

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 280 OF 2007**

The State of Maharashtra
(Through Tasgaon Police Station)

....Appellant
(Orig. Complainant)

V/s.

1. Ravindra Vasant Damate
Age : 31 years, Occu.: Service

2. Ananda Vasant Damate
Age : 24 years, Occu.: Agriculture

3. Sou. Subhadra Vasant Damate
Age : 50 years, Occu.: Household

All R/o. Kavathe Ekand,
Tal. Tasgaon, District Sangli

....Respondents
(Orig. Accused Nos.1 to 3)

Ms. Anamika Malhotra, APP for State.
Mr. Kedar J. Patil for Respondents.

CORAM : K.R.SHRIRAM, J.
DATED : 15th JANUARY, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 30th December, 2005 passed by the II Ad-hoc Additional Sessions Judge, Sangli acquitting the respondents (hereinafter referred as accused) of offence punishable under Section 498-A (*Husband or relative of husband of a woman subjecting her to cruelty*) r/w 34 and 306 (*Abetment of suicide.—If any person commits suicide*) of the Indian Penal Code.

2. It is the case of the prosecution that Suchita had got married to Accused No.1 on 6th July, 2003. The marriage was conducted with consent of parties and Suchita lived happily. As she was working at the time of marriage as a temporary teacher in Mahankali Vidya Niketan, Kavathe-Mahankal, even after marriage she continued to stay at the residence of her parents in Kavathe-Mahankal and would visit the house of her husband (matrimonial house) over Saturday, Sunday and on holidays. The matrimonial house was in Kavathe-Ekand and the distance between the parents house and the matrimonial house was about 30 to 40 kms. Suchita got about Rs.700/- per month as salary. Suchita had done B.A. B.Ed. and also first year (M.A in Psychology) student.

3. Accused No.1 who was husband of Suchita was also educated and had done B.Sc. B.Ed. He was working in the Health Department, Zilla Parishad, Sangli and drawing approximately Rs.7,000/- per month as salary. Accused No.2 is brother of Accused No.1 and Accused No.3 is mother of Accused Nos.1 and 2.

4. Sometime in August 2004, because it is prosecution's case that six months before the incident, accused are alleged to have started harassing Suchita by abusing her that she was unable to cook or do any household work, that she should resign her job because Rs.700/- she was earning was not enough to even cover her travel expenses from Kavathe-

Mahankal to Kavathe-Ekand. Accused are also alleged to have demanded a sum of Rs.50,000/- to repay certain debts. The allegations noted are more general and not specific.

5. About 1 and 1/2 months before the incident on 19th February, 2005, i.e., prior to end of December 2004 or early January 2005 Suchita went to reside in her matrimonial house. She did not go back to work or to her parental house. Sometime around early February 2005, P.W. 1 – Ramchandra Yashwant Kore who is father of Suchita went to her matrimonial house at which time, weeping Suchita informed him about harassment meted out by accused that accused told her that Rs.700/- salary was not enough to meet her expenses, she is unable to cook, that she was not given enough food and she was abused in filthy language. Suchita is supposed to have told P.W. 1 about demand of Rs.50,000/- by accused and unless that amount was paid Suchita will not be allowed to go back to her parental house. According to prosecution, on two or three earlier occasions also Suchita had informed P.W. 1 about harassment as noted above.

6. On 19th February, 2005 Suchita and her husband went to bed. In the night Suchita committed suicide by hanging herself in the house by tying a saree around her neck. When accused no.2 woke up early morning and he was searching for pipe to fetch water, he realised Suchita had committed suicide. Immediately everybody was informed and P.W. 1 and

other family members went to the matrimonial house of Suchita and found Suchita hanging and dead. On 20th February, 2005 at 8.35 a.m. accused no.2 informed police. Police recorded accidental death case and commenced investigation. Police also came to prima facie conclusion that the death was by hanging but nevertheless sent the body for postmortem. The postmortem report also recorded a conclusion that death was due to hanging.

7. On 20th February, 2005 at 6.50 p.m. P.W. 1, father of Suchita, lodged report at Tasgaon Police Station about harassment and that Suchita committed suicide due to such harassment. Based on the report crime was registered. Investigation commenced, accused arrested and charges were framed. Accused pleaded not guilty and claimed to be tried. According to accused, since accused no.3 was old and Suchita's salary of Rs.700/- was too small, it was suggested to Suchita that she should resign her job and live in the matrimonial house. Accordingly, Suchita also resigned from her job. They have denied that they ever demanded any amount from Suchita or P.W. 1 or harassed Suchita in any manner.

8. To bring home the charge, prosecution has examined three witness viz., Ramchandra Yashwant Kore, as P.W. 1 ; Balkrishna Yashwant Kore, as P.W. 2 and Chandrakant Malhari Ombase, Investigating Officer as P.W. 3. P.W. 1 - Ramchandra Kore and P.W. 2 - Balkrishna Kore were father and uncle (father's brother)

respectively of Suchita. There is nothing to talk about in the evidence of Investigating Officer.

9. After considering the evidence, the trial court has rightly concluded that prosecution's case is devoid of any merits. I agree with the trial court findings. This is because the evidence which is on record is not enough to conclude that Suchita was subjected to cruelty at the hands of accused or accused abetted Suchita to commit suicide. P.W. 1 states that Suchita was being harassed, abused in filthy language, not given food, taunted for not able to cook and told that her Rs.700/- salary was not enough to even meet her expenses and that is what Suchita told him on two or three occasions during six months period before incident. For the first 14 months after marriage, there was no problem. Suchita after marriage continued to live in her parental house because she had a temporary job in Mahankali Vidya Niketan as a teacher and was earning Rs.700/- against the salary of Accused No.1 of Rs.7,000/-. Accused also allowed Suchita to stay in the parental house though she was earning salary of only Rs.700/- as a teacher on the hope that her job will be made permanent, which was not happening. Suchita used to visit her matrimonial house over weekends or on holidays which was at a distance of 30 to 40 kms from her parents house. Therefore, accused informed her that it was not worth working for Rs.700/- when the travel cost itself will consume most of her salary and if she gave up job and move into matrimonial house, they could at least have a happy

married life. It was a practical suggestion in my opinion. How can this be called harassment to fall under the definition of cruelty or can be said to be something to abet Suchita to commit suicide. Perhaps Suchita did not want to live in her matrimonial house, but for that, can the accused be blamed ?

10. The allegations of Suchita being abused in filthy language or not being given food etc. are vague and general. I cannot accept these allegations because more than a year after marriage Suchita was living in her parental house and would only visit her matrimonial house over weekends and holidays and during that time there are no allegations of any harassment or abuse.

11. Even as regards the demand of Rs.50,000/- alleged by P.W. 1, it is not believable. According to P.W. 1, Accused No.1 telephone to him and demanded Rs.50,000/- and when P.W. 1 went to the matrimonial house of Suchita, at that time also accused demanded Rs.50,000/-. We should keep in mind Accused No.1 was working in Zilla Parishad and earning Rs.7,000/- per month salary. Accused are also having income from agricultural land. Till the death of Suchita there is no complaint of any nature regarding demands by accused. So first time in the FIR this demand is mentioned. It is important to note that there is no evidence to show accused were really in debt or in need of money. The marriage was conducted on 06th July, 2003 and until six months before the incident, i.e., until about August/September,

2004 there was no demand on behalf of accused. Therefore, one cannot rule out possibility that this demand has been included only to implicate accused. I would say this because to prove this demand, prosecution has led evidence of P.W. 2. The evidence of P.W. 2 has spoiled P.W. 1's case as well. P.W. 2 is brother of P.W. 1, uncle of Suchita, who had visited Suchita's matrimonial house eight days after the marriage, i.e., sometime around 15th July, 2003. He says accused were harassing and ill treating and demanding Rs.50,000/- from Suchita. But how does he know that. One cannot believe P.W. 2 because he goes to the extent by saying, after marriage Suchita was staying at matrimonial house and used to go to Mahankali Vidya Niketan which is near her parental house everyday. This is contrary to prosecution's case as well as evidence of P.W. 1.

12. In this circumstances, I cannot gather myself to conclude that there is any perversity in the conclusions of the trial court.

13. The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has formulated 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 Section 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.

¹ (2008) 10 SCC 450

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 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 Karnataka² 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 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.

15. 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.

² (2014) 5 SCC 730

³ 1996 SCC (Cri) 972

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

17. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to 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, accused having secured his acquittal, the presumption of his 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.

18. 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.

19. Appeal dismissed.

(K.R. SHRIRAM, J.)