

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1104 OF 2004

The State of Maharashtra	)
(through Vani Police station)	)....Appellant
	(Org.Complainant)
V/s.	
1) Deepak Pandit Jadhav	)
24 years	)
2) Pandit Namdeo Jadhav	)
55 years	)
3) Vatsalabai Pandit Jadhav	)
52 years	)
4) Minabai @ Kusumbai Kailas Shinde	)
29 years	)
All R/o Materewadi, Tal.Dindori,	)
Dist. Nashik.	)....Respondents
	(Org.Accused nos.1 to 4)

Ms.Pallavi Dabholkar APP for appellant.
None for respondents.

CORAM : K.R.SHRIRAM,J
DATE : 3.3.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 31.5.2004 passed by the I Adhoc Additional Sessions Judge, Nashik acquitting the respondents (accused) of offences punishable under

Sections 306(*Abetment of suicide*), 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) read with 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2. Accused no.2 and accused no.3 are father and mother respectively, of accused no.1 and accused no.4 is the sister of accused no.1.

3. It is prosecution's case that Trimbak Kashinath Ghule - complainant (PW-1) had 4 daughters, one of whom was Sangita. Sangita was given in marriage to accused no.1 on 19.4.2000. Sangita gave birth to a son on 13.3.2001. It is alleged that Sangita for the first time after marriage went to her parents' house during Diwali and the 2nd time was couple of months before her delivery. During the first visit, Sangita informed PW-1-the father and PW-2 the mother that accused was demanding Rs.15,000/- for repayment of loan taken for buying a tractor and the parents gave that amount. During the 2nd visit, Sangita asked for Rs.50,000/- but also told PW-1 and PW-3 not to mention about this to accused no.1 and also said that if this amount was not given, the accused had threatened to kill her. It is also alleged that at that time Sangita informed PW-1 and PW-3 that the accused

were abusing her and ill-treating her for not bringing the amount to repay the loan taken for buying a tractor. It is alleged that a year before Sangita committed suicide, accused no.4 lost her husband and since then she had been living with accused no.2 and accused no.3, which is also the matrimonial home of Sangita. It is alleged that accused no.4 also instigated the other accused against Sangita.

4. On 11.4.2002 at about 6.30 a.m., uncle of accused no.1 Gulab Namdeo Jadhav informed PW-1 over telephone that Sangita had fallen near the water tank and suffered some injuries. Therefore, PW-2 and his relatives rushed to Materewadi where Sangita was residing and found Sangita's dead body in the house court yard with a crowd collected around the body. On the same day, post mortem was conducted. Post mortem report indicates Sangita died by consuming poison and an accidental death case was registered. Spot panchanama and inquest panchanama was conducted. On 11.4.2002, Trimbak Kashinath Khule-PW-1 the father of Sangita lodged a complaint. During course of further investigation, statements of witnesses were recorded. Later post mortem report was collected. Subsequently, charge-sheet was filed in the court of Judicial Magistrate First Class, Dindori who committed the case to the Court of sessions since offence under section 306 of the IPC is exclusively triable by Sessions Court.

Charge against all the accused was framed to which, accused pleaded not guilty and claimed to be tried. The case of the accused is of total denial.

Accused no.1 in his statement under Section 313 of Cr.P.c. states that after delivery, Sangita was bleeding a lot and was being treated by a doctor. Due to bleeding, Sangita had become weak and she was fed up.

5. 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 also be substantial and compelling reasons for holding that trial court was wrong.

¹ (2008) 10 SCC 450

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.

6. The Apex Court in many other judgments including ***Murlidhar Vs. State of Karnataka***² has held that unless, the conclusions

² (2014) 5 SCC 730

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.

7. 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

³ 1996 SCC (cri) 972

Court need not even reappraise the evidence and arrive at its own conclusions.

8. Trimbak Kashinath Khule (PW-1) in his evidence states that for the first time, Sangita complained about cruelty when she visited his house for Diwali and Sangita told him that the accused were demanding Rs.15,000/- to repay the loan taken for tractor and PW-1 also gave that money to her. We should note that Diwali comes during October-November and the marriage happened on 19.4.2000. Therefore, according to PW-1, Sangita complained for the first time, almost 6 months after her marriage. According to PW-1, next time Sangita complained about cruelty was 2 to 3 months later when she visited his house, which must be sometime in January-February-2001. At that time, Sangita is supposed to have told him that the accused were now demanding Rs.50,000/- to pay of the loan of tractor and were harassing her and ill-treating her. It seems she also told PW-1 that he should not discuss that with accused no.1 otherwise they will harass her more. Thereafter Sangita went back to her matrimonial home.

9. Thereafter Sangita went to the house of her parents and on 13.3.2001 delivered a boy, who was named as Pratik. Sangita stayed

in the house of PW-1 and PW-3 for 2 to 3 months after delivery and then went back to her matrimonial home. PW-1 then says on 11.4.2002 he got telephone call from the uncle of accused no.1 that Sangita had fallen near the water tank and suffered injuries. Therefore, what has come from the evidence of PW-1 is that only on 2 occasions Sangita informed him about the alleged demand and cruelty because in the cross-examination, PW-1 has stated that he had visited Sangita at her matrimonial home about once or twice. PW-1 does not say that during those visits, Sangita informed him about cruelty or demand. PW-1 also says that he visited the matrimonial home of Sangita to celebrate the first birthday of her son, i.e., his grand son Pratik. Even during that time, Sangita has not informed him about any ill-treatment or cruelty. PW-1 also admits in his cross-examination that in the FIR there is no mention about the first demand of Rs.15000/- during Diwali and the ill-treatment by in-laws of Sangita or that he has given Rs.15,000/- to the accused. PW-1 also admits in his cross-examination that FIR does not mention about the 2nd demand of Rs.50,000/- or that Sangita requested him not to take it up with accused no.1 because the accused will otherwise ill-treat her more or that Sangita told him that if amount is not given, the accused would kill her. These are very glaring omissions which in my opinion, are detrimental to prosecution's case. PW-1 also says that when he

got the news about Sangita on 11.4.2002, he, his wife and son Vishnu went to the house of the accused where they found the dead body of Sangita in the court yard. Vishnu has not been examined. PW-1 also admits that his other son-in-law Vijay Nivrutti Kadam resides at village Korate and son-in-law's brother is a Sarpanch and a village leader. PW-1 admits that after post mortem, all the relatives consulted with each other and then he lodged the FIR. Therefore, the evidence of PW-1 does not induce much confidence.

Similarly, PW-3 the mother of Sangita in her examination-in-chief says 2 to 3 months before delivery Sangita told them that she wanted Rs.15,000/- to repay the amount of loan and accordingly Rs.15,000/- was paid to her. As against this, what PW-1 said is for the first time during Diwali, Sangita demanded Rs.15,000/-. PW-1 says when this demand was made, accused no.1 was present with Sangita but PW-3 does not mention anything about presence of accused no.1. PW-3 says 2 to 3 months before delivery of Sangita, Sangita mentioned demand of Rs.50,000/- but PW-2 says before 4 to 5 days of incident which will be on or about 7.4.2002, Sangita and her husband had gone to her house and she had demanded Rs.50,000/- for household expenditure and PW-1 says demand was for repayment of tractor loan. PW-3 also admits that in her statement recorded by the police it is not mentioned that Sangita before delivery had come to

see her and she demanded Rs.15,000/- and that they paid Rs.15,000/- to her. PW-3 also admits that in the statement recorded by police, it is not mentioned that 4 to 5 days before the incident, Sangita had come to her place and she had demanded Rs.15,000/- for household expenditure. These are grave omissions and these also show the contradictions in the evidence given by PW-1 and PW-3 on the time when these demands were made. We should also note that these are the only 2 instances of demand over a period of 2 years of marriage.

10. Dr.Shobha Madhuka Jadhav, the medical officer (PW-2) who conducted the post mortem admits in her cross-examination that if the vicera is not analysed at an early date, there can be chemical changes. PW-2 also admits that merely on the basis of post mortem notes, she cannot opine if the death of the deceased was caused due to poisoning. Shamkant Yadavrao Somwanshi-Investigating officer (PW-4) admits that he is not the one who registered the accidental death information. That was registered by PSO Bagul who was not being examined. PW-4 also admits in his cross-examination that PW-3 did not state before him that before delivery, when Sangita had been to her place and demanded Rs.15,000/-, they paid that much amount to her and her husband. PW-4 also says PW-3 did not mention to him that 4 or 5 days before incident, Sangita and her husband had come to

her place and demanded Rs.50,000/- for household expenses.

11. In the circumstances: (a) there is no evidence of cruelty; and (b) there is no evidence that Sangita committed suicide because of such cruelty.

12. Therefore, the charge under Section 498-A has to fail. Moreover, there is no evidence whatsoever to show that Sangita committed suicide by consuming poison. Just because the post mortem report and Chemical Analyser report say that poisonous substance was found in her body, would not mean Sangita has committed suicide. I am making this observation because Sangita had delivered a son on 13.3.2001 and he had just turned one year, a month before the date of incident i.e., 11.4.2002. It has come in the evidence of PW-1 that birthday was “celebrated” and PW-1 along with his son had attended the birthday celebration. Which mother, I wonder would commit suicide? And there is no evidence to speak of to assume otherwise.

13. 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 trial Court. For acquitting the accused, the Sessions Court rightly observed that the prosecution had failed to prove its case.

14. Appeal dismissed.

(K.R.SHRIRAM,J)