

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.1299 OF 2003

The State of Maharashtra	)....Appellant (Org.Complainant)
V/s.	
1) Rohidas Sadashiv Mulay Age-32 years, Occ.: Labour	))
2) Sadashiv Dagadu Mulay Age-52 years, Occ.: Service	))
3) Smt.Laxmibai Sadashiv Mulay Age-47 years, Occ.: Household	))
4) Kum.Kavita Sadashiv Mulay Age-19 years, Occ.:Education	))....Respondents (Org.Accused Nos.1 to 4)

Ms.Anamika Malhotra APP for appellant-State.
Mr.Vilas B.Tapkir for respondent nos.1 to 4.

CORAM : K.R.SHRIRAM,J
DATE : 11.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 25.6.2003 by which the Sessions Court, Pune, acquitted the respondents (accused) of offences punishable under Sections 306 and 498-A read with section 34 of the Indian Penal Code. The judgment

impugned was passed in an appeal filed by the accused challenging the conviction and sentencing the accused to suffer various terms of imprisonments and fine by the 7th Ad-hoc Assistant Sessions Judge, Pune. Originally there were six accused. Accused nos.5 & 6 were acquitted by the trial Court.

2. The facts in brief are, that Savita who committed suicide on 5.9.1998 was the sister of complainant Damodar Sopan Pawar (PW-1). Savita was married to accused no.1 Rohidas Sadashiv Mulay on 28.5.1994. In the year 1998 Savita came to her parental house and complained to Damodar about the ill-treatment meted out to her. On 21.8.1998 complainant went to the house of the accused and discussed with the accused the status of Savita and told the accused that he would send Savita back for cohabitation soon. Accused told him not to send his sister to the matrimonial home. Again on 4.9.1998 complainant Damodar approached Savita's in-laws and told that he will be sending his sister on the next day. Accordingly, on 5.9.1998 Damodar went with his sister Savita to the house of the accused and left Savita there in the evening. On the same night Savita committed suicide by setting herself on fire. She was taken to the hospital but succumbed to her injuries. On 6.9.1998 her body was received by the complainant and Savita was cremated. On 7.9.1998 at

about 2.30 p.m., Damodar lodged a report to the police stating that his sister Savita had committed suicide on account of ill-treatment meted out by the accused who had also complained that they had received 4 grams of gold less in the marriage.

3. Based on that, offence was registered and investigation began. Spot panchanama was performed and articles found lying on the spot were seized and the Investigating officer recorded statements of witnesses. The accused were arrested on 8.9.1998.

4. On completion of investigation, Investigating officer sent the charge-sheet to the learned JMFC, Vadgaon, Maval.

5. As offence under Section 306 of IPC was triable exclusively by the Court of Session, the Magistrate committed the matter to the Court of Session.

6. Charges were framed and all the accused pleaded not guilty and claimed to be tried. Their defence was of total denial.

7. In the course of trial, prosecution examined 5 witnesses against 24 witnesses listed in the charge-sheet. (PW-1) Damodar

Sopan Pawar-complainant, brother of Savita; (PW-2) Bayadabai Ramchandra Kadam, an aunt of Savita; (PW-3) Sunil Harishchandra Ghodekar, a panch witness; (PW-4) Vithal Rambhau Kad, neighbour of accused; and (PW-5) Sanjay Bhagwan Bhamare, Investigating officer.

8. Inquest panchanama, spot panchanama and post mortem report are at Exh.23, Exh.27 and Exh.24, respectively.

9. 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 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

¹ (2008) 10 SCC 450

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.

10. The Apex Court in many other judgments including

Murlidhar Vs. State of Karnataka² 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.

11. 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

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

manifestly erroneous with the order of the Trial Court, the Appeal Court need not even reappraise the evidence and arrive at its own conclusions.

12. I have also perused the evidence and considered the impugned judgment. I do not find anything wrong or erroneous in the impugned judgment warranting interference by this Court.

13. The fact that Savita committed suicide within 7 years of her marriage, accused nos.1, 2 & 3 were the husband, father-in-law, mother-in-law and accused no.4 was sister-in-law of Savita and that Savita committed suicide cannot be disputed. The post mortem report which shows 99% burn injuries on Savita has also been admitted.

14. Let us examine whether Savita was ill-treated and that led her to commit suicide. The evidence about ill-treatment prior to Savita returning to her parental home on 19.8.1999 has come in the oral version of Damodar (PW-1) and her aunt (PW-2). It is very necessary to note that though prosecution listed 24 witnesses in the charge-sheet, they have only examined 5 witnesses. I would have expected the daughter to have complained to her parents if there was any ill-treatment and they would have been the best witnesses. Prosecution

in its wisdom did not consider it necessary to get the parents of Savita to testify.

15. PW-1 states that during the first year of marriage, Savita was treated well and thereafter all the accused started assaulting her and harassing her. The reason, and I find it rather strange, is that Savita was unable to cook properly and her behaviour was not good. I wonder why did the accused wait for one year to start assaulting her and harassing her. This itself shows that allegations of assault and harassment due to inability to cook properly or bad behaviour, are not believable. PW-1 states that Savita used to discuss these facts whenever she came to her paternal home but as noted earlier her parents have not deposed.

PW-2 states that after one year of marriage, Savita used to discuss with her that the accused used to assault and harass Savita she was unable to cook and she was not behaving properly. PW-2 is the sister of Savita's mother. Savita's mother and her husband and children lived at Indori, whereas PW-2 was living in Kiwle, Dist. Pune. Savita went to live in Rupinagar with her husband. I do not understand how Savita would be going to Kiwle, district-Pune to complain to her mother's sister instead complaining to her own parents who have not stepped into the witness box. PW-2 also states

that Savita was ill-treated because she was unable to conceive which is not a case of ill-treatment mentioned by PW-1.

16. These incidents of ill-treatment after one year of marriage i.e., between 1995 to 1998, have not been recorded in any letters or correspondence. PW-1 says that Savita used to be sent back for co-habitation after every incident of harassment. But there is no independent evidence to support this version. One has to note that after the incident, it is easy for anybody to make allegation of harassment to the deceased but when there is no evidence of harassment prior to the incident, it will be dangerous to rely on such over all account of reported harassment.

17. PW-1 says on 19.8.1998 Savita came to the parental home and disclosed that she had not been provided food for 2 days, she was abused and assaulted and therefore, returned to the parental home with all her clothes. Savita has not been driven out with only her wearing apparels.

PW-2 says that on 19.8.1998 Savita had disclosed that she had not been provided with food, she was kept outside the house for 2 days and was asked not to enter the house and therefore, Bayadabai (PW-2) took Savita to her parental home.

PW-1 does not say that Bayadabai (PW-2) brought Savita to the parental home. I ask myself, if Savita was kept outside the house for 2 days without food and was banned from entering the matrimonial home, how did PW-2 took Savita to the parental home of Savita after collecting all her clothes. This is a very grey area of the case being developed by the prosecution.

PW-1 says on 21.8.1998 he visited the house of the accused and asked about the reason why Savita was being harassed and what was the fault. It seems accused disclosed that Savita was unable to cook properly, she was unable to conceive and was not behaving properly. PW-1 assured that he will make Savita understand and persuade her to behave properly and bring Savita in few days. At that time, the accused say Savita need not be brought back and they would not allow Savita to enter the house.

Despite this, PW-1 says on 4.9.1998 he again went to the house of the accused and told them that he would bring his sister on the next day to their house. It seems accused at that stage, i.e., 4 years after marriage, told PW-1 that they have been deceived by the family of Savita at the time of marriage, because they got 4 grams less gold during the marriage. It has to be noted that the story about receiving less gold has been developed at the later stage, which indicates an improvement because PW-1 would have felt that unless

some accusation about demand was made, the case of bride burning will fail.

18. Despite twice being told not to bring Savita home, PW-1 says that he took Savita to her matrimonial home on 5.9.1998 and all the accused were at home. Now comes a twist. PW-1 says that accused no.1 thereafter went to Lokmanya hospital to see the ailing grandfather of PW-1. Thereafter he dropped Rohidas to Rupinagar and went to his house at Indori at about 8.00 p.m. What does this indicate ? It indicates that Savita has been accepted in the house by the accused and accused Rohidas even accompanied PW-1 to see ailing grand-father of PW-1. Therefore, there was reconciliation.

19. PW-2 states that at about 9.30 p.m. on the fateful night of 5.9.1998 she received a phone call from Savita stating that the accused were assaulting her and therefore, asked PW-2 to come to Savita's house urgently. But the phone was disconnected. There was no telephone in the house of the accused. The submission of the learned APP is recorded in the impugned judgment that Savita might have made a call from the neighbour's residence.

The appeal Court was correct to observe that if Savita who was being allegedly assaulted by the accused, could go to her

neighbour's house to make phone call to her aunt and complain about the assault, why did she not ask for any help from the neighbour. Why did she not tell the neighbour about the assault ? Savita was not a newly married woman, she had been married for 4 years and would have certainly known the neighbour well enough to complain about the assault. None of the neighbour have been examined by the prosecution and that neighbour could have confirmed that Savita went to their house and made a telephone call as stated by PW-2.

20. PW-3 is examined as an eye witness to the incident of assault and also a panch witness. PW-3 categorically states that he has not seen the accused assaulting Savita. PW-3 also denies that he and PW-4 went on motor cycle to inform PW-1 about the incident of assault.

PW-4 also did not state having gone to the house of PW-1 to inform him of any assault. Therefore, the witnesses who should have stated about the assault prior to the death of Savita have not supported the prosecution.

21. PW-4 states that on 5.9.1998 at about 11.00 p.m. when he was watching TV, he heard shouts from the house of the accused. Hence he came out of the house and saw flames and smoke coming

out of one room of the accused. He kicked the door of that room and saw Savita was engulfed in flames.

In his cross-examination, PW-4 admits that he has not seen any quarrel between the deceased Savita and the accused and all the accused also attempted to extinguish the fire.

22. Therefore, the entire story of Savita being subjected to assault or cruelty by the accused has not been proved with the evidence on record. The witnesses have not supported the case of the prosecution. The circumstantial corroboration in the form of two persons rushing to the house of complainant and informing such assault also has not been established. The story of telephone call received by PW-2 from Savita is rather fanciful and the neighbour from whom the telephone call is supposed to have been made, has not been examined. Thus the story of assault prior to incident is got up.

23. In these circumstances, it cannot be said that any of the accused persons had abetted the commission of suicide by Savita by provoking her to do so by their ill-treatment. We can only guess that Savita committed suicide because she was sent to her matrimonial home against her wish.

24. It is settled law that even if there is cruelty, all kinds of cruelty does not amount to an offence under Section 498-A of IPC.

25. So far as section 306 is concerned, it is settled law that for an offence under Section 306, the evidence should suggest or indicate that accused knew or had reason to believe that Savita would commit suicide. The evidence should indicate that the accused intended by their acts Savita to commit suicide. It is not what the deceased felt but what the accused intended by their act which is more important in this context.

It is nobody's case that the accused intended that Savita should commit suicide.

26. 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, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the sessions Court in appeal which rightly observed that the prosecution had failed to prove its case. The order of the sessions

Court in appeal of acquittal, in my view, need not be interfered with.

27. Appeal dismissed.

(K.R.SHRIRAM,J)