

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1352 OF 2008**

The State of Maharashtra)
(through Police Station, Vita Crime)
Register No.73/2007) ..Appellant

V/s.

Tanaji Khashaba Jagtap)
Age 46 years, Occupation Labour,)
Resident of Bhakuchiwadi,)
Taluka Khanapur, District Sangli) ..Respondent
(Org. Accused)

Mrs. Anamika Malhotra, APP for State
None for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 8th JANUARY 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 30-01-2008 passed by the Learned Ad-hoc District Judge-2 and Additional Sessions Judge, Sangli acquitting accused of offences punishable under Section 498A (*Husband or relative of husband of a woman subjecting her to cruelty*), Section 306 (*Abetment of suicide*), Section 323 (*punishment for voluntarily causing hurt*) and Section 504 (*intentional insult with intent to provoke breach of the peace*) of the Indian Penal Code.

2 The deceased Latabai had married accused in 1984. It is prosecution's case that accused used to be an alcoholic who would get drunk and demand

money from Latabai and if, she did not give, would mentally and physically abuse her. Latabai and accused had three children, all grown up. 23 years after marriage on 19-6-2007, Latabai was so upset with the constant abuse and alcohol addiction of accused that she committed suicide by pouring kerosene on herself and setting it on fire. In the intervening night of 19-6-2007 and 20-6-2007 Latabai died. According to prosecution Latabai died at 1.30 a.m. on 20-6-2007 but documents indicate that she died at 10.30 p.m. on 19-6-2007.

3 After pouring kerosene and setting herself on fire, Latabai started screaming and shouting at which time accused extinguished fire by wrapping her in the blanket. In the bargain, accused also got burn injuries and was admitted in the same burn ward as Latabai. Immediately, the brother-in-law of Latabai with the help of few other relatives, took Latabai in jeep to Civil Hospital Sangli, where Latabai was admitted and treatment commenced. Statement of Latabai was recorded as dying declaration by P.W.-3 in the presence of P.W.-6 Dr. Salgotra. Based on the dying declaration offence was registered and further investigation was carried out. P.W.-10 who was the Investigating Officer visited the spot and prepared spot panchnama, seized articles that were found at the spot, recorded the statement of witnesses etc., and after investigation, submitted the charge sheet. Subsequently charges were framed and accused pleaded not guilty and claimed to be tried.

According to accused he and Latabai were extremely happy with each

other, he never drank alcohol and the incident occurred at about 10-10.30 p.m. when Latabai was cooking and due to flames from the stove her dress caught fire. While trying to extinguish the fire, he also suffered burn injuries. Accused denied he ever beat Latabai. According to accused because he refused to cultivate the land of Latabai's brother they were deposing falsely against him. According to accused, the brother of Latabai in collusion with police and doctor have prepared false dying declaration of Latabai. Dying declaration as recorded by prosecution is false. Accused also stated that on 19-6-2007 he, Latabai and his sister in law Pushpa (PW-4) had gone to the house of Latabai's parents to attend a fair and returned only at about 8.30 to 9.00 p.m. Accused says that Latabai was in a very happy mood. Thereafter, the incident happened as mentioned above, when Latabai was cooking and despite his best efforts he could not save Latabai.

4 To drive home the charge, prosecution has led evidence of 10 witnesses. Prosecution has also relied on an agreement dated 20-2-2007 entered into between accused and Latabai, at the instance of the father of Latabai, to submit that accused was an alcoholic and used to beat Latabai when drunk and accused had promised to behave himself well, which promise was broken.

5 PW-2 Dilp Mohite is the brother of Latabai and in his evidence he has made lot of allegations against accused, but he also admits that one day prior to the incident, i.e., on 19-6-2007, Latabai PW-4 and accused had been to their house to attend the local fair and they were at his house until

7 to 7.30 p.m. P.W.-2 has specifically admitted that Latabai went back home happily. Incident of fire happened at 10.30 p.m. and, therefore, few hours before the incident also Latabai was in a happy mood. That raises a doubt as to whether the incident really occurred as alleged by prosecution.

6 P.W.-2 has admitted that Latabai was admitted in the hospital in a very serious condition and he and his relatives were near Latabai in the ward. According to P.W.-2 Latabai narrated about the incident after getting down from the vehicle when he was near to Latabai for 15 to 20 minutes. I find that rather strange because there is no explanation from prosecution as to why Latabai could not have told the witnesses when they were in the jeep together as to what happened. P.W.2 also stated that Latabai's sons were not in cordial terms with accused. If that was the case, why even one of the sons of Latabai and accused was not called to give evidence to prove that accused used to ill treat Latabai. It is very relevant because marriage happened in 1984 and Latabai died in June 2007. As regards the agreement Exhibit 16 dated 20-2-2007, the same has been executed one year and four months before Latabai committed suicide. Prosecution's case of accused used to beat Latabai and demand money for alcohol and if she did not give accused would beat, is not found in the agreement Exhibit 16. Therefore, one can safely conclude that prosecution has improved its case to say that accused was demanding money.

7 P.W.3 has admitted that the information which was given by Doctor was recorded in station diary of Vishrambag police station and the letter

Exhibit 19 was given to him on the basis of the entry made in the station diary. PW-3 does not produce the station diary. PW-3 has denied in his cross-examination that the relatives of Latabai, like her brother, mother etc., were present when he went to the hospital for recording statement of Latabai. But PW-2 says that after admitting Latabai in Civil Hospital and till her death, he was near Latabai.

8 Exhibit 18, dying declaration runs into 34 to 35 lines. Admittedly, Latabai had 98% burn injuries. Considering the nature and extent of burn injury, I wonder whether Latabai really in a condition to give statement which runs into 34/35 lines. Even next to the thumb impression of Latabai, there is no signature of any person attesting the signature. The endorsement in the dying declaration says 6.00 a.m. to 6.30 a.m. at the bottom. Even if we assume that incident happened at 1.30 p.m. as alleged by prosecution, the question that arises is even after suffering 98% burn injuries, was Latabai in a position to give a statement running into 34/35 lines particularly when nowhere it is stated by prosecution that while being taken to hospital in the jeep Latabai had made any grievances against accused in the presence of all other who were travelling with her in the jeep.

9 PW-4 in her further evidence has deposed that at about 1.00 to 1.30 a.m in the night when she was asleep, she heard the shouts to the effect “mala wachava mala wachava” (save me save me) and when she came out of her house the fire had been extinguished and there were 15 to 20 persons who had gathered. Strangely, PW-4 says she did not know who all those

people were. P.W.-4 says that when she asked Latabai to whom she should inform, Latabai told her to inform her family at Narsewadi. According to P.W.-4 Latabai was found lying on the road. P.W.-4 took her to the house. However, none of the witnesses have stated that Latabai was lying on the road. P.W.-4 who was constantly with Latabai, has also not stated that Latabai informed her about the grievances against accused. More particularly P.W.-4 says both palms of Latabai were burnt and skin of fingers of Latabai was removed. In that case, I wonder how Latabai's thumb impression have been taken.

10 P.W.-6 Dr. Salgotra states that constable asked some questions to Latabai and Latabai replied to the said questions. But P.W.-3 in his evidence nowhere stated that he put questions to Latabai and Latabai replied to the questions. Dying declaration is in narrative form and not in question and answer form.

11 P.W.-6 admits that before admitting the patient in a particular ward, the patient is to be taken to casualty ward and there in casualty ward a register is maintained and in the said register CMO used to make entry regarding the period and date on which patient is admitted and history of the patient is also used to be taken in casualty ward. P.W.-6 also admits that in the register as regards history of the incident there is a reference "due to stove" in connection with the injuries sustained by Latabai. P.W.-6 also admits that in the said history word "kerosene" is mentioned later on by scoring the previous word and the correction is signed by him. This a fatal

blow to the prosecution's case because if Latabai had actually poured kerosene on herself and set herself on fire, certainly there would not have been a mention in the history about stove. PW.-6 says that Latabai had suffered 98% burn injuries and all parts of body had burns except some portion of the sole and palm. Exhibit 25, the medical report, is full of over writing. So far as the date and time is concerned, in case papers it has been mentioned that patient came with burns at 10.30 p.m. on 19-6-2007, due to stove. Considering these averments in the case paper and reference to stove in the history, it is rather difficult to accept that the incident occurred at 1.30 a.m. on the intervening night of 19-6-2007 and 20-6-2007, when Latabai poured kerosene on herself and set herself on fire. Even evidence of PW.-7 is unreliable.

12 Considering all the above said aspects and as the evidence is rather vague and silent so far as the offence punishable under Section 323 and 504 is concerned, it is rather difficult for me to hold that the prosecution has proved those offences also against accused. As Latabai was married to accused in the year 1984 and as the prosecution has not examined any son of deceased Latabai and the document Exhibit 16 is silent so far as demanding amount by accused to Latabai is concerned, it is rather difficult for me to hold that the prosecution has proved an offence against accused under Section 498-A of Indian Penal Code. There is inconsistency in evidence regarding the manner in which the incident occurred. There is no sufficient and reliable evidence to accept the case of prosecution that the

incident occurred at about 1.30 a.m. Therefore, considering all these aspects, it is rather difficult for me to hold that prosecution has proved an offence punishable under Section 306 of Indian Penal Code against accused. Thus, I hold that prosecution failed to prove any sort of offence against accused by giving sufficient, cogent and reliable evidence on record.

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.

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

1. (2008) 10 SCC 450

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 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.

2. (2014) 5 SCC 730

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 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 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

3. 1996 SCC (cri) 972

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.)