

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1007 OF 2003**

State of Maharashtra	)	Appellant/Complainant
V/s.		
1. Mr. Deepak Shamlal Talreja, Age 25 years, Occ.: Business, R/o. H.No.40, Konarknagar, Pune – 14	)))	
2. Mrs. Vandana Shamlal Talreja, Age 49 years, Occ.: Housewife, R/o. H.No.40, Konarknagar, Pune – 14	)))	
3. Mr. Shamlal Nanekaram Talreja, Age 54 years, Occ.: Business, R/o. H.No.40, Konarknagar, Pune – 14	)))	Respondents/Accused

Mrs. Anamika Malhotra, AGP for State.

**CORAM : K.R.SHRIRAM, J.
DATE : 7th SEPTEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 17th May 2003 passed by Judicial Magistrate First Class, Court No.5, Link-II, Pune, 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 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2 Complainant Heena Deepak Talreja (PW-1) got married to accused no.1 on 26th December 1999. Accused no.2 and accused no.3 are the parents of accused no.1. It seems after 15 days of marriage, the accused started demanding Rs.30 lakhs for purchase of a shop in Pune city and when

that was not given, they started harassing complainant. It is also alleged that since complainant was not getting Rs.30 lakhs from her father's house, accused no.2 started pointing out petty mistakes of complainant and harassed complainant. When this was brought to the notice of the father of complainant, he gave the accused a sum of Rs.50,000/- and Kinetic Honda Scooter was bought in the name of complainant. After few days again demand for Rs.30 lakhs was made and on 7th June 2000, accused no.1 beat up complainant and dragged her by her hair out of her house. On 8th October 2000, this was repeated by accused no.1, who also threatened to kill complainant and tried to choke her to death by strangling her neck.

3 On 8th October 2000, complainant, her father and one more person went to the police and lodged the complaint, which was treated as NC complaint (Exhibit 25). In the cross examination, complainant admits that Exhibit 25 does not mention anything about demand of Rs.30 lakhs or that she was assaulted on 7th June 2000 or on 8th October 2000 she was dragged out of the kitchen by her hair and threatened with death etc. There is an FIR, which is dated 21st October 2000, in which all these things have been mentioned but the FIR (Exhibit 18) bears the signature of complainant and it says the signature was made on 27th November 2000. Therefore, Exhibit 18 appears to be an improvisation over Exhibit 25 otherwise the allegations contained in Exhibit 18 would have certainly been mentioned Exhibit 25 as well, which is prior in point of time and on the date when complainant has accused accused no.1 of dragging her out of the kitchen by

her hair and even trying to kill her.

4 Moreover, Exhibit 60 is a complaint that has been addressed to Police Nirikshak Mahila Vibhag on 30th October 2000. Even this complaint does not mention anything about the demand of Rs.30 lakhs. Therefore, the Trial Court has disbelieved PW-1, complainant and acquitted the accused. I see no reason why to disagree with the Trial Court.

5 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 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

1. (2008) 10 SCC 450

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***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

2. (2014) 5 SCC 730

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.

7 I have perused the impugned judgment, considered the evidence and also heard Mrs. 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

3. 1996 SCC (cri) 972

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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