

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1502 OF 2003

The State of Maharashtra

)....Appellant

(Org.Complainant)

V/s.

1) Subhash Bhau Pawar

)

2) Bhau Hari Pawar

)

3) Ramesh Haribhau Pawar

)

4) Sham Bhau Pawar

)

5) Tarabai Haribhau Pawar

)

All resident of S.No.15, Gosavi Vasti,
Hadapsar, Pune.

)

)....Respondents

(Org.Accused nos.1 to 5)

Ms.Pallavi Dabholkar APP for Appellant-State.

Mr.Amey V.Chandorkar i/by Mr.Rajesh A.More for respondent nos.1
to 4.

CORAM : K.R.SHRIRAM,J

DATE : 13.2.2020

ORAL JUDGMENT:-

1. In this appeal, an order and judgment dated 15.9.2003 passed by the Judicial Magistrate First Class, Pune acquitting the original 5 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, is impugned.

2. Mr.Chandorkar for respondent nos.1 to 4 states that during the pendency of this appeal, respondent no.5-Tarabai died on 30.11.2011 and hence the appeal abates against respondent no.5. Mr.Chandorkar tenders a photo copy of death certificate which is taken on record and marked `X' for identification.

3. The prosecution's case in brief is that PW-1 Pushpalata Subhash Pawar who is the complainant got married to accused no.1 Subhash Bhau Pawar on 7.6.1994 as per Hindu Customs. After the marriage, PW-1 went to reside with the accused persons and 2 children were born to her from the marriage. PW-1 was treated well for about 2 months but thereafter accused started suspecting her character and used to abuse and beat her. Accused no.1 was not doing any work and used to get drunk and beat complainant. Complainant used to bring money from her parents which she required for meeting household expenses from time to time. Accused no.1 also abused that she was not fit to be a member of the family of accused. PW-1 was beaten by accused no.1 in the middle of the night and driven out of the house. PW-1 narrated her misery to PW-2 & PW-3 i.e., father and mother, respectively, who consoled her and sent

her back to the matrimonial home by assuring that one day or the other accused will mend their ways.

4. In the month of May-1996 due to some reasons accused no.1 consumed poison and was admitted to Ruby hospital. PW-1 was barred from meeting accused no.1 and PW-1 was told to bring sum of Rs.1,00,000/- for the hospital expenses of accused no.1, failing which she should not even show her face to any one, let alone return to the matrimonial home. It is also alleged that the accused blamed PW-1 for accused no.1 consuming poison.

5. On 10.6.1996, two years after the marriage when PW-1 was about 9 months pregnant with the 2nd child, the accused threw out the complainant from the matrimonial home with 1st son. Since then PW-1 was residing in her parental house with the 2 children. In view thereof, PW-1 lodged a complaint with the police. Police started investigation and after completion of investigation, filed charge-sheet accusing the accused of offences punishable under Sections 498-A read with section 34 of IPC. Charges were framed and the accused pleaded not guilty and claimed to be tried. Their defence is of total denial.

6. In the statement of accused no.1, he alleges that after he

became handicapped due to consumption of poison, complainant PW-1 did not want to cohabit with accused no.1 and hence has filed a false complaint. In fact, the same statement has been repeated by all the other accused.

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

¹ (2008) 10 SCC 450

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.

8. The Apex Court in many other judgments including ***Murlidhar 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,

² (2014) 5 SCC 730

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.

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 reappraise the evidence and arrive at its own conclusions.

³ 1996 SCC (cri) 972

10. I have perused the impugned judgment, considered the evidence and also heard the learned APP Ms.Dabholkar and Mr.Chandorkar for respondent nos.1 to 4. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. All allegations are very vague and general in nature. Ms.Dabholkar in fairness agrees with this observation of the Court.

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., in the facts and circumstances of this case, the harassment must be with a view to coercing the woman or any person related to her to meet any unlawful demand for any property or on failure of her to meet such demand.

12 The Division Bench of this court in ***Kamlesh Ghanshyam Lohia and Ors. Vs. State of Maharashtra, through the commissioner of police & Ors.***⁴ in paragraphs 12 to 15, has observed as under:

⁴ 2019 SCC online Bom 1762

“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 looses the incriminating tendency. “

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

5 2017 SCC Online Bom 62

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 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.1,00,000/-, there is no evidence of harassment at all or for that matter harassment with a view to coerce PW-1 to meet any unlawful demand and on account of failure by her to meet such demand. In the cross-examination of PW-1 suggestion has come that it is the other accused who paid for the treatment of accused no.1 and subsequent to complainant leaving his house, accused had also constructed a multi storied building.

15. The other striking omission is the Investigating officer himself has not been examined. That would indicate that the evidence

would have been unfavourable to complainant and adverse inference arises against the prosecution's case in view of illustration (g) of section 114 of the Indian Evidence Act 1872. Non examining the Investigating officer as a witness, in the circumstances of the case would also cause prejudice to the accused.

16. The Apex Court in *Habeeb Mohammad Vs. State of Hyderabad*⁶ observed that it was the bounden duty of the prosecution to examine the Investigating officer who is a material witness in the case particularly when no allegation was made that if produced, he would not speak the truth. Moreover, Investigating officer is a principal architect and executor of the entire investigation. He is a crucial witness for purpose of establishing that there are omissions and contradictions. But more importantly it is always open to the defence to question honesty and caliber in the entire process of investigation.

17. 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.

⁶ AIR 1954 SUPREME COURT 51

Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court which rightly observed that the prosecution had failed to prove its case. The order of the trial Court of acquittal, in my view, need not be interfered with.

18. Appeal dismissed.

(K.R.SHRIRAM,J)