

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1267 OF 2004**

The State of Maharashtra	)	Appellant/Complainant
V/s.	)	
1. Sanjay Mahadev Kavle Age about 34 yrs., Occupation : Nil, R/o. House No.2064/D-Ward, Dhanavade Lane, Shukrawar Peth, Kolhapur	)))))	
2. Smt. Parvati Mahadev Kavle 65 yrs., Occupation : Household, R/o. House No.2064/D-Ward, Dhanavade Lane, Shukrawar Peth, Kolhapur	)))))	Respondents/Accused

Mrs. Anamika Malhotra, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATE : 2nd DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 13th July 2004 passed by the Ad-hoc Assistant Sessions Judge, Kolhapur, acquitting the accused of offences punishable under Section 498 (A) (*Husband or relative of husband of a woman subjecting her to cruelty*) read with Section 306 (*Abetment of suicide*) of the Indian Penal Code (IPC).

2 It is prosecution's case that PW-1 complainant Dattaram Laxman Mayekar's daughter Sangeeta was married to accused no.1 on 15th February 2001. Accused no.1 used to reside at that time at Kolhapur and complainant was allegedly informed that accused no.1 was working in Post Office. Accused no.2 is the mother of accused no.1, who was living on

family pension being the widow of an ex-postal services employee.

3 Initially for about a year or two, Sangeeta was treated well by the accused. Sangeeta also delivered a girl child Mansi about 14 months after marriage. After the child was born, apparently accused no.1 lost his job and also got addicted to alcohol. Accused no.1 used to beat Sangeeta under influence of alcohol. It is alleged that accused no.2 used to keep on telling accused no.1 and Sangeeta that they were not having a proper job and they are not earning any amount and how could she maintain them also in her pension amount. Therefore, accused no.1 was harassing Sangeeta by beating and ill-treating her and accused no.2 was mentally harassing Sangeeta by asking her to earn some money. Both the accused are also alleged to have demanded Rs.10,000/- from parents of Sangeeta. Unable to bear the ill-treatment, Sangeeta committed suicide on 21st October 2003. On the next day, PW-1 filed a complaint with the Police and after due investigation, chargesheet was filed against the accused in the Court of J.M.F.C., Kolhapur. Thereafter, the case was committed to the Sessions Court and charges were framed for offences punishable under Section 498 (A) and Section 306 of IPC.

4 To drive home the charge, prosecution led evidence of seven witnesses, viz., Dattaram Laxman Mayekar, father of Sangeeta (complainant) as PW-1; Ravindra Dattaram Mayekar, brother of Sangeeta as PW-2; Shamsundar Kashiram Manjarekar, neighbor of PW-1 as PW-3;

Kanchan Dattaram Mayekar, sister of Sangeeta as PW-4; Manisha Digambar Kavle, the wife of brother of accused no.1 as PW-5; Vasant Arvind Khot, Police Constable as PW-6 before whom sudden death report was filed and who started inquiry; and Suresh Sahebrao Jagtap, the Investigating Officer as PW-7.

5 Having considered the evidence, records and proceedings and the impugned judgment, I see no reason to find any fault with the conclusion arrived at by the Trial Court.

6 PW-1 in his evidence has stated that for about one year Sangeeta was looked after well by the accused and after the daughter Mansi was born, the accused started ill-treating Sangeeta. Accused no.2 used to complain frequently that accused no.1 and Sangeeta did not have a job and it was difficult for accused no.2 to maintain them. Accused no.2, therefore, insisted that Sangeeta and accused no.1 should look for a job. PW-1 also stated that accused no.1 beat Sangeeta and asked her to seek a job or else bring Rs.10,000/- from her parents. Sangeeta had also informed complainant (PW-1) and witnesses about ill-treatment on phone and by letters (Exhibit 15 and Exhibit 17) and whenever she visited complainant's house. FIR also proceeds on the same basis.

7 But when we considered the evidence of PW-1 and also the FIR, the allegations of cruelty and ill-treatment mainly seem to be of beating, demand of Rs.10,000/- and some taunts and digs by accused no.2. It also

appears that Sangeeta was treated well for some time after marriage. But when we consider evidence of witnesses and documents, there appears lot of inconsistencies. PW-1 in his testimony says accused no.1 used to beat Sangeeta while FIR says he used to beat under the influence of liquor. In the evidence, PW-1 says accused no.1 used to regularly beat Sangeeta whereas FIR says Sangeeta was beaten couple of times. As regards the allegation of demand of Rs.10,000/-, no details have been given either in the evidence or in FIR. I would not blame accused no.2 for asking accused no.1 and Sangeeta to go out and earn a living because accused no.2 herself was surviving on meager family pension that she was getting and had no other source of income. In these circumstances, just because accused no.2 expressed her unhappiness about Sangeeta and accused no.1 not earning anything cannot be labeled as ill-treatment of such a nature that could have driven Sangeeta to commit suicide.

8 As regards the documentary evidence relied upon by the prosecution, i.e., Exhibit 15 and 17, it only says that accused no.1 did not have any job and they were short of money and Sangeeta was worried due to financial issues. Both the letters do not even mention about accused no.1 beating Sangeeta or demanding any money from her parents or demanding a sewing machine, as improvised by PW-4.

9 PW—2, the brother of Sangeeta, alleges that accused no.1 was addicted to liquor and used to beat Sangeeta and accused no.2 would harass Sangeeta by asking her to take a job. As noted earlier, to tell someone to

take up a job and not just depend on the meager family pension can never be called ill-treatment or cruelty or for that matter of such a nature as to drive Sangeeta to commit suicide. As regards the ill-treatment by accused no.1, PW-2 has made bald allegations of beating with no details.

10 Evidence of PW-3 also is economical with details. PW-4, the younger sister of Sangeeta, used to go to the house of accused with Sangeeta. PW-4 says that she noticed accused no.1 used to beat Sangeeta, accused no.2 used to harass Sangeeta and both insisted Sangeeta to bring Rs.10,000/- from her parents and if that was not possible, to get a sewing machine from her parents. The demand of sewing machine, however, is absent in the evidence of PW-1 and PW-2, the father and brother, respectively of Sangeeta. So also, of PW-3.

11 The witnesses have also alleged that the accused had not disclosed that accused no.1 was not having permanent job or was addicted to liquor. These allegations, even if accepted, are not enough to prove ill-treatment or cruelty or abetment. The evidence of witnesses as noted earlier do not have any details of accused no.1 beating Sangeeta. As far as demand of Rs.10,000/- also there are no details and PW-4 has gone a step further and stated about demand of sewing machine in the alternative for Rs.10,000/- about which all others are silent.

12 In the circumstances, the Trial Court was right in concluding that the charge under Section 498 (A) has not been proved.

For Section 306, there is no evidence to speak of for abetment. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, the Trial Court was right in acquitting the accused. The intention of the legislature and the ratio of the cases decided by the Apex Court and various High Courts is clear that in order to convict a person under Section 306 of IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push Sangeeta into such a position that she committed suicide. This charge has also been rightly rejected by the Trial Court.

13 The Apex Court in ***Ghurey Lal V/s. 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.

1. (2008) 10 SCC 450

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 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.

14 The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. 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.

The Apex Court in ***Ramesh Babulal Doshi V/s. 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 re-appraise the evidence and arrive at its own conclusions.

15 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP. I do not find anything

3. 1996 SCC (cri) 972

palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against the accused.

16 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 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.

17 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. I cannot find any fault with the judgment of the Trial Court.

18 Appeal dismissed.

(K.R. SHRIRAM, J.)

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