

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.458 OF 2003**

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| State of Maharashtra                                                                                                                           | )                     | ....Appellant/Complainant |
| V/s.                                                                                                                                           | )                     |                           |
| 1. Vivek Maruti Shinde<br>Age about : 28 yrs.,<br>Occ.: Service,<br>R/a. 370 A Soham Prasad, Shashtri<br>Nagar, Tal.: Karad, Dist.: Satara     | )<br>)<br>)<br>)<br>) |                           |
| 2. Maruti Ganapati Shinde,<br>Age about : 54 yrs.,<br>Occ.: Service,<br>R/a. 370 A Soham Prasad, Shashtri<br>Nagar, Tal.: Karad, Dist.: Satara | )<br>)<br>)<br>)<br>) |                           |
| 3. Smt. Kusum Maruti Shinde,<br>Age about 47 yrs., Occ.: Household,<br>R/a. 370 A Soham Prasad, Shashtri<br>Nagar, Tal.: Karad, Dist.: Satara  | )<br>)<br>)<br>)      |                           |
| 4. Anand Maruti Shinde,<br>Age about : 25 yrs., Occ.: Service,<br>R/a. 370 A Soham Prasad, Shashtri<br>Nagar, Tal.: Karad, Dist.: Satara       | )<br>)<br>)<br>)      |                           |
| 5. Smt. Mranalini Animesh Patil,<br>Age about : 24 yrs., Occ.: Household,<br>R/o. Hira Banglow, Gulab Nagar<br>Housing Soc., Dhankawadi, Pune  | )<br>)<br>)<br>)      | ....Respondents/Accused   |

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Mrs. Anamika Malhotra, AGP for State.

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**CORAM : K.R.SHRIRAM, J.  
DATE : 7<sup>th</sup> SEPTEMBER 2020**

**ORAL JUDGMENT :**

1            This is an appeal impugning an order and judgment dated 30<sup>th</sup> July 2002 passed by Joint Judicial Magistrate First Class, Karad, acquitting the accused of offences punishable under Section 498 (A)

*(Husband or relative of husband of a woman subjecting her to cruelty)* read with Section 323 *(Punishment for voluntarily causing hurt)* read with Section 34 *(Acts done by several persons in furtherance of common intention)* of the Indian Penal Code (IPC).

2 Complainant one Savita Vivek Shinde (PW-1) got married to accused no.1 on 26<sup>th</sup> January 1997 at Karad. Accused no.2 and accused no.3 are mother and father of accused no.1. Accused no.4 is the brother of accused no.1 and accused no.5 is sister of accused no.1. According to complainant (PW-1), for the first 4 days of marriage the accused treated her well and later started ill-treating her and demanded colour T.V., home furniture, refrigerator etc. to brought from her parents' house.

3 It seems all accused used to beat her because the father of complainant expressed his inability to meet the demands of the accused. The incidences of harassment mentioned in the evidence are all general. Moreover, PW-2, the father of PW-1, says for the first 4-5 months accused used to look after PW-1 very well and started making demands as against four days mentioned by PW-1. PW-3, who is the cousin of complainant, also says for the first few months complainant was looked after very well but subsequently demand was made and due to non satisfaction of demands complainant was harassed.

4 We have to note both PW-2 and PW-3 have not seen personally any incident of harassment or beating and they are relying only on what

complainant has told them. The main allegation of cruelty is when complainant got pregnant, the accused did not give her proper food because of which the foetus, that was developing, was underweight. But there is no such evidence given by any Medical Practitioner or her gynaecologist to corroborate this allegation. It also appears that accused no.1 sent notice on 18<sup>th</sup> March 1998 to complainant as complainant did not return to the matrimonial home since 26<sup>th</sup> June 1997 and the complaint has been filed on 9<sup>th</sup> May 1998. What is required to be noted is on 18<sup>th</sup> March 1998 complainant received a notice from accused no.1 threatening divorce unless complainant went back to the matrimonial home. It appears that the divorce petition also was filed but it was later compromised. The important point is the complaint was filed by complainant only after she received a notice on 18<sup>th</sup> March 1998 in which accused no.1, through his advocate, had called upon complainant within eight days of receiving the notice to return to the matrimonial home with the new born child failing which appropriate legal action would be commenced.

5           The Apex Court in ***Ghurey Lal V/s. State of U.P.***<sup>1</sup> 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*

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1. (2008) 10 SCC 450

*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 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. V/s. State of Karnataka***<sup>2</sup> 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.

          The Apex Court in ***Ramesh Babulal Doshi V/s. State of Gujarat***<sup>3</sup> 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.

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2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

7           I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against the accused.

8           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, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

9           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.

10          Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.  
Gaekwad

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by Gauri A.  
Gaekwad  
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