

Digitally signed
by Kiran G.
Jahagirdar
Date: 2020.10.13
13:02:32 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1392 OF 2003

State of Maharashtra)
(through Velha Police Station, Velha)
Dist. Pune)Appellant
(Complainant)

V/s.

1. Balu Nathu Nivangune, Age-25 yrs.)
Occ.Agriculturist)
2. Nathu Sadu Nivangune, Age-70 yrs.)
Occ.Agriculturist)
3. Sou.Vithabai Nathu Nivangune)
Age-60 yrs. Occ. Household)
4. Sou.Shalan Balu Nivangune)
Age-28 yrs. Occ. Household)
5. Sitaram Nathu Nivangune, Age-23 yrs.)
Occ.Labourer)Respondents
(Org.Accused)
All R/o Pole, Taluka Velha, Dist.Pune)

Mrs.Anamika Malhotra, APP for the appellant-State.

CORAM : K.R.SHRIRAM,J
DATE : 5.10.2020

ORAL JUDGMENT :-

1. By this appeal, the appellant-State of Maharashtra is challenging the order of acquittal dated 21.07.2003 passed by the Additional Sessions Judge Pune for offences punishable u/s 498(A) and 306 r/w 34 of the Indian Penal Code (IPC).

2. Sulochana (deceased) got married to Sitaram-accused no.5 on 6.5.1999. At that time, and later accused was working in Mumbai. Accused nos.2 & 3 are the parents of accused no.5. Accused no.1 was a brother of accused no.5 and accused no.4 was the wife of accused no.1. Accused nos.1 to 4 were residing at Pole, Taluka Velha. After marriage deceased was residing at Pole whereas accused no.5 went to Mumbai to work.

3. It is the case of prosecution that for the first six months the accused treated deceased very well and thereafter the ill-treatment started. The accused were asking deceased to bring Rs.25,000/- from her parents as accused no.5 wanted to acquire a residential premises in Mumbai. Complainant PW-1 Ganpat Kolekar, father of deceased met the accused and explained his inability to meet the demand as he was not financially sound. This, however, had no effect on the accused who also started physical torture of deceased. The case of

prosecution is that whenever deceased visited complainant, she used to inform about the cruelty meted out to her. Accused no.5 also was reluctant to take deceased to Mumbai. Therefore, deceased contacted PW-3 Ashabee Shaikh who was the president of Indira Mahila Aadhar Kendra, Pune and on the intervention of PW-3 an agreement in writing between deceased and accused no.5 was entered into whereby accused no.5 agreed to cohabit with deceased. Subsequently, deceased was treated nicely for some time.

4. On 26.4.2001 deceased visited the house of complainant and informed complainant that she does not wish to live with the accused in their house and accused nos.1 to 4 told deceased not to return without the amount of Rs.25,000/-. It seems deceased informed PW-1 and PW-2 that accused no.5 has a concubine at Mumbai. Deceased was refusing to go back to the matrimonial home at Pole but complainant persuaded deceased to go back to her matrimonial home. Thereafter nothing was heard from deceased.

5. On 18.5.2001, almost a month later, at about 10.00 A.M. accused nos.1 & 2 came to the house of Complainant and inquired whether deceased has come there. Accused no.1 also informed that on the previous evening deceased left the house without telling

anything. Immediately complainant, with the accused and other family members, started searching for deceased in possible places where she would have gone but found her dead on the edge of panshet dam. In the meanwhile, police had already been informed about the deceased missing on the previous day. After the inquest panchanama, the dead body was sent for autopsy and three days later, complainant PW-1 went to police station at Velha, narrated the whole story and incident of cruelty at the hands of the accused and accordingly, an offence came to be registered.

6. Statements of witnesses were recorded, investigation was completed and charge-sheet came to be filed.

7. To bring home the charge, prosecution led evidence of Ganpat Kolekar-complainant and father of deceased as PW-1 ; Shevanta Bai Kolekar-mother of deceased as PW-2 ; Ashabee Shaikh who runs the Mahila Aadhar Kendra as PW-3 ; Shankar Tukaram Jagale – the panch witness at the scene of offence as PW-4 and Police Inspector Gulabrao Krishnaji Dabade-Investigating officer as PW-5.

8. Many documents including the agreement alleged to have been executed by deceased and accused no.5 were exhibited.

9. With the assistance of the learned APP, I have considered the record & proceeding and the order and Judgment and I see no reason to interfere.

10. Though the offence under Sections 306 and 498- A of the IPC can be considered independently, in this case we will have to first consider section 498-A and that has great bearing on Section 306 as well.

11. Prosecution has tried to prove the alleged cruelty through PW-1, PW-2 and PW-3. When we consider the evidence of these 3 witnesses, I am not satisfied that the accused in furtherance of their common intention subjected deceased to cruelty with a view to forcing her to bring cash of Rs.25,000/- to acquire a place of residence in Mumbai. PW-1 has stated that for the first six months after the marriage, the accused treated deceased very nicely but later started ill-treating by demanding Rs.25,000/- for acquiring a room for accused no.5 at Mumbai. This is what PW-2 also states. This means that for 1 ½ years prior to the incident there has been friction regarding the demand of Rs.25,000/- . This matter was also taken up before PW-3 and PW-3 attempted to bring a rapprochement between deceased and accused

no.5. On 19.5.2001 PW-1 lodged a missing complaint with the police but in that complaint he has not mentioned about any suspicion against accused no.5 or any of the accused particularly when he was aware and according to him, for more than 1 ½ years deceased was being tormented for not bringing Rs.25,000/- from her parents.

12. Body of deceased was found on 20.5.2001 on which date PW-1 lodged the accidental death report with police. There also PW-1 has not made any reference to the incident of cruelty and harassment to deceased on account of the demand of Rs.25,000/-. It is rather strange that in both, the missing person report and accidental death report, PW-1 chose not to mention about alleged cruelty. Surprisingly, on 21.5.2001 PW-1 went to the police and lodged FIR where for the first time PW-1 has mentioned about the demand of Rs.25,000/- for accused no.5 to secure an accommodation in Mumbai.

13. Prosecution has exhibited the agreement between deceased and accused no.5 entered in presence of PW-3; complaint recorded by PW-3 and her report addressed to the police. Though the agreement does not have a signature of deceased, which in my view is not a major issue, the fact to be noted is none of these three documents also refer to the demand of Rs.25,000/-.

14. Another point which requires to be noted is that in the evidence of PW-4 it has come on record that a suitcase and chappal of deceased were found near the spot where the body was found. It makes me wonder which person will carry suit case with her clothes while going to commit suicide.

15. The ingredients of section 498-A are that the accused must be the husband or relative of the husband of a women and must have subjected such woman to cruelty. What is cruelty is explained to be any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) or the accused must have harassed the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

16. Based on the facts and circumstances, the trial Court came to a conclusion that offence under Section 498-A has not been proved.

17. Coming to section 306, there is no evidence whatsoever to prove

that the accused intended the deceased to commit suicide. In paragraph 19 of ***Shivaji Shitole and Ors. Vs. State of Maharashtra & Anr.***¹ this court has summed up the legal position on 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.”

In this case, it does not appear in any evidence led that accused instigated deceased to commit suicide. Therefore, we cannot say that accused in any way provoked or instigated or incited or encouraged deceased to commit suicide. Therefore, one cannot say accused abetted commission of suicide as defined under Section 107 of IPC.

¹ 2012(3) Bom.C.R. (CRI) 532

18. The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***² in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved

² (2007) 4 SCC 415

guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

19. 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, the accused having secured their 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.

20. 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.

21. Appeal dismissed.

(K.R.SHRIRAM,J)