

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 1420 OF 2003**

The State of Maharashtra)
(through Wathar Police Station,)
Tal.- Koregaon, District Satara) ..Appellant

Vs.

Dayaram Eknath Pandhare)
Age-20 yrs. Occup-Service)
R/O Kawadewadi, Tal Koregaon,)
District Satara) ..Respondent/Accused

Ms Pallavi Dabholkar APP for Appellant
Mr. Pramod Pawar for Respondent
Mr. Prathamesh Kamat appointed as Amicus Curaie

**CORAM : K.R.SHRIRAM, J.
DATE : 13th JANUARY, 2020**

ORAL JUDGMENT:

1 This is an appeal impugning an order and judgment dated 18-8-2003 passed by the Learned Joint Judicial Magistrate First Class, Koregaon, acquitting accused/respondent of offence under Sections 498A (*Husband or relative of husband of a woman subjecting her to cruelty*), 323 (*punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*) and 506 (*Punishment for criminal intimidation*) of Indian Penal Code.

2 As none appeared on 3-1-2020 for accused, this court appointed Mr. Prathamesh Kamat, as amicus curaie and his assistance has been immense. Today, Mr. Pawar, however, appeared for accused.

3 It is the case of prosecution that respondent, who was accused, was married to complainant (P.W.-1) Vaishali Pandhare. The marriage took place on 10-7-1999. Accused used to work in police department as a driver. What is the position of accused today, nobody is aware. After marriage, complainant moved to Kawadewadi in Satara District, which was the house of accused, because accused did not have quarters or a place of residence to live with his wife in Mumbai. At Kawadewadi in the house, where complainant went to reside, the mother of accused was also living there. Though, in a complaint earlier, complainant had accused the mother-in-law also of cruelty, in the complaint which was the subject matter of this appeal, there is no allegation against mother-in-law. In fact statements have been made that mother-in-law used to protect complainant and shield her when accused used to physically assault her. It is stated that initially for the first three months the matrimonial life of complainant was very pleasant. Subsequently, accused started ill-treating complainant. Accused, as he was working in Mumbai, used to visit Kawadewadi on every Sunday, which was a weekly off for him and during those visits, after the initial honeymoon period of three months, accused used to abuse and assault complainant physically and mentally and also used to accuse her of being a loose character. It is also alleged that accused demanded a gold chain, gold ring and a dress for Diwali from complainant. It is also alleged that accused went to the house of his in-laws, i.e., P.W.-2 and P.W.-3, who were residing in

Mumbai and demanded the gold chain, gold ring and the dress for Diwali. It is also alleged that on one occasion, accused went to the house of in-laws and proudly proclaimed that he has beaten up his wife because they did not provide gold chain, gold ring and the dress and he does not wish to continue to cohabit with complainant and they are welcome to take her away. It is alleged that on 27-10-2000, when accused was at home at village, Kawadewadi, at about 8.00 p.m., he started beating complainant. It is also alleged that accused even beat up his mother when she tried to intervene and shield complainant from being beaten. It is stated that accused made allegations on the character of complainant and again told that unless she gets gold chain, gold ring and dress from her parents, he will not cohabit with her. It is alleged that on that day accused beat complainant with belt and also hit her with a stone on the back of her head, resulting in bleeding from her head.

4 Therefore, the parents of complainant reached at the village Kawadewadi on 11-11-2000, a clear 14 or 15 days later, and complainant informed them about the incident of 27-10-2000. Thereafter, complainant filed a report at Wathar police station and complainant with her parents went to her parental home in Mumbai, straight from the police station. The police registered the offence on 11-11-2000 and commenced investigation. In the course of investigation, police recorded the statements of witnesses and after completion of necessary investigation, filed charge sheet against

accused. In the charge sheet, 13 witnesses, apart from complainant, have been listed. However, the evidence of only 7 witnesses including complainant has been recorded.

5 After securing the presence of accused, charges were framed for commission of offence punishable under Section 498A, 323, 504 and 506 of IPC. Accused pleaded not guilty and claimed to be tried. The defence is of total denial. Statement under Section 313 was also recorded, but looking from the answer to Question No.21, it appears accused is alleging interference by the mother-in-law (Pw.-3) in the marriage for the problem in his marital life.

6 Trial Court, after considering the evidence and in the facts and circumstances of the case, passed the impugned judgment and order dated 18-8-2003. To drive home the charge, prosecution led evidence of 7 witnesses, namely, Vaishali Dayaram Pandhare-Complainant (PW.-1); Gajanan Jagannath Kale (PW.-2) father of PW.-1; Tarabai Gajanan Kale (PW.3) mother of PW.-1 and wife of PW.-2; Dr. Arvind Rajaram Jadhav (PW.-4) doctor who was practising in village Bhadale, to prove the assault by accused on 27-10-2000; Shankar Sahebrao Pandhare (PW.-5), an inhabitant of Kawadewadi and a neighbour of accused/complainant to prove the cruelty on the part of accused; Anandrao Appa Pandhare (PW.-6), an inhabitant of Kawadewadi to prove cruelty; and Ramesh Shankar Kumbhar (PW.-7), Investigating Officer. PW.-4, PW.-5 and PW.-6 were declared

hostile. What we have got before us is, therefore, the evidence of P.W.-1, P.W.-2, P.W.-3 and P.W.-7.

7 Before I proceed further, I have to note three documents, which are on record. One is Exhibit P-22, which is a letter dated 30-10-2002 from the Senior Inspector of Police, Social Service Department, Crime Branch, Crime Investigation Department, Mumbai. In this letter, the Senior Inspector of Police informed the Magistrate (though I have my own reservations on a police officer writing to the Magistrate directly in the matter) that complainant and accused have settled the matter. To the said letter, is also enclosed the application of complainant and the copy of response from accused. I am unable to make out which are the attachments that the police officer sent to the Magistrate. At the same time, on record there are two documents, which are Exhibit 31-D and Exhibit 31-E, both dated 16-8-2000. Exhibit 31-D is the statement of complainant and Exhibit 31-E is the statement of accused. Both of them have stated that all the differences have been settled and they have decided to live together as husband and wife from 9-9-2000. I cannot make out the sanctity of this date 9-9-2000, but the fact is both decided to put their differences at rest and live together as husband and wife. The reason for my noting after considering the statement recorded under Section 313 that accused was hinting at interference by his mother-in-law in the marriage, is in the statement at Exhibit 31-E, accused says that complainant has problem living

in the matrimonial home at Kawadewadi because her mother, i.e., P.W.-3 was filling her ears against accused and his mother. Accused also says that his in-laws be made to understand that they should desist from interfering in the matrimonial life of complainant and accused and he is willing to cohabit with complainant.

8 These things have also weighed in the mind of the Trial Court while acquitting accused. P.W.-1, P.W.-2 and P.W.-3 have all uniformly stated that accused demanded gold chain, gold ring and dress for Diwali. Even assuming that, accused made such demand, would that amount to cruelty under Section 498A. The ingredients required for Section 498A are (a) the woman must be married, (b) she must be subjected to cruelty or harassment and (c) such cruelty or harassment must have been shown either by husband of woman or by the relatives of husband. The prosecution has failed to prove that accused subjected complainant to cruelty or harassment. Complainant states accused used to beat her with belt, suspected her character and once even hit her head with a stone. P.W.-2 and P.W.-3 are not eye witness to any beating or even arguments between the two. Therefore, it is only the statement of complainant P.W.-1. P.W.-1 states that on 27-10-2000 she was physically assaulted with belt and a stone resulting in blood oozing from the back of her head. To prove this, prosecution brought P.W.-4 Dr. Arvind Rajaram Jadhav to testify. P.W.-4 in his examination-in-chief states that he knew complainant Vaishali was the wife of accused and P.W.-4

also says complainant never had gone to him for medical treatment. P.W.-4 turned hostile. Prosecution also relied on the evidence of P.W.-5 and P.W.-6, both are neighbours of complainant/accused to prove cruelty. In the statement recorded by police under Section 161 of CrPC, it is recorded that these two witnesses are witness to cruelty and assault by accused to complainant. Both these witnesses have stated that the portion marked in their statement dated 14-11-2000 were not recorded based on the information from them. These two, P.W.-5 and P.W.-6, also turned hostile. Therefore, it is not possible to accept the statement of complainant that she was subjected to cruelty and harassment.

9 Moreover, in the examination-in-chief, P.W.-1 has stated that accused was given a sum of Rs.50,000/- as cash in dowry and her parents spent Rs.2,00,000/- for the marriage. This is not mentioned anywhere in the statement of P.W.-1 recorded under Section 161 of CrPC. Moreover, no evidence has been brought on record to prove that Rs.50,000/- was given as dowry and her parents spent Rs.2,00,000/- for the marriage. It is also stated in the cross-examination of P.W.-1 that on 11-11-2000, when she went to Wathar Police Station to lodge a complaint her maternal uncle was present. Maternal Uncle was not called to give evidence. P.W.-1 says that accused used to even beat his own mother, i.e., her mother-in-law, whenever the mother-in-law used to protect her and shield her from physical assault. The mother-in-law is not called to testify. P.W.-2 in his examination-in-chief

states accused was beating his daughter on account of demand of residence at Mumbai. P.W.-1 is totally silent about demand of residence. P.W.-2 also admits in his cross-examination that in his statement recorded by the police, he has not mentioned that accused was beating his daughter for reason of availment of accommodation at Mumbai from them.

10 In view of these contradictions and omissions, I cannot gather myself to conclude that the evidence of P.W.-1, P.W.-2 and P.W.-3 is totally reliable.

11 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ 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.

1. (2007) 4 SCC 415

(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 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.”

12 There is an acquittal and therefore, there is double presumption in favour of 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 Trial Court rightly observed that the prosecution had failed to prove its case.

13 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, need not be interfered with.

14 Appeal dismissed.

(K.R. SHRIRAM, J.)