

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1237 OF 2003**

The State of Maharashtra) ..Appellant

Versus

1. Rasul Ganibhai Shaikh (Desai))
Age 22 yrs. Occ: Agriculturist)

2. Ganibhai Mohammad Shaikh)
Age 60 yrs. Occ: Agriculturist)

3. Sou Roshan Ganibhai Shaikh)
(Desai) Age 45 yrs.)

4. Hamid Ganibhai Shaikh (Desai))
Age 24 yrs. Occ: Agriculturist)

5. Sau Bai @ Kulsumbee Hamid Shaikh)
(Desai) Age 22 yrs. Occ: House work)
and Agriculture)

All R/at, Kivale, Taluka Khend, Dist: Pune)..Respondents
(Original Accused Nos.1 to 5)

Ms Anamika Malhotra APP for Appellant

Mr. Uday Warunjikar i/b Mr. Vilas Tapkir for Respondent Nos.1 to 3

CORAM : K.R.SHRIRAM, J.

DATE : 11th FEBRUARY 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 14-7-2003 passed by the learned 6th Ad-hoc Sessions Judge, Pune, acquitting respondents (accused) of offence punishable under Sections 498A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306

(Abetment of suicide) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of Indian Penal Code.

2 The prosecution's case in brief are that marriage of deceased Shehnaz had taken place on 31-5-2002 with Rasul Ghani Baig (accused no.1). Original accused no.2 was the father in law, who died during the pendency of the appeal and the appeal is not against the order of acquittal against original accused no.5 - Sau Bai @ Kulsumbee Hamid Shaikh. Appeal, therefore, survives only against original accused no.1, original accused no.3, who is the mother of original accused no.1 and original accused no.4, who is the brother of original accused no.1 and son of original accused no.3. Admittedly, after marriage Shehnaz cohabited with accused no.1 in her matrimonial home at Kivale, Taluka – Khed, District – Pune.

3 It seems, after some days of the marriage, Rasul (accused no.1) left his job and was staying at home. The father-in-law, who has since died, used to blame Shehnaz for accused no.1 leaving his job. It is alleged that in view of his leaving the job, accused no.1 and Shehnaz went to the house of her parents, i.e., PW-1 and PW-2 and accused no.1 demanded a sum of Rs.60,000/- from the family for starting some business. The family of PW-1 and PW-2, i.e., the in-laws of accused no.1, expressed their inability to cough up such large amount because of which, the accused started ill treating Shehnaz.

4 It is also alleged that whenever Shehnaz used to meet her

parents, she would lament about the ill treatment in her matrimonial home. I have to note here that, there are no specific allegations against each of the accused, as to how each one would ill treat Shehnaz. On 5-10-2002, Shehnaz was found dead in the well near their house. PW-1, therefore, lodged a complaint in Khed Police Station against the accused alleging that they ill-treated Shehnaz and thereby abetted her to commit suicide.

5 After completion of investigation and recording of statements, Investigating Officer submitted the charge sheet to the court of JMFC, Khed. By an order dated 8-1-2003, the matter was committed to Sessions Court. Postmortem report was received during the trial of the case. Postmortem indicates the cause of death is due to drowning. Trial Court framed charges and the accused pleaded not guilty and claimed to be tried. Statements of the accused were also recorded, in which, they have denied all allegations and according to the accused, Shehnaz's drowning was an accident.

6 To drive home their case, prosecution examined 5 witnesses as against 12, listed in the charge sheet. These 5 witnesses are Sher Mohammad Babulal Inamdar- complainant and father of Shehnaz, as PW-1; Sugrabee Sher Mohammad, mother of Shehnaz, as PW-2; Manik Shivaji Kadam, friend of PW-1, as PW-3 (he was declared hostile); Dnyandeo Raskar, ASI, who noted the complaint made by PW-1, as PW-4 and Rajendra M Bhambre, Investigating Officer, as PW-5.

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:

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 reappraise 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;

¹ (2008) 10 SCC 450

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 & Ors. 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 re-appraise the evidence and arrive at its own conclusions.

10 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Warunjikar for accused nos.1 to 3. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

11 Law on what would amount to an offence under Section 498A, has been well discussed in catena of judgments. It is settled law that under Section 498A of IPC, every cruelty is not an offence. The cruelty must be of such a degree as contemplated by the Section, i.e., it must be willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb and health of the woman.

12 The Division Bench of this court in ***Kamlesh Ghanshyam Lohia and Ors. Vs. State of Maharashtra, through the commissioner of police &***

3 1996 SCC (cri) 972

Ors.,⁴ in paragraphs 12 to 15, has observed as under:

“12. The allegations against the petitioners are, therefore, required to be appraised through the aforesaid backdrop. If we take the allegations in the FIR at par, qua the petitioners, at best, the following three allegations can be attributed to the petitioners :

(i) After the first informant and Krishna shifted to Juhu in June 2012, the petitioners occasionally visited them and during those visits, insulted the first informant by calling her fat and dark complexioned.

(ii) On every festive occasion, the family members of Krishna demanded clothes, ornaments and money from her parents and those demands were met.

(iii) All the family members humiliated the first informant by calling her, "infertile" and made her to demand money from her parents.

13. Whether the aforesaid allegations, even if taken at par, would warrant the prosecution of the petitioners is the moot question. It is indisputable that the cruelty under [section 498-A](#) of IPC has a specific legal connotation. Ordinary quarrels, differences of views and wear and tear of life, which every home witnesses, do not fall within the mischief of cruelty which [section 498-A](#) of IPC punishes. Nor, every ill-treatment or harassment falls within its dragnet. To fall within the tentacles of [section 498-A](#), the married woman must have been subjected to cruelty which would drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, or with a view to coerce her or any person related to her to meet an unlawful demand of property. Mere demand of money or property, unaccompanied by any harassment, would also not fall within the mischief of [section 498-A](#). There has to be a nexus between the demand and the consequent harassment.

14. On the anvil of the aforesaid legal position, if the allegations enumerated above, are weighed, it becomes evident that the first allegation of insulting the first informant after she shifted to Juhu in the year 2010, is of general nature. The allegation is stale as well. By no stretch of imagination, it can be stated that the alleged conduct had the propensity to drive the first informant to commit suicide or cause harm to herself.

15. The second allegation of all the family members of Krishna demanding money, clothes and ornaments on each of the festive occasions is also of general nature and bereft of any specific instance and authorship. The said allegations, at the highest, would indicate that on festive occasions certain articles were demanded. In the absence of the allegation that the first informant was subjected to harassment either in order to meet the unlawful demands of property or on her failure to meet such demands, the second allegation loses the incriminating tendency. “

4 2019 SCC online Bom 1762

13 A Learned Single Judge of this Court in ***Neeraj Subhash Mehta Vs. The State of Maharashtra***,⁵ in paragraphs 9 and 10 has observed as under:

“9 Section 113A of the Evidence Act prescribes rule of presumption in case of suicidal death by a married woman. Whenever the question arose as to whether commission of suicide by a woman has been abetted by her husband or relatives of her husband and it is shown that she had committed suicide within the period of seven years of her marriage and that her husband or relatives of her husband had subjected her to cruelty, then the court may presume “having regard to all other circumstances of the case” that such a suicide has been abetted by her husband or relatives of her husband. It is, thus, clear that, this presumption cannot be raised automatically on proof of suicidal death within seven years of marriage and subjecting a married woman to cruelty. Something more is required to be seen for drawing this presumption.

10 By catena of judgments of this court as well as Apex Court what amounts to cruelty as envisaged by Explanation to Section 498A of IPC is explained. Cruelty implies harsh and harmful conduct with certain intensity and persistence. It covers acts causing both physical and mental agony and torture or tyranny and harm as well as unending accusations and recrimination reflecting bitterness putting the victim thereof to intense miscarries. The conduct, in order to prove guilt, must be such as strongly stirring up the feeling in the mind of a married woman that life is now not worth living and she should die, being the only option left. In other words, provisions of Section 498A of the IPC envisages intention to drawing or force a woman to commit suicide by unabetted persistence and grave cruelty. A willful conduct of such a nature as is likely to propel or compel a married woman to commit suicide or to cause grave injury or danger to her life, limb or health is required to be established. In other words, matrimonial cruelty is included from the definition of legal cruelty. To put it in other words, ordinary petulance and discord or differences in domestic life does not amount to cruelty. By keeping this aspect in mind, let us prima facie examine the instant case for a limited purpose as to whether the applicant / accused is entitled for liberty. If the impugned judgment and order of the trial court is perused, then it is seen that the reasoning part is in paragraph 65 of the judgment. Reliance is placed on evidence of PW1 to PW3 by the learned trial court. It is observed that the dispute was over the issue of the deceased having made “kaccha chapati.” Further observations are to the effect that this was too trivial matter to invoke extreme and harsh response of calling her

5 2017 SCC Online Bom 62

brother and parents. In other words, the learned trial Judge was very well aware of the fact that the incident of commission of suicide was preceded by a trivial incident in the matrimonial life of Neha. Still, without further discussion, offence punishable under Section 498A of the IPC is held to be proved. Then by taking aid of Section 106 of the Evidence Act, as well as Section 113A thereof, it is held that the offence punishable under Section 306 of the IPC is proved.”

14 I have to note that except a general statement of demand of Rs.60,000/-, which is also full of contradiction, there is no evidence under Section 498A.

15 The star witness is complainant (PW-1), who in his examination-in-chief states that within three days of the marriage, Shehnaz has informed about the quarrel with Shafia. Shafia and Pamma Shaikh had settled the marriage proposal between Shehnaz and accused no.1. PW-1 says that, at that time his wife who is PW-2, had convinced Shehnaz. PW-1 states that after marriage, for one month, Shehnaz was treated very well and she never mentioned about any such quarrel with Shafia.

16 PW-1 says that Shehnaz and accused no.1 had been to their house after accused no.1 left the job and accused no.1 demanded Rs.60,000/- from Firoz for business. Firoz is the son of PW-1 and PW-2, who, though listed as a witness, has not been examined. Per contra, PW-2 does not state that this amount was demanded from Firoz. PW-2 says that accused no.1 had asked Shehnaz to bring Rs.60,000/- for business and Shehnaz has demanded the amount from ‘us’. PW-1 says that on 4-10-2002

at 7.00 p.m. he and his wife had been to Pamma Shaikh at Ahire to ask him about the ill-treatment of Shehnaz. Pamma Shaikh has not been examined. PW-1 says he told the ill-treatment of Shehnaz to Manik Kadam who was from the village of the accused, on more than one occasion. Manik Kadam, who is PW-3, in his examination in chief states that it did not happen that complainant had said to him that accused ill-treat his daughter and that he should explain to them. PW-3 says that portion marked as A in his statement recorded by police was never stated by him.

17 PW-1 says on 5-10-2002 he had been to Pune to the Court of Shri Borikar, where the police Sonalkar had informed him about the telephonic message and asked him to go back to his house. Why was PW-1 was in Pune ? no explanation. Who informed the police Sonalkar and What was informed ? No explanation. Police Sonalkar is also not called to testify. PW-1 says that on the way back, he telephonically inquired with his cousin brother-in-law Rafiq Inamdar, who had also asked him to immediately go to Chandoli. Chandoli is the place, where the hospital is situated and Shehnaz had been rushed there after she was found in the well. PW-1 says that Shamshuddin met him and informed him about the death of Shehnaz and he was told that Shehnaz died due to drowning in the well. Shamshuddin also has not been examined.

18 In the cross-examination, PW-1 says that though his relatives lived in and around Pait or Ahire, from where, even the house of the

accused was not very far, he never called any meeting of his relatives to inform them about the ill-treatment by the accused of Shehnaz. PW-1 also says that few days after the marriage, all his relatives had gathered at the time of Chehnam of Kulsumbhi, but he never told anybody about the problem of Shehnaz. In the examination in chief, as noted earlier, PW-1 says within three days of marriage Shehnaz had informed PW-2 about the quarrel with Shafia, but in cross-examination he says "...till today I do not know what was told about Shehnaz to her mother...". PW-1 also says that after marriage and before Shehnaz died, he had met Pamma Shaikh and Shafia on 2 or 3 occasions and 3 to 4 times he had also visited the house of the accused and accused no.2, father-in-law, who had met with an accident, was confined to bed. However, PW-2 says the father-in-law of Shehnaz, used to get drunk and abused Shehnaz. PW-1 does not say any such things. PW-1 also admits that he had received information that Shehnaz used to answer back to her father-in-law and he was so told by PW-2. PW-1 says that when he went to the hospital at 2.00 pm, police were there, but he did not inform the police about the ill treatment to Shehnaz. PW-1 says that when he went to the police to lodge the complaint on 6-10-2002, no discussion had taken place in his house as to what type of complaint should be lodged. Per contra PW-2 says "on the next day of the occurrence we had decided for lodging a complaint against the accused", and PW-1 says that when he went to the police to lodge the complaint, his wife, son and brother

had accompanied him. PW-4, who was the ASI, in his examination-in-chief says nobody else had accompanied complainant before him. PW-1 in his cross-examination states “it is true to say that Rasul, the husband of Shehnaz used to lover her and both of them had visited my house together on some occasions.” PW-1 also says that “ it is true to say that because of death of daughter Shehnaz I was shocked and hence I had lodged my complaint in the rage of anger”.

19 PW-2 in his cross-examination admits that they were told that Shehnaz had been to well for fetching the water and that she has fallen into the well by accident. PW.-2 admits that there was no water connection in the house of the accused and the accused used to fetch water from well. In the spot panchnama, it is recorded that the well, which had a diameter of about 25 ft., had water depth of about 8 ½ ft. and the gap between the top to the water level is of about 3 ft and there was no protective wall around the well. It is also not the case of prosecution that Shehnaz knew how to swim.

20 PW-2 admits that in her statement under Section 161 recorded by the police, she has not mentioned that Shehnaz had been with her to Turukwadi and there she had complained against her in-laws and relatives. PW-2 also admits that in her police statement, she has not stated that she then brought back Shehnaz to her house and at that time she had narrated about her ill treatment. Therefore, there are omissions.

21 In the circumstances, as noted earlier, the evidence is fraught with lot of inconsistencies, contradictions and omissions.

22 As regards Section 306, it reads as under :

*“306. **Abetment of suicide.**—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

What is abetment and who is an abettor can be found in Sections 107 and 108 of IPC which read as under:

*“107. **Abetment of a thing.**—A person abets the doing of a thing, who:- (1) Instigates any person to do that thing; or (2) Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (3) Intentionally aids, by any act or illegal omission, the doing of that thing.”*

*“108. **Abettor.**—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. ”*

23 Here is the case of abetment by instigation. When is a person said to instigate another ? The word 'instigate' literally means to goad, or urge, or to provoke, or incite, or encourage, to do an act, which the person, otherwise would not have done. It is well settled, that in order to amount to abetment, there must be mens rea or community of intention. Without knowledge or intention, there can be no abetment and the knowledge and intention must relate to the act said to be abetted, i.e., suicide, in this case. In order to constitute 'abetment by instigation', there must be a direct

incitement to do the culpable act. This issue has been discussed by various High Courts and Supreme Court of India and some of those pronouncements are discussed here.

24 A Learned Single Judge of the Kerala High Court in *Cyriac, S/o Devassia and another Vs. SubInspector of Police, Kaduthuruthy and another*,⁶ dealt with extensively the concept of abetment to commit suicide after referring to a number of pronouncements including the decision of the Supreme Court of India.

The Learned Single Judge ultimately summarized the legal position as follows :

" 17. From the discussion already made by me, I hold as follows : The act or conduct of the accused, however, insulting and abusive those may be, will not by themselves suffice to constitute abetment of commission of suicide, unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide. Even if the words uttered by the accused or his conduct in public are sufficient to demean or humiliate the deceased and even to drive him to suicide, such acts will not amount to instigation or abetment of commission of suicide, unless it is established that the accused intended by his acts, consequence of a suicide. It is not enough if the acts of the accused cause persuasion in the mind of the deceased to commit suicide.

18. An indirect influence or an oblique impact which the acts or utterances of the accused caused or created in the mind of the deceased and which drove him to suicide will not be sufficient to constitute offence of abetment of suicide. A fatal impulse or an ill-fated thought of the deceased, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 IPC. In short, it is not what the deceased 'felt', but what the accused 'intended' by his act which is more important in this context."

25 In paragraph 19 of *Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr.*⁷ this court has summed up the legal position on

⁶ 2005 Criminal Law Journal 4322

⁷ 2012(3) Bom.C.R. (CRI) 532

Section 306. Paragraph 19 reads as under:

“19. The legal position that emerges from the above discussion is as follows : Even if a person would commit suicide because of the torments of an accused, the accused cannot be said to have abetted the commission of suicide by the deceased, unless the accused would intend, while causing torments to the victim/deceased, that he should commit suicide. Even if the rigour of this proposition is diluted, still, the least that would be required is, that it should be shown that the accused could reasonably foresee that because of his conduct, the victim was almost certain or at least quite likely to commit suicide. Unless that the victim should commit suicide, is either intended, or can be reasonably foreseen and expected a person cannot be charged of having abetted the commission of suicide, even if the suicide has been committed as a result of some of the acts committed by the accused. A perusal of the reported judgments show that even in cases where the accused had uttered the words such as "go and die", in abusive and humiliating language, which, allegedly, led to the committing of suicide, it was held that it would not amount to instigation and that consequently, there would be no offence of abetment of suicide.”

26 The courts have held that the evidence must suggest or indicate that the accused knew or had a reason to believe that deceased would commit suicide.

27 There is no evidence, whatsoever to even suggest that Shehnaz committed suicide because of ill-treatment or cruelty by of the accused. There is also no evidence whatsoever that the accused by their acts intended Shehnaz to commit suicide.

28 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 they are proved guilty by a competent court of law. Secondly, accused having secured their

acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

29 In the circumstances, in my view, the opinion of the Sessions Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

30 Appeal dismissed.

(K.R. SHRIRAM, J.)