

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 145 OF 2009**

The State of Maharashtra
(Kurar Police Station,
C.R. No. 193/2007)

....Appellant
(Orig. Complainant)

V/s.

1. Ramesh Nagaram Chaudhary
2. Smt. Kanyadei Nagaram Chaudhary
3. Smt. Varsha Pratap Chaudhary
All R/o. Kumbhar Chawl,
Mukesh Collection, Near Saibaba Temple,
Gokul Nagar, Kandivali (E),
Mumbai.

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

Ms. Pallavi Dabholkar, APP for State.
None for Respondents.

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

ORAL JUDGMENT :

1. Learned APP tried her best to pursue the court to interfere. I am afraid the judgment does not warrant interference. The charges against accused are under Section 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.

2. I have perused the evidence as well as impugned judgment with the assistance of learned APP. Even the FIR has not been proved. Though,

P.W. 3 – Jivram Chaudhari father of deceased has proved his two signatures on the FIR, he has failed to prove the contents. I say this because P.W. 3 – Jivram Chaudhari states that he had gone to Malad Police Station on 18th July, 2007 at about 12.00 p.m. On the request of police he had gone to hospital and identified the dead body of deceased Smt. Kavita and then had returned to the police station. He had lodged FIR in Hindi language and the police had talked to him in Hindi language but he does not know what the police had recorded in his FIR in Marathi language. According to P.W. 3 the police had made him sit for the whole day in the police station and had recorded his FIR at the evening hours at 7.00 p.m. According to P.W. 3 he does not know how Kavita expired. All this kind of evidence is reflecting very badly upon the prosecution's story and evidence.

3. In any event, the contents of the FIR also does not make out a case under Section 498-A of the Indian Penal Code as stated in paragraph no.26 and 27 of the impugned judgment. P.W. 3 - Jivram Chaudhari has admitted that there are lots of omissions in the statement as recorded by the police. P.W. 3 also admits that he had not stated before police in his FIR or statement that father of accused Ramesh had stated to him that Ramesh would not repeat any such mistake of assaulting deceased Kavita and there would be no such occasion for complaint in future. P.W. 3 has also contradicted the FIR by deposing that it had not happened that P.W. 2 – Lalaram Chaudhary had informed him on telephone that deceased Kavita

was sitting found in temple. Coming to P.W. 2 in paragraph no.22 to 24 of the impugned judgment, the court has reproduced all the omissions and contradictions in P.W. 2's evidence. The trial court has in detail dealt with all the omissions and contradictions in its judgment which for the sake of brevity I am not reproducing here. Of course, learned APP in fairness also states that these omissions and contradictions are there for any one to see.

4. 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 reappraise 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

¹ (2008) 10 SCC 450

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.

5. 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

2 (2014) 5 SCC 730

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.

6. 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.

7. I have perused the impugned judgment, considered the evidence, also heard Ms. Dabholkar, 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.

8. There is an acquittal and therefore, there is double presumption

³ 1996 SCC (Cri) 972

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.

9. 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.

10. Appeal dismissed.

(K.R. SHRIRAM, J.)