

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 49 OF 2005**

The State of Maharashtra
(Through Haveli Police Station, Pune)

....Appellant
(Orig. Complainant)

V/s.

1. Sanjay Bhiwaji Shinde,
Aged about 26 years
2. Bhiwaji Waman Shinde,
Aged about 45 years
3. Sou. Shalan Bhiwaji Shinde,
Aged about 40 years
4. Sou. Sangeeta Anil Chavan,
Aged about 30 years

All R/at : Vadgaon Budruk,
Dhayari Phata, Tal. Haveli,
District Pune.

....Respondent
(Orig. Accused Nos.1 to 4)

Ms. P.N. Dabholkar, APP for State/Appellant.
Ms. Mrunmayi Khambete i/b Mr. Vilas Tapkir for Respondent Nos.1 to 4.

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

ORAL JUDGMENT :

1. This is an appeal impugning the order and judgment dated 24th June, 2004 passed by the 15th Ad-hoc Assistant Sessions Judge, Pune acquitting the accused (Respondents) of offences punishable under Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306 (*Abetment of suicide.—If any person commits suicide*) r/w 34 of the Indian Penal Code.

2. It is the case of the prosecution that Sadhana married Accused No.1 Sanjay Shinde on 12/05/1998 as per customs that prevailed in Gosavi community. After marriage Sadhana went to live with Accused No.1. In the matrimonial home, parents of Accused No.1, i.e., Accused No.2 and 3 and Accused No.4 sister of Accused No.1, were residing.

3. Sadhana had seven sisters and two brothers, one of which is complainant Chandrakant Shrihari Sawant. All the sisters were married. Complainant Chandrakant was living separately from his parents. After marriage, Sadhana used to visit complainant Chandrakant as well as her mother P.W. 4 Changunabai.

4. According to prosecution, Sadhana became pregnant twice and unfortunately she miscarried on both occasions. The accused therefore started taunting and abused her by saying that she was not even fit to give birth to a child and she had made it a habit to miscarry. Strangely some time later Sadhana delivered a child. Sadhana used to tell the complainant and P.W. 4 about these taunts and abuses whenever they meet.

5. It is also the case of prosecution that about 1 and 1/2 years later Sadhana informed the complainant over telephone that accused were demanding Rs.10,000/- to purchase motorcycle and Sadhana was threatened with dire consequences if the demand was not fulfilled. The

complainant informed Sadhana to come to his place to collect a part of the amount and accordingly Sadhana visited the complainant and he handed over to her a sum of Rs.3,000/-. It seems five or six months later when the complainant came to meet Sadhana at her matrimonial home, Sadhana told the complainant that accused have further demanded a sum of Rs.25,000/- to purchase a plot of land and construct a house therein. When Sadhana informed the accused that her parents and complainant was not in a position to pay such a large sum, Sadhana was ill treated and she was not given sufficient food. It seems that Accused No.1 also say that no dowry was given to him at the time of marriage. It is also alleged that one night Accused Nos. 1 to 3 forced Sadhana to consume liquor and when Sadhana resisted, all the three accused along with Accused No.4 started kicking and punching Sadhana. As such Sadhana was ill treated and harassed by the accused. The complainant, his mother P.W. 4, his other sister Shalan P.W. 1 met the accused and tried to convince them and told them not to harass Sadhana but that was in vain. Accused continued to ill treat Sadhana. Even a panchayat of Gosavi community was called where the accused also participated and despite attempts to make accused change their behaviour towards Sadhana, the accused continued to ill treat Sadhana.

6. On 23/06/2002 at about 7.00 p.m., the complainant was informed by his son that Sadhana had consumed poisonous substance and was admitted to Sassoon Hospital. By then his mother P.W. 4 and his wife

had already proceeded towards Sassoon Hospital. When the complainant reached Sassoon Hospital, he saw Sadhana was unconscious and not able to speak anything. It seems that complainant came to know from the accused that there was quarrel between Sadhana and her husband Sanjay Accused No.1. As a result of which Sadhana consumed some poisonous substance and hence had to be hospitalized. Sadhana died at about 3.00 a.m. on 24/06/2002 living behind a son aged about six months. A complaint came to be lodged at 9.05 p.m. on 24/06/2002.

7. Investigation was commenced and statement of witnesses and family members of Sadhana was recorded. Spot panchanama as well as Inquest panchanama were prepared by police. After postmortem funeral was conducted at matrimonial place of Sadhana. After due investigation, charge-sheet was filed and the Judicial Magistrate First Class Court committed the case to the Court of Sessions since Section 306 of the Indian Penal Code was involved.

8. To prove its case, prosecution examined nine witnesses namely Shalan w/o. Manoj Athawale (P.W. 1) sister of deceased, Bhausahab Shankar Jadhav (P.W. 2) Social Worker, Chandrakant Shrihari Sawant (P.W. 3) complainant/brother of deceased, Changunabai Shrihari Sawant (P.W. 4) mother of deceased, Leelabai Aba Athawale (P.W. 5) Social Worker, Sudam Miya Kolekar (P.W. 6) Social Worker, Dr. Bhawana Vasantrao Sayaji (P.W. 7)

who conducted postmortem of deceased, Ajay S/o. Nanasaheb Jadhavrao (PW.8) Investigating Officer and Dr. Shripad Mukundrao Bhat who examined and treated deceased Sadhana on her admission to Sassoon Hospital (PW. 9).

9. The defence has taken a stand that death was natural death and Sadhana used to become ill often prior to her death. The accused have denied each and every charge.

10. The Trial Court dismissed stand of the defence that Sadhana died of natural causes and concluded it was a case of suicide by consuming poisonous substance.

Learned counsel for accused Ms. Mrunmayi Khambete raised that point again but since the findings of the Trial Court that Sadhana died of consuming poison and it was a suicidal death has not been challenged by the accused in cross appeal, I did not accept the submissions. Notwithstanding that, I have accepted the findings of the Trial Court on the other issues and thereby upheld the reasons mentioned below for the acquittal of accused.

11. It is the case of prosecution that after Sadhana miscarried for second time, Sadhana complained to the complainant, when he went with his mother to meet Sadhana at her matrimonial home that she was abused,

ill treated by all the accused who were accusing her of being incapable of giving birth to a child and that she had made miscarriage a habit. Complainant PW. 3 and his mother PW. 4 spoke to the accused and requested them not to ill treat Sadhana. In my view, considering the entire evidence, the ill treatment started after the second miscarriage. By then Sadhana was married for 1 and 1/2 years. I say this because, according to prosecution again after 1 and 1/2 years Sadhana informed complainant PW. 3 that accused demanded Rs.10,000/- and Sadhana went to the house of PW. 3 when he gave Rs.3,000/- and then she went back to the matrimonial house. It seems again after five or six months when complainant went to meet Sadhana at her matrimonial house, Sadhana once again mentioned to him about how she was being ill treated and the demand of the accused of Rs.25,000/- to buy a plot of land to construct a house therein.

12. From the testimony of PW. 3 complainant, it appears that after three months of her marriage Sadhana informed him over telephone that Accused No.1 Sanjay used to beat her whereas others abused her. PW. 3 states that he brought this to the notice of mother PW. 4 and then about 8 to 10 days later PW. 3 went to the matrimonial home of Sadhana. PW. 3 states that again after a month Sadhana complained to him over telephone about same ill treatment and that she was not provided with sufficient food even though she was pregnant. But the evidence of PW. 4 is silent about visit of PW. 4 eight days after PW. 3 informed him that Sadhana over

telephone mentioned about ill treatment.

P.W. 4 states that after marriage Sadhana had a blissful life about one year after which she became pregnant. Strangely none of these facts mentioned above are even stated to the police by P.W. 3 or P.W. 4 when their statement was recorded which means that these have been brought on evidence as after thought.

13. P.W. 1 who is the sister of Sadhana says initially for about two to three months after marriage Sadhana was treated well and thereafter the ill treatment began. P.W. 1 says that after second miscarriage she along with her brother P.W. 3 and P.W. 4 mother went to meet Sadhana and there they came to know about ill treatment from Sadhana. Interestingly, prosecution case as well as testimony of P.W. 3 is silent that P.W. 1 accompanied him and his mother P.W. 4 and that they went to the matrimonial house of Sadhana after her second miscarriage.

14. P.W. 1 and P.W. 4 came to know about demand of money from P.W. 3. But P.W. 3 in his testimony does not state that he informed P.W. 3 about demand of money by the accused.

15. As regards amount of Rs.3,000/- allegedly paid by P.W. 3 to Sadhana there is no evidence as to how he paid this money or whether the motorcycle was purchased or whether accused purchased a plot of land. It

is established that accused already had a motorcycle and their own house and the marriage was conducted in a very simple manner with nobody giving anything and nobody taking anything.

16. P.W. 3 has stated that Sadhana has told him about ill treatment and demand of money over telephone but there is nothing on record to indicate that Sadhana had a telephone connection in her matrimonial home. P.W. 1 states that Sadhana was not allowed to go to her parental home and if she was allowed her father-in-law would accompany her. Even the days or month of alleged demand was not mentioned by any of the witnesses. As noted earlier, demand of money were made after second miscarriage which was about 1 and 1/2 years after marriage. P.W. 6 Sudam Kolekar social worker says after six to seven months after marriage Sadhana had gone to him and informed him about ill treatment and after about six months P.W. 4 had gone to him with her complaint. P.W. 6 suggested to P.W. 4 to call a panchayat and accordingly a meeting was called to convince the accused to treat Sadhana properly. Therefore, it appears that about 13 months after marriage a panchayat was called. But the testimony of P.W.1, P.W. 3 and P.W. 4 show that meeting was called after second miscarriage which was about 1 and 1/2 years from the marriage of Sadhana.

According to P.W. 4 she took panchayat members to the house of Sadhana and they tried to persuade the accused to stop ill treating Sadhana. But P.W. 6 's evidence is silent about he accompanying P.W. 4 to the house of

Sadhana.

P.W. 4 states that meeting of panchayat was called after about a month from the payment of Rs.3,000/-. But P.W. 3 says meeting was called after the alleged demand of Rs.25,000/-. Therefore, there are various discrepancies or contradictions in the evidence of the witnesses.

17. The other witnesses P.W. 2 and P.W. 5 who were members of Janeev Sanghatana appear to be some social workers. P.W. 2 states that P.W. 1 informed him about ill treatment of Sadhana by the accused and he along with others went to the house of Sadhana to talk to the accused. He also says that a panchayat was called but he never spoke about this to anybody before his statement was recorded by police on 25/07/2002. His statement, however, is silent about the discussion that happened after the demand of Rs.25,000/- by the accused and ill treatment of Sadhana for non fulfillment of said demand. What is also very important to note is the prosecution's case is silent that complainant and other approached Janeev Sanghatana and informed its members about ill treatment.

The other witness P.W. 5 states that two years after marriage of Sadhana she was told about ill treatment. She goes further to state that she saw injury on forehead of Sadhana but none of the other witnesses have mentioned of any injury on Sadhana's forehead though all of them were on visiting terms with Sadhana. The Investigating Officer has pointed out and corroborated these omissions.

Even assuming that there was a panchayat meeting, not a single independent witness has been examined by the prosecution. The reason why it is relevant is because P.W. 1 is also a member of Sanghatana of which P.W. 2 and P.W. 5 are members. Therefore, P.W. 2 and P.W. 5 are also be termed as interested witnesses.

The statement of P.W. 2 and P.W. 5 was recorded on 21/07/2002 whereas the death of Sadhana happened on 24/06/2002. Investigating Officer P.W. 8 has not explained what cause him to record the statement of these two witnesses after such a long gap which creates element of doubt.

18. As regards to demand of dowry is concerned, admittedly there is no custom in the community of accused to demand dowry. Admittedly, the marriage was performed in a very simple manner and there was no complaint from either side when the marriage took place. It is also brought on record that accused had a better financial position than the complainant and the accused had two wheeler as well as their own house. It is not even the case of prosecution that Sadhana suffered two miscarriage due to any ill treatment by the accused.

19. One has to note that close relatives of victim may have tendency to exaggerate. Therefore, their evidence has to be scrutinized with great care and caution. It is a settled law that from evidence if two possibilities are available, one of which goes in favour of the prosecution

and other in favour of accused, the court has to lean towards the accused.

20. In view of above concept and many other reasons given in the impugned judgment with which I agree, the Trial Court has concluded that the accused (Respondents) should be acquitted.

21. Therefore, I am also not satisfied with the prosecution's case about ill treatment or demand of dowry or that the requirements of Section 498 A of the Indian Penal Code is met. For Section 306 of the Indian Penal Code to stick, abetment should involve a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, Section 306 of the Indian Penal Code cannot come into play. Under Section 306 there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended the deceased into such a position that she committed suicide. There is no evidence to prove any instigation.

22. 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

1. (2008) 10 SCC 450

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 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.

23. 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.

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.)