

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 683 OF 2004**

The State of Maharashtra

....Appellant  
(Orig. Complainant)

V/s.

1. Smt. Taramati Tukaram Mhadgut  
Age about 60 years, Occ. : Household

2. Lawoo Tukaram Mhadgut  
Age about 25 years

Both residing at Amberi, Gosaviwadi,  
Tal. Kudal, District – Sindhudurg.

....Respondents  
(Orig. Accused Nos.1 to 2)

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Ms. Anamika Malhotra, APP for State.

Mr. Vaibhav S. Charalwar, Advocate, appointed for Respondents.

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**CORAM : K.R.SHRIRAM, J.  
DATED : 15<sup>th</sup> JANUARY, 2021.**

**ORAL JUDGMENT :**

1. There is an office noting that notice was served on Respondent Nos.1 and 2. They have stated that they are poor and want advocate from legal aid at government expense. The court, therefore, appointed Mr.Vaibhav Charalwar on behalf of respondents.

2. This appeal impugns an order and judgment dated 27<sup>th</sup> February 2004 whereby the Learned Sessions Court had acquitted Accused Nos. 1 and 2 of offences punishable under Sections 498 – A (*Husband or relative of husband of a woman subjecting her to cruelty*) and 306

*(Abetment of suicide.—If any person commits suicide)* r/w 34 of the Indian Penal Code (IPC). Accused No. 1, Taramati Tukaram Mhadgut is the mother-in-law of deceased, Latika Lawoo Thakur (Latika). Accused No. 2, Lawoo Tukaram Mhadgut is the husband of late Latika.

P.W. 1, Pramod Arjun Thakur is the brother of Latika. P.W. 2, Priyanka Pramod Thakur is the wife of P.W. 1. P.W. 3 Satyabhama Thakur is the sister-in-law of P.W. 1 and P.W. 2.

Latika and Accused No. 2 got married on 30<sup>th</sup> March 2001. Before getting married, Latika's maternal home was situated at Math. After getting married, Latika started residing with Accused No. 2 at Amberi, which is 20 – 25 kms from Math. There were no instances of matrimonial discord or instances of cruelty which have been alleged by the prosecution between March 2001 till October 2001. As per the testimony of P.W. 1, someone from his household visited Latika every month.

3. In October 2001 it is alleged by prosecution that Latika had come to Math on a visit and with instructions from Accused Nos. 1 and 2 to return on the same day. She could not return on the same day to Amberi. P.W. 2 and P.W. 3 dropped the deceased back to Math on the next day. On reaching Math, Accused No.1 allegedly asked Latika why she had returned a day later and also suggested to P.W. 2 and P.W. 3 that they were not aware of her nature. In December 2001, when P.W. 2 was visiting Latika, Accused No.1 allegedly taunted that Latika did not have a smiling

face and was not talkative. Latika accompanied P.W. 2 back to the bus stand and during such time informed P.W. 2 that despite doing all the work, Accused No. 1 scolded Latika. In January 2002 when P.W. 2 and P.W. 3 visited Latika, Accused No.1 once again allegedly stated that Latika did not have a smiling face and was of rotten nature and that if Accused No. 2 left Latika, she would be in trouble. In February 2002, the uncle of P.W. 1 expired and thus P.W. 2 had to travel to Mumbai leaving her son behind at Math. P.W. 2 requested Latika to stay at Math for 4 days to look after her son. Due to certain reasons, P.W. 1 and P.W. 2 could not return within 4 days. Latika on the 4<sup>th</sup> day called P.W. 1 and informed him that Accused No. 2 had asked the deceased to return immediately otherwise she would not be permitted in the house. When P.W. 1 and P.W. 2 reached Math from Mumbai after 2 days, Latika was scared and was weeping. Latika said that she should immediately reach Amberi otherwise Accused No. 2 would scold her. P.W. 1 accompanied Latika to Math and convinced Accused No. 2 not to scold her. In May 2002, about 3 months after the last visit to Math, Latika visited Math for 2 days. During that visit Latika allegedly informed P.W. 1 that she was beaten [how (no details provided), number of times or the date is not mentioned - very vague] by Accused No. 1 for not picking up the dinner plate of Accused No.2 in time. P.W. 2 once again visited Latika on 9<sup>th</sup> June 2002. On reaching she was informed by Accused No. 1 that she was helping Accused No. 2 in digging a well. Latika on being called back and seeing P.W. 2 started weeping. Latika once again told P.W. 2 that despite

doing all the work she was scolded by Accused No. 1. Latika accompanied P.W. 2 to the bus-stand when she informed P.W. 2 that Accused No. 2 was not maintaining sexual relations with her and that she was being scolded by the Accused No.1. This is the only time Latika has said that. On 10<sup>th</sup> June 2002, P.W. 2 was informed by a certain Amol (neighbour) that he had received a call and was informed that Latika was serious. P.W. 2, P.W. 3, Vasudev (P.W. 1's cousin brother) and sister of P.W. 2 went to Amberi. They saw the dead-body of Latika. They were informed that Latika committed suicide by consuming insecticide. P.W. 1 filed a report on 15<sup>th</sup> June 2002.

4. Prosecution contends that Latika committed suicide because of the harassment meted out by Accused Nos. 1 and 2. Accused Nos. 1 and 2 have denied all the allegations in their statements given under Section 313 of the Criminal Procedure Code. Accused No. 2 in his statement has stated that the Latika could not conceive and thus he had taken her to a doctor. On examination, it was diagnosed that Latika would not be able conceive. Accused No. 2 states that this was the reason for Latika to be mentally disturbed which perhaps led her to commit suicide. Further, P.W. 1 and P.W. 2 have both admitted in their cross-examination that no complaints were made to the police about the harassment at the relevant time as the complaints were trivial in nature. The FIR has also been lodged 5 days after the occurrence of the incident.

5. The prosecution alleges on the basis of the complaint lodged by P.W. 1 - Pramod Arjun Thakur brother of Latika that Accused No.1 who was mother-in-law of Latika and Accused No.2 husband of Latika had treated Latika with such cruelty that had forced her to commit suicide. Admittedly, there was no harassment for any unlawful demand. With the help of learned APP and Mr. Vaibhav Charalwar, I went through evidence and the impugned judgment. P.W. 1 was never at home and was always at work. The evidence of P.W. 1 appears more hearsay. The main evidence is of P.W. 2 - wife of P.W. 1 who was at home and who was meeting Latika of and on. The allegations appear to be that Accused No.2 would insist Latika returning home the same day whenever she went to visit P.W. 1 or P.W. 2. Whenever P.W. 2 visited Latika's residence Accused No.1 would tell P.W. 2 that Latika does not smile at all and is quiet at all time. Latika was always scared when she was late and did not return to the matrimonial house at the time and date as fixed by Accused No.2. P.W. 2 has also stated that Latika would tell her that despite doing all household work Accused No.1 would keep scolding her and lying about her to Accused No.2. When we consider these allegations and the evidence there is nothing really against Accused No.2 – husband. What remains is only allegations against Accused No.1 as briefly stated above. The stand of the defence is as stated in statement under Section 313 of the Code of Criminal Procedure. Accused No.2 in reply to question no.33 (b) has stated that Latika could not conceive despite one year after marriage and he had taken her to doctor who after examining

opined that Latika could not conceive therefore she used to be in disturbed state of mind and because of that perhaps consumed poison in that frame of mind. Per contra, P.W. 2 in her examination-in-chief states that Latika once informed her that her husband was not keeping sex relations with her and her mother-in-law scolded her and they were not treating her with affection. Be that as it may, the allegations against Accused No.2 would not amount to cruelty under the definition of Section 498 A of the Indian Penal Code.

6. Mr. Charalwar relies on the judgment of this court in ***State of Maharashtra Vs. Anil Kurkotti and Others***<sup>1</sup> wherein paragraph nos.20 and 21 reads as under;

*20. There will be ordinary wear and tear in any matrimonial life but that does not amount to cruelty or harassment. It is settled law that every type of harassment or every type of cruelty, would not attract Section 498A or Section 306 of IPC. It must be established that the harassment or cruelty was with a view to force the wife to commit suicide or to fulfill illegal demands of husband or in-laws. The witnesses have given evidence of harassment only on the basis of what the deceased Swati is supposed to have told them. The deceased Swati was married for 8 years but P.W.-2 did not feel it was necessary to report the matter to the police even once. In the present case, the allegations against Accused was not that Swati was subjected to cruelty on account of any illegal demand. Except bare words of the witnesses that Swati used to complain about harassment, there is no other positive evidence on cruelty. When Swati committed suicide, Accused Nos.2 to 4 were residing at Village Surpur and they came from village Surpur on receiving information about the commission of suicide by Swati. There is no evidence to show that the Accused in any way instigated or aided Swati to commit suicide. Therefore, the Trial Court has rightly concluded that on the face of records, there is no evidence to conclude that the Accused in any way abetted the*

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*commission of suicide.*

21. *Cruelty under Section 498A means any willful conduct which is of such nature as is likely to drive the woman to commit suicide. It also means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Therefore, the prosecution has to prove a willful conduct, which is of such nature as is likely to drive the woman to commit suicide. No such willful conduct has been established because none of the witnesses have given evidence to have seen the Accused indulging in such willful conduct that could drive a woman to commit suicide. Moreover, if a woman is harassed, that harassment should be with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand. Therefore, the prosecution has to prove that there was any unlawful demand for any property or valuable security by the Accused. None of the witnesses have stated that there was any such demand by the Accused. Therefore, the charge under Section 498A cannot stick.*

7. Even in this case P.W. 2 has given evidence of harassment only on the basis of what Latika is supposed to have told her. Of course, P.W. 2 states that Accused No.1 told her that Latika does not smile or talk much but that cannot be the harassment.

8. As regards the charge under Section 306 of the Indian Penal Code, paragraph nos.16 and 17 of ***Gurjit Singh Vs. State of Punjab***<sup>2</sup> which Mr. Charalwar relied upon reads as under;

16. *It has been further held that when the case does not fall under clauses secondly and thirdly of Section 107 of the IPC, the case is to be decided with reference to the first clause, i.e., whether the accused-appellant abetted the suicide by instigating*

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2 2019 SCC OnLine SC 1516

*her to do so. It will be further relevant to refer to following observations in Ramesh Kumar (supra):*

*“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.*

*21. In State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.*

*22. Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.....” (emphasis supplied)*

*17. The Court observed that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. Though the court observed that to satisfy the requirement of instigation, it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. However, it has been observed that a reasonable certainty to incite the consequence must be capable of being spelt out. Relying on the judgment of this court in the case of State of West Bengal vs. Orilal Jaiswal, it is observed that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the*

*victim had in fact induced her to end her life by committing suicide. It has further been held that Section 498-A and Section 306 of the IPC are independent and constitute different offences. It has been observed, that depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A of the IPC . It has further been observed, that if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, it may also amount to abetment to commit suicide. It is further observed, that, however, merely because accused had been held liable to be punished under Section 498-A of the IPC, it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.*

9. There is no evidence to indicate any instigation or provoking or inciting or encouraging Latika to do the act of committing suicide.

10. The Apex Court in ***Ghurey Lal V/s. State of U.P.***<sup>3</sup> 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.*

*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*

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<sup>3</sup> (2008) 10 SCC 450

*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.*

11. The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***<sup>4</sup> 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

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<sup>4</sup> (2014) 5 SCC 730

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.

12. The Apex Court in *Ramesh Babulal Doshi V/s. State of Gujarat*<sup>5</sup> 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.

13. I have perused the impugned judgment, considered the evidence, also heard Ms. Malhotra, learned APP and Mr. Charalwar for respondents. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the

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5 1996 SCC (Cri) 972

evidence available on record, there is nothing to substantiate the charge leveled against accused.

14. 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.

15. 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.

16. Appeal dismissed.

17. Mr. Vaibhav Charalwar is appointed to present case on behalf of unrepresented respondents, the appointment made is of good assistance for rendering this judgment. Mr. Charalwar's fees is quantified to Rs.10,000/-. High Court Legal Services Committee to award fees of Mr. Charalwar within two weeks.

**(K.R. SHRIRAM, J.)**