

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1521 OF 2003**

The State of Maharashtra) ..Appellant

V/s.

1 Ajit Shrirang Gadhave, 38 yrs.)
Occu. Service, R/o 1, Pawar colony)
Sahupuri, Satara)

2 Prakash Shrirang Gadhave, 58 yrs.)
Occu. Watchmaker, R/o 50,)
Kamathipura, Godoli, Satara)

3 Ratankumar Shrirang Gadhave,)
35 yrs, Occu. Service, R/o Pawar)
Colony, Sahupuri, Satara)

4 Urmila Ashok Katkar, 44 yrs)
Occu. Household, R/o 16, Shukrawar)
Peth, Satara)

..Respondents
(Orig. Accused Nos.1 to 4)

Mrs. M. M. Deshmukh, APP for State
Mr. Rahul Kate for Respondent Nos.1 to 3

**CORAM : K.R.SHRIRAM, J.
DATED : 18th JUNE 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 26th May 2003 passed by the Judicial Magistrate, First Class, Medha, Satara, acquitting the accused of offences punishable under Section 498A (*Husband or relative of husband of a woman subjecting her to cruelty*), Section 323

(Punishment for voluntarily causing hurt), Section 504 (Intentional insult with intent to provoke breach of the peace) and Section 506 (Punishment for criminal intimidation) read with Section 34 (Acts done by several persons in furtherance of common intention) of the Indian Penal Code.

2 One Kamal Ajit Gadhave (P.W.5), got married on 16th December 1989 to Ajit Gadhave (Accused No.1). Accused no.1 was a widower, his first wife having expired. It was P.W.5's first marriage. P.W.-5 delivered a baby girl. There was a daughter from the first marriage of accused no.1, who was initially residing with accused no.4. Accused no.4 is the wife of accused no.3. Accused no.3 was the brother of accused nos.1 and 2.

3 It is prosecution's case that after marriage, P.W.-5 went to reside with accused no.1 where the parents of accused no.1 was also residing. It is alleged that accused no.1 used to pick quarrels with P.W.-5 on flimsy grounds. P.W.-5 got ill and was diagnosed with TB in the brain. It is alleged that accused no.1 to avoid incurring expenses on the medical treatment of P.W.-5 started picking up quarrels more frequently and beat her up on flimsy grounds and even asked her to leave the matrimonial home. It is alleged that on 18th September 1998, at about 3.00 p.m., when the last rites of the father of accused no.1 was going on, the accused punched and kicked P.W.-5 and also abused her in filthy language. At that time, another sister of accused no.1 (who is not an accused) and her husband were present and they rescued P.W.-5 from the physical and verbal onslaught.

4 It is also alleged that prior thereto, on 16th July 1998, when P.W.-5 was

residing with accused no.1 at Panvel, accused nos.3 and 4 had gone to the house where P.W.-5 was residing with accused no.1 to celebrate the birthday of the daughter of accused no.1 from his first wife. The daughter was a school going girl and was called Shalaka. After celebrating the birthday, all went to sleep. At about 11.00 p.m., accused no.1 caught hold of both legs of P.W.-5 and tied both her legs with nylon rope. Accused no.1 was assisted by accused nos.3 and 4, accused no.3 twisted her left hand and accused no.4 pressed her mouth closed. Thereafter, accused no.1 took his daughter from P.W.-5, a little girl called Maitrayee and made her to stand on the cooking gas and threatened to set her on fire unless P.W.-5 signed certain documents and admitting that she was unchaste. To save her daughter Maitrayee from being harmed, P.W.-5 wrote as directed on some papers and signed the same. It is further alleged that accused no.1 threatened P.W.-5 with dire consequences if she disclosed to anyone what happened and further threatened to self immolate. Hence, P.W.-5 did not disclose about that incident to anyone but informed only to her mother, who is P.W.-6.

5 Thereafter, P.W.-5 reduced the allegations into writing and her complaint was registered at Juna Rajwada Police Station, Kolhapur, from where it was referred to Satara City Police Station. Investigation was set into motion, the accused were arrested, statements of witnesses were recorded and after further investigation and finding of further evidence, trial commenced and charge sheet was filed. All the accused pleaded not guilty and claimed to be tried. In his statement under Section 313, accused no.1

states that he had married P.W.-5 because she was from very poor family but she used to keep demanding money from him for her mother and keep torturing him mentally and the complaint has been filed only to harass him. Learned APP pointed out that this itself would show that there was a discord between accused no.1 and P.W.-5 but in fairness agreed that, that it self will not satisfy the requirement of Section 498A of IPC.

6 With the assistance of Learned APP Ms Deshmukh and Mr. Kate, I have perused the evidence, documents and the impugned judgment. I do not see any reason to interfere in the order of acquittal passed by the Trial Court.

7 P.W.-1 and P.W.-2 Jaysing Uthale and Indumati Awale, respectively, who are independent witnesses, turned hostile. Therefore, the case of the prosecution has to be considered in the light of the testimonies of P.W.-3 to P.W.-6 and mainly P.W.-5 and P.W.-6, i.e., complainant and her mother respectively.

8 Admittedly, P.W.-5 had medical issues and she was under treatment for T.B. in the brain. If one considers the evidence of P.W.-5, she seems to be saying one thing and immediately denying the same. In her cross-examination, P.W.-5 first denied that Shalaka and Maitrayee were admitted in the same school but in the next sentence, she says that the school in which Shalaka and Maitrayee were admitted, i.e., Changukana Thakur Vidyalaya is a good school in that locality.

P.W.-5 says that the stamp paper produced at Sr. No.1 of Exhibit 59

was written in her own handwriting and she does not know the persons by name Vijay Mandake, Jayant Uthale and Ajit Salunkhe whose names are written on the said stamp paper. But a sentence later, P.W.-5 says that these persons have solmenised her marriage forcibly. In her cross-examination, P.W.-5 says on 16th July 1998, there was a birthday of daughter of her husband's first wife and accused nos.4 and 5 came to Panvel to attend the birthdays party. In the cross-examination, P.W.-5 says it is not correct to say that accused nos.2 and 4 had been to Panvel on 16th July 1998 for the birthday of Shalaka.

As regards her complaint to the Kolhapur Police Station filed on 24th September 1998, P.W.-5 says in the cross-examination that she has not read the complaint nor it was read over to her. But in the next sentence, she says that she read the complaint, it was read over to her and then she signed it.

Then she says it is not correct to say that she has filed a maintenance petition against accused no.1 at Kolhapur. But in the next sentence, she says she has filed the maintenance petition against accused no.1 at Kolhapur.

9 In her cross-examination, P.W.-5 says that it is not correct to say that she was undergoing from Dr. Dabholkar for mental disturbance. But P.W.-6 in her cross-examination says that P.W.-5 was given medical treatment of Dr. Dabholkar at Satara by accused no.1.

P.W.-5 says when she went to file a complaint on 24th September 1998 she went alone. But P.W.-6 in her cross-examination states that she went with P.W.-5 to Kolhapur to file the complaint at the police station.

10 PW.-6 states that two or three months after marriage, PW.-5 used to tell her that accused no.1 used to state to her that your mother is cleaning utensils and wandering here and there which is against his status and standing as he is a Professor. PW.-5 does not say anything of that in her testimony.

PW.-6 says that her statement was recorded by police at Satara but PW.-4 I.O. says he did not record the statement of the mother of complainant, i.e., PW.-6. PW.-6 in her cross-examination states that she was not aware PW.-5 was suffering from illness as mentioned in her statement. PW.-5 in her testimony does not mention about she being punched and kicked on 18th September 1998 at the time of the cremation rites being performed of her father-in-law. PW.-4, I.O. states that he has not demanded the medical papers regarding illness of PW.-5 nor he has inquired with Dr. Deshmukh who gave medical treatment to PW.-5. PW.-4 further states that he has not inquired about the incident dated 16th July 1998 at Panvel as narrated by PW.-5. On 16th July 1998, as noted earlier, it is prosecution's case that after celebrating the birthday of Shalaka in the night, the legs of PW.-5 were tied by accused no.1 with nylon rope with the assistance of accused nos.3 and 4 and her daughter Maitrayee was made to stand on the cooking gas and threatened to set her on fire unless PW.-5 signed certain documents, admitting that she was unchaste and accused no.1 threatened to self immolate. This itself shows that PW.-4 has not done his job properly.

11 In view of these contradictions and lacunas in the prosecution's case, the Trial Court was pleased to acquit the accused. I have to also observe that

there has been no allegations against accused no.2 anywhere.

12 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 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

1. (2008) 10 SCC 450

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.

13 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.

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***

2. (2014) 5 SCC 730

*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.

14 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.

15 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 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.

16 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,

3. 1996 SCC (cri) 972

in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

17 Appeal dismissed.

(K.R. SHRIRAM, J.)