Judge of this Court in **Neeraj Subhash Mehta Vs. The State of Maharashtra**,⁵ in paragraphs 9 and 10 has observed as under:

“9 Section 113A of the Evidence Act prescribes rule of presumption in case of suicidal death by a married woman. Whenever the question arose as to whether commission of suicide by a woman has been abetted by her husband or relatives of her husband and it is shown that she had committed suicide within the period of seven years of her marriage and that her husband or relatives of her husband had subjected her to cruelty, then the court may presume “having regard to all other circumstances of the case” that such a suicide has been abetted by her husband or relatives of her husband. It is, thus, clear that, this presumption cannot be raised automatically on proof of suicidal death within seven years of marriage and subjecting a married woman to cruelty. Something more is required to be seen for drawing this presumption.

10 By catena of judgments of this court as well as Apex Court what amounts to cruelty as envisaged by Explanation to Section 498A of IPC is explained. Cruelty implies harsh and harmful conduct with certain intensity and persistence. It covers acts causing both physical and mental agony and torture or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miscarries. The conduct, in order to prove guilt, must be such as strongly stirring up the feeling in the mind of a married woman that life is now not worth living and she should die, being the only option left. In other words, provisions of Section 498A of the IPC envisages intention to drawing or force a woman to commit suicide by unabated persistence and grave cruelty. A willful conduct of such a nature as is likely to propel or compel a married woman to commit suicide or to cause grave injury or danger to her life, limb or health is required to be established. In other words, matrimonial cruelty is included from the definition of

5 2017 SCC Online Bom 62

legal cruelty. To put it in other words, ordinary petulance and discord or differences in domestic life does not amount to cruelty. By keeping this aspect in mind, let us prima facie examine the instant case for a limited purpose as to whether the applicant / accused is entitled for liberty. If the impugned judgment and order of the trial court is perused, then it is seen that the reasoning part is in paragraph 65 of the judgment. Reliance is placed on evidence of PW1 to PW3 by the learned trial court. It is observed that the dispute was over the issue of the deceased having made "kaccha chapati." Further observations are to the effect that this was too trivial matter to invoke extreme and harsh response of calling her brother and parents. In other words, the learned trial Judge was very well aware of the fact that the incident of commission of suicide was preceded by a trivial incident in the matrimonial life of Neha. Still, without further discussion, offence punishable under Section 498A of the IPC is held to be proved. Then by taking aid of Section 106 of the Evidence Act, as well as Section 113A thereof, it is held that the offence punishable under Section 306 of the IPC is proved."

12 The evidence of PW-2, has many contradictions and omissions.

PW-1, father of PW-2 says after 4 to 5 months of marriage, a demand of Rs.50,000/- was made. Whereas, PW-2 (complainant) says the demand made within 3 to 4 days of marriage.

PW-2 says within 2 or 3 days, she noticed that there were illicit relations of accused no.1 and accused no.3, but in her complaint (Exhibit 32), PW-2 says that in the month of September 1998, i.e., 4 months after marriage, she had noticed extra marital relation between accused no.1 (husband) and accused no.3 (sister-in-law) and she caught them red handed. In the evidence, PW-2 says that when she confronted accused no.1 on his illicit relationship with accused no.3, she was beaten. But in her complaint at Exhibit 32, PW-2 says she never disclosed that to anybody and only when her mother visited her house, she told about the illicit relationship between accused no.1 and accused no.3. Strangely, the mother

of PW-2 is not examined. PW-2 says that she even disclosed this to accused no.5, who is the husband of accused no.3 and the illicit relationship between accused no.1 and accused no.3 continued until she left the matrimonial home. It would be natural for accused no.5 not to have tolerated that his wife – accused no.3 being in illicit relationship with his own brother - accused no.1 and there would have been some kind of reaction from him, particularly because all the accused were living under one roof. Nothing of that is mentioned in the evidence, Therefore, the testimony of PW-2 is just not reliable.

PW-1 says that at the time of marriage, the accused gave PW-2 mangalsutra, necklace and earrings, whereas, PW-2 says she got only mangalsutra and no earrings or necklace was given. PW-2 also admits various omissions.

13 The demand of Rs.50,000/- is also very vague. I have to note that except a general statement of demand of Rs.50,000/-, there is no evidence of harassment at all or for that matter harassment with a view to coerce PW-2 to meet any unlawful demand and on account of failure by her to meet such demand. PW-2 says that the accused lost their shop in road widening in the month of September 1998 and at that time PW-2 was asked to bring Rs.50,000/- to compensate that loss. PW-2 also says that the accused asked PW-2 three or four days after marriage to compensate this loss. These just do not tally.

14 The delay in lodging the complaint also has not been explained and the delay makes me feel that prosecution's case is suspicious. It is pertinent to note that PW-1 and PW-2 admit in their cross-examination that accused no.1 had filed a complaint against PW-2 in the Police Station at Pune on 24-11-1998 and the present complaint was lodged by PW-2 on 4-12-1998 subsequent to the complaint filed by accused no.1 against her. In view of the above, I am unable to agree with the case of prosecution.

15 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, 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 Trial Court has rightly observed that the prosecution had failed to prove its case.

16 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.

17 Appeal dismissed.

(K.R. SHRIRAM, J.)