

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.95 OF 2004**

State of Maharashtra	)Appellant/Complainant
V/s.	
1. Dr. Umakant Laxman Biraris,	)
28 yrs., R/o. Pale Budruk, Taluka – Kalwan	)
2. Laxman Shamrao Biraris,	)
51 yrs., R/o. Balhane, Taluka – Sakri,	)
District - Dhule	)
3. Latabai Laxman Biraris,	)
46 yrs., R/o. Balhane, Taluka – Sakri,	)
District - Dhule	)
4. Kesharbai Shamrao Biraris,	)
72 yrs., R/o. Balhane, Taluka – Sakri,	)
District - Dhule	)
5. Bhaskar Shamrao Biraris,	)
52 yrs., R/o. Balhane, Taluka – Sakri,	)
District - Dhule	)
6. Shobhabai Bhaskar Biraris,	)
45 yrs., R/o. Balhane, Taluka – Sakri,	)
District - Dhule	)
7. Prabhakar Shamrao Biraris,	)
42 yrs., R/o. Balhane, Taluka – Sakri,	)
District - Dhule	)Respondents/Accused

Mr. S.V. Gavand, APP for State – Appellant.

Mr. Vaibhav Charalwar, Advocate appointed as Amicus Curiae.

CORAM : K.R.SHRIRAM, J.

DATE : 17th FEBRUARY 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 26th September 2003 passed by the First Ad-hoc Additional Sessions Judge, Nashik, acquitting the 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*), read with Section 34 (*Acts done by*

several persons in furtherance of common intention) of the Indian Penal Code (IPC).

2 Initially, there were 7 accused. After the evidence was recorded, as noted in paragraph 10 of the impugned judgment, the prosecutor conceded that there was no sufficient evidence as to bring home the guilt of accused nos.2 to 7. Therefore, this appeal has been preferred only against the acquittal of accused no.1.

3 On 12th February 2020 since nobody was present in Court representing respondents, the Court appointed Mr. Vaibhav Charalwar, an Advocate, as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Mr. Vaibhav Charalwar, learned Amicus Curiae, for it has been of immense value in rendering the judgment.

4 It is prosecution's case that PW-1 and PW-4 had a daughter, who was called Pratibha. Pratibha got married to accused no.1 on 8th May 1999. At the time of marriage, accused and original accused nos.2 to 7 were residing together at village Balhane, Taluka – Kalwan, District - Nashik. Pratibha had studied upto 12th standard. PW-1 and PW-4 spent for the marriage of Pratibha and also gave Rs.75,000/- to accused as dowry. After one month of marriage, Pratibha started to complain that accused was not treating her properly and was demanding Rs.50,000/- for purchasing a motor-cycle. Pratibha informed PW-1 and PW-4 that accused used to abuse and beat her.

5 After 8 to 9 months of marriage, Pratibha and accused started living separately at Pale Budruk village. Accused was Doctor, a general practitioner. It is alleged that accused was an alcoholic and he often used to beat Pratibha after getting drunk and at that time, would also demand that she gets Rs.50,000/- from her parents. When Pratibha got pregnant, PW-1 requested accused to send Pratibha to their house for delivery but accused refused to send Pratibha for delivery. Pratibha delivered a male child while residing at the house of accused. After delivery, when PW-1 and PW-4 went to the house of accused to see the baby and make inquiries about Pratibha's health, at that time also Pratibha informed her parents that accused used to beat her and demand money. 2-3 days after the baby was born, PW-4 took Pratibha and the child to their house and after six weeks or so, the father of accused came and took Pratibha and the child home.

6 On 21st June 2001, PW-1 received information that Pratibha died due to burns. PW-1, PW-4 and relatives rushed immediately to village Pale Budruk to the house of accused where they came to know that Pratibha has been taken to Civil Hospital, Kalwan. PW-1, therefore, proceeded to Primary Health Centre, Kalwan, where he saw the corpse of Pratibha. PW-1 took possession of the corpse and cremated her.

7 The following day, PW-1 lodged report of incident with Kalwan Police Station based on which an offence was registered. After investigation, chargesheet was filed and accused pleaded not guilty and claimed to be tried. The defence is of total denial.

8 To drive home the case, prosecution led evidence of 7 witnesses, viz., Ramesh Ramdas Patil, father of Pratibha as PW-1; Laxaman Sahebrao Deshmukh, Police Patil as PW-2; Shivaji Rajaram Deshmukh, panch witness and neighbor of accused as PW-3; Gokulbai Ramesh Borse, mother of Pratibha as PW-4; Nitin Ramesh Borse, elder brother of Pratibha as PW-5; Subhash Sitaram Borse, uncle of Pratibha as PW-6; and Lakhanlal Hari Mathure, Police Inspector and Investigating Officer as PW-7. The postmortem report has been admitted.

9 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.

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

1. (2008) 10 SCC 450

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.

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. 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

2. (2014) 5 SCC 730

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.

The Apex Court in *Ramesh Babulal Doshi V/s. 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.

10 I have perused the impugned judgment, considered the evidence and also heard Mr. Charalwar, learned Amicus and Mr. Gavand, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

11 PW-1 and PW-4 are alleging cruelty in the hands of accused and both are saying that accused was demanding Rs.50,000/- to buy a motor-cycle. Apart from these general statements, there is nothing specific. PW-1 says that

3. 1996 SCC (cri) 972

accused used to get drunk and assault Pratibha. PW-1 and PW-4 say that on one occasion when accused and Pratibha had gone to the parental home of Pratibha, accused beat Pratibha. Both do not say what steps they took when they saw their daughter being beaten. It would be quite natural to any parent to atleast stop son-in-law from beating their daughter. They may have not thought to lodge a police complaint but atleast the witnesses should have stated what they did when they allegedly saw their daughter being beaten. PW-1 says that when they visited the house of accused, they found accused under the influence of liquor in the evening and they found that Pratibha had delivered a male child. But PW-4 does not say anything of that kind in her evidence. Infact PW-4 says that 2-3 days after delivery, accused reached Pratibha and her son to their house by hiring a vehicle.

12 PW-1 admits that he has not stated in his statement recorded under Section 161 of the Code of Criminal Procedure that after delivery of Pratibha, when he had been to the house of accused, he found accused under the influence of liquor in the evening. PW-1 also admits that he did not tell the police that he kept his wife (PW-4) in the house of accused to take care of Pratibha and he returned to the village. PW-1 admits that accused used to go for visits to other villages on a motor-cycle, whereas, the allegation is accused was asking money to buy a motor-cycle. PW-1 says that even though he was informed by Pratibha about the conduct of accused and demand of money, he did not inform any of his relatives or complain about accused to their relative – Vasant Pawar, who was also living in the same village as the

family of accused. PW-1 also admits that he never lodged any complaint to the police about accused ill-treating Pratibha and demanding money to buy motor-cycle. PW-1 also admits that he never informed the Police Patil or Sarpanch or other respectable persons of village Pale Budruk to persuade accused not to take liquor.

13 Similarly, PW-4 says that the grievance of Pratibha was not told to anybody even to her sister and husband, who were from the same village Pale Budruk. PW-4 also admits that they never complained to Police Patil or Sarpanch or other respectable persons of the village or neighbors of accused about the conduct of accused towards Pratibha. PW-5 and PW-6 also admit that there are many omissions in their evidence. All these are interested parties. What is very important is the evidence of PW-2 and PW-3, who are independent persons.

14 PW-2, who was the Police Patil, says when he received information, he proceeded towards the house of accused and heard noise in the house of accused and he saw crowd collected. PW-2 also says he went to find out what happened and realised that the door of the house was locked from inside and the child could be heard crying. PW-2 claims to have broken open the door with the help of a carpenter and found the child crying in one room and the dead body of Pratibha in another room. In his cross examination, however, PW-2 says he never noticed existence of any matrimonial dispute between accused and Pratibha. PW-2 also says no relative of Pratibha ever complained to him about the conduct of accused.

PW-2 has added that he came to know that Pratibha used to quarrel with accused as he was financially helping his parents for cultivating their field.

15 Similarly, PW-3, who was also a panch witness for the inquest panchnama and the neighbor of accused, says he and his wife used to frequently visit the house of accused and similarly, accused and his wife also frequently used to visit their house. According to PW-3, accused and Pratibha were pulling well and there was no quarrel between them. PW-3 says Pratibha was not able to control her anger and would quarrel with accused because he is used to financially assist his parents.

16 Therefore, these two independent witnesses, i.e., PW-2 and PW-3 say that they did not notice any matrimonial dispute, Pratibha has not told either of them that she was being ill-treated, neither PW-1 nor PW-4 have informed PW-2 about the ill-treatment and these neighbors also do not state that accused was a habitual drinker. These two prosecution witnesses have in effect poured water over prosecution's case that accused used to get drunk and beat Pratibha.

17 It looks like Pratibha was unable to tolerate accused, who was a medical practitioner, financially helping his family. Infact on the date of incident, it has come in the evidence of PW-3 that the grandmother of accused had come to visit them to see the great grandchild and in the evening, accused had taken his grandmother back to his parents' house on motor-cycle.

18 Therefore, in my view, prosecution has not proved beyond reasonable doubt that accused used to ill-treat Pratibha and because of that ill-treatment Pratibha committed suicide.

19 Mr. Gavand, learned APP submitted that the marriage happened on 8th May 1999, the incident of Pratibha dying happened on 21st June 2001 and therefore, there is a presumption under Section 113–A of the Indian Evidence Act as to abetment of suicide.

20 Mr. Charalwar, learned Amicus relying upon a judgment of the Apex Court in *Hans Raj V/s. State of Haryana*⁴ submitted that under Section 113–A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage, which in this case is not disputed and that her husband had subjected her to cruelty. Even if these facts are established, the Court is not bound to presume that the suicide had been abetted by her husband. Mr. Charalwar submitted that Section 113-A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, one of which is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. Mr. Charalwar submitted that where the allegation is of cruelty, Court must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of word cruelty in Section 498(A) of IPC. The mere fact that a

4. (2004) 12 SCC 257

woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband.

Paragraphs 13 to 15 of the said judgment read as under :

13. Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act. Under Section 113-A of the Indian Evidence Act the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the Court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of word cruelty in Section 498-A I.P.C. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. The law has been succinctly stated in RameshKumar Vs. State of Chhattisgarh (2001) 9 SCC 618 wherein this Court observed :

"This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution.

Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression "the other circumstances of the case" used in Section 113- A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it".

14. *The same principle has been reiterated in Sanju Alias Sanjay Singh Sengar Vs. State of M.P .*

15. *In the State of West Bengal Vs. Orilal Jaiswal and Anr., this Court observed :*

"We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Bater v. Bater [(1950) 2 All ER 458,459] has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject- matter".

21 Mr. Charalwar also points out that even the postmortem report does not indicate any external physical injury to Pratibha and therefore, it is difficult to accept that Pratibha was being beaten and treated with such cruelty that could drive her to commit suicide.

22 Therefore, I am unable to accept the submissions of learned APP that because the death happened within a period of 7 years from the date of marriage, the Court should presume it to be an abetment of suicide by accused.

23 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to 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 his 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.

24 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.

25 Appeal dismissed.

(K.R. SHRIRAM, J.)