

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.261 OF 2004

State of Maharashtra	)....Appellant (Org.Complainant)
V/s.	
1) Umesh Nivrutti Mhaske Age-30 years, Occ. Service	))
2) Sau.Kantabai Nivrutti Mhaske Age-53 years, Occ.Household	))
3) Sau.Nandini Anil Mhaske Age-25 years, Occ.Household	))
All R/o Kalas-Jadhav Vasti, Pune	)Respondents (Org.Accused Nos.1 to 3)

Ms.Pallavi Dabholkar APP for appellant-State.
Mr.Uday Warunjikar i/by V.B.Tapkir for respondent nos.1 to 3.

CORAM : K.R.SHRIRAM,J
DATE : 24.2.2020

ORAL JUDGMENT:-

1. At the outset, Mr.Warunjikar for respondents (accused) states that accused no.2 has died and tenders copy of the death certificate issued by Pune Municipal Corporation. The same is taken on record and marked 'X' for identification. Appeal against accused no.2 abates.

2. This is an appeal impugning an order and judgment dated 28.10.2003 acquitting the respondents (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).

3. Prosecution's case in brief is that one Lalita had got married to accused no.1 on 10.6.2001. On 29.11.2001 Lalita was admitted to Shetia hospital and then was shifted to Sasoon hospital where she died on 3.12.2001. Lalita was supposed to have consumed poison. It is the case of prosecution that Lalita was fed up with the cruelty meted out to her by the accused and hence committed suicide. It is alleged that the accused were beating Lalita for not bringing silver utensils, 2 tolas gold, 2-3 sarees and a dress for accused no.1 and also was being insulted for being lame. There are various general allegations given in the evidence by six witnesses out of the 21 that was listed in the charge-sheet. Of course, these six are only family members of Lalita and one of whom an aunt was declared hostile.

4. The trial Court after considering the evidence, acquitted the accused. We do not have to go into those details. I find no fault in the

impugned judgment.

5. The Investigating officer- Milind Vasantrao Gaikwad who is PW-7 says that the information that he received was Lalita accidentally consumed poison. There is a statement of Lalita which was recorded by the police on 29.11.2001 i.e., the date when Lalita was admitted in the hospital, in which Lalita has stated that she was unwell for few days and was coughing very badly. She was also suffering from severe cold. She has stated in the statement that when her cough became unbearable, by mistake, she consumed baygon spray and it is her in-laws who rushed her to the hospital and she was under treatment. Lalita has also stated that she has no grievance against anybody. Prosecution has relied on this statement.

6. With such damaging evidence against prosecution, I see no reason why Court should even entertain this appeal against acquittal.

7. 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:

¹ (2008) 10 SCC 450

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.

8. The Apex Court in many other judgments including ***Murlidhar 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 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.

² (2014) 5 SCC 730

9. 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 reappraise the evidence and arrive at its own conclusions.

10. Appeal dismissed.

(K.R.SHRIRAM,J)

³ 1996 SCC (cri) 972