

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.352 OF 2009**

The State of Maharashtra (Through PSO, Police Station, Miraj, (Rural), Crime Register No.85/2007)	))))	Appellant/Complainant
V/s.		
1) Rajendra Sadashiv Avati Age : 24 yrs., Occupation : Agriculture, resident of Bedag, Taluka Miraj, District – Sangli	))))	
2) Shanta Sadashiv Avati Age : 61 yrs., Occupation : Household work resident of Bedag, Taluka – Miraj, District - Sangli	))))	
3) Sanjay Sadashiv Avati Age : 29 yrs., Occupation : Agriculture resident of Bedag, Taluka – Miraj, District - Sangli	))))	Respondents/Accused

Mrs. Anamika Malhotra, APP for State.

Ms. Sayali Dhuru i/b. Mr. K.S. Patil for respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 12th FEBRUARY 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 10th April 2008 passed by the Ad-hoc District Judge 1 and Additional Sessions Judge, Sangli, acquitting three respondents (accused) of offences punishable under Sections 498 (A) (*Husband or relative of husband of a woman subjecting her to cruelty*), 306 (*Abetment of suicide*) read with Section 34 (*Acts done by several persons in furtherance of common*

intention) of the Indian Penal Code (IPC).

2 Prosecution's case is as under :

(a) One Sarika, who died by hanging on 5th August 2007, got married to accused no.1 on 27th May 2006. After marriage, Sarika went to reside at the house of her parents in law. In the house, alongwith with Sarika, her husband (accused no.1), mother-in-law (accused no.2), husband's brother (accused no.3) and the father-in-law, who is not an accused, were living jointly.

(b) The father-in-law of Sarika has been having serious asthma problem even before Sarika was married to accused no.1. As the health of father-in-law deteriorated, he was advised to undergo a bypass surgery. The Doctor gave an estimate of Rs.1,50,000/- as cost to be incurred for the surgery. It is the case of prosecution that the accused started blaming Sarika that she was responsible for the father-in-law falling ill and demanded Rs.50,000/- to be brought from her parents to fund the operation of Sarika's father-in-law.

(c) In the first week of July 2007, Sarika informed her parents over telephone that the operation of her father-in-law has been fixed and they should immediately arrange for Rs.50,000/- to be paid over as she was unable to withstand the harassment by the accused. On 8th July 2007 Sarika is supposed to have called her parents over telephone once again and informed them that accused no.3 would be visiting them shortly and they

should pay over the amount of Rs.50,000/- to him. On 10th July 2007, accused no.3 went to the house of PW-1 and PW-2 to collect the amount of Rs.50,000/-. PW-2 collected a sum of Rs.40,000/- from his nephew (PW-4) Ravikant Karadage and gave it to accused no.3 with a plea not to harass Sarika anymore. At that stage, accused no.3 informed PW-2 that they have to pay the balance amount of Rs.10,000/- soon. On 3rd August 2007, the surgery of father-in-law of Sarika was performed at Miraj Mission Hospital. On 4th August 2007 Sarika informed her parents over telephone that she is being subjected to beating, abusing and harassment by the accused as the balance amount of Rs.10,000/- has not been paid and she is unable to withstand the harassment.

(d) On 5th August 2007 Sarika committed suicide by hanging but the accused did not inform her parents about the same but simply asked them to come over to Bedag. When PW-1 and PW-2 went to Bedag, they found their daughter Sarika dead. Therefore, PW-2 lodged the report with Police on 6th August 2007 and an offence came to be registered. After investigation, chargesheet was filed and charges were framed.

3 In the statement of the accused recorded under Section 313 of Code of Criminal Procedure, the accused have denied that they demanded any amount or that they were harassing Sarika or on account of such harassment, Sarika committed suicide. It is also the case of the defence that they were not in need of any money because accused no.3 had borrowed a

sum of Rs.2 lakhs from the bank for the surgery. Defence has also stated that PW-2 and PW-4, after the death, demanded a sum of Rs.5 lakhs and as the accused refused to pay the amount of Rs.5 lakhs, this false case has been filed. Defence has examined one relative Arun Vonrao as DW-1 and also filed copies of bank statements of accused no.3.

4 To drive home the charge, prosecution has led evidence of five witnesses, viz., Sujata Kore, mother of Sarika as PW-1; Ravsaheb Kore, father of Sarika as PW-2; Aruna Patil, sister of Sarika as PW-3; Ravikant Karadage, relative of PW-1 to PW-3 as PW-4; and Ram Abhangrao, Investigating Officer as PW-5.

5 Prosecution has also relied on many documents including spot panchnama, inquest panchnama, postmortem notes, photographs of marriage, arrest panchanama etc. The Trial Court, after considering the evidence and also hearing the prosecution and defence counsel, came to a conclusion that prosecution has failed to prove the charge beyond reasonable doubt and acquitted the accused. It is that order of acquittal, which is impugned in this appeal.

6 It is settled law that a reasonable nexus has to be established between cruelty and suicide in order to prove the offence of cruelty. In the alternative, the cruelty established has to be of such a gravity as is likely to drive a woman to commit suicide. If suicide is established, it has to be further established that it was occasioned on account of cruelty which was

of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide.

It is also settled position that the harassment has to be with a definite object, viz., to coerce the woman or any person related to her to meet any unlawful demand. Therefore, mere harassment by itself is not cruelty and mere demand for property itself is also not cruelty. In other words, every harassment or every type of cruelty would not attract Section 498 (A).

7 With this settled position in law, let us examine whether the prosecution has proved that there was cruelty and that such cruelty was of such gravity that it led Sarika to commit suicide. Let us also examine whether the prosecution has proved that the accused made an unlawful demand of Rs.50,000/- and Sarika was coerced to commit suicide as she was unable to meet the unlawful demand.

8 I have considered the evidence, documents and the impugned judgment with the assistance of the learned APP Mrs. Malhotra and counsel for respondents Ms. Dhuru. I am in agreement with the conclusions arrived at by the Trial Court. The Trial Court has listed various points as to why prosecution failed in its endeavour but to keep this judgment brief, I would only highlight certain portions.

9 PW-1, who is the mother of Sarika, admits that open heart surgery of Sarika's father-in-law was performed on 3rd August 2007 and the

surgery got over in the evening hours of 3rd August 2007 and the Doctor had also advised that the first 48 hours after the surgery was critical. PW-1 also admits that all responsible persons from Sarika's husband's family stayed in the hospital during the said 48 hours period. PW-1 also admits that PW-2, while leaving the hospital, told accused no.1 to inform him on telephone once the father-in-law of Sarika regained consciousness. PW-1 also admits that on 4th August 2007 she received a message from accused no.1 that his father has regained consciousness and has been moved to the ICU. All these only indicate one thing, that the relationship between the two families, i.e., Sarika's parents and Sarika's in-laws, was rather cordial and not strange. This would not have happened if what the prosecution says that Sarika was harassed, beaten, abused or treated with cruelty and Sarika was unhappy due to alleged demand of Rs.50,000/- not been fulfilled etc.

PW-1 also states that even though Sarika died on 5th August 2007, Police did not record her statement prior to 16th August 2007. Statement of PW-1 before the Police is silent to the fact that articles worth of Rs.80,000/- were given to Sarika in marriage and for the first time PW-1 has deposed about the same in the Court. PW-1's cross examination also reveals that she has not stated to the Police that matrimonial life of Sarika was proper till Diwali or that Sarika was subjected to harassment by accused after Diwali. The word "Diwali", it appears for the first time in the deposition of PW-1. PW-1 also admits that she has not stated before the

Police that Ravikant Karadage (PW-4) had taken an amount of Rs.30,000/- from Credit Society and an amount of Rs.10,000/- from his house. Another glaring omission, which could be even termed a contradiction, is in her cross examination, PW-1 agrees that she had not stated before the Police that on 4th August 2007, the day before Sarika committed suicide, she had a talk with Sarika on phone. It is very important material omission because a conversation has taken place between Sarika and PW-1 one day before the incident, which has not been disclosed to the Police.

10 Similarly, PW-2 in his examination in chief states that in-laws of Sarika told Sarika to bring an amount of Rs.50,000/- and accordingly, Sarika told him over telephone to give the said amount and after receiving the phone call from Sarika, PW-2 and Ravikant Karadage (PW-4) had gone to the house of Sarika at Bedag. PW-1, however, is totally silent about this visit of PW-2 and PW-4. PW-2 has further deposed that thereafter, three accused and father-in-law of Sarika started harassing Sarika but prosecution has nowhere stated that father-in-law of Sarika harassed Sarika. This only shows the improvements being made by PW-2.

PW-2 then states that he received a call from Sarika, who told him to give Rs.50,000/- for the surgery to be performed on her father-in-law and that the surgery was fixed for 10th July 2007 and accused no.3 will come to collect the amount. According to PW-2, thereafter he called PW-4 to discuss with him and PW-4 said he will somehow manage Rs.40,000/- and

on 10th July 2007 in the afternoon accused no.3 came to their house and they gave the amount of Rs.40,000/- to accused no.3. According to PW-2, Rs.30,000/- was withdrawn by PW-4 from the Credit Society and PW-4 had Rs.10,000/- in his house. PW-2 says the surgery of Sarika's father-in-law was performed on 3rd August 2007 and he was present in the hospital the entire day. PW-2, in his cross examination, also says that Sarika's husband's family invited him to Bedag to discuss and take his views about the surgery to be performed and he gave his opinion that it would be advisable to undergo a surgery. This also indicates that the relationship between the two families was very cordial. If Sarika was being harassed or an unlawful demand of Rs.50,000/- was being made, as suggested by the prosecution, the accused would not have invited PW-2 to discuss and take his views on the surgery to be performed on Sarika's father-in-law.

PW-2 further states that on 5th August 2007 he received a telephone call from Sarika's husband after which he went to Bedag and the Police was already present there when he arrived. PW-2 also states that Police asked who was the father of Sarika and he identified himself. PW-2 also states that during that period, Police also inquired with him whether he had any complaint about the death of Sarika but PW-2 says he orally made a complaint to the Police about the accused. That has not come in any statement recorded by Police. Even in the examination in chief, PW-2 does not state that on 5th August 2007 when they reached the spot of incident

and the Police asked him whether he had any complaint, he orally complained about the harassment to Sarika by the accused.

PW-2 also admitted that all responsible persons from the family of Sarika's in-laws were in the hospital for 48 hours after the operation was performed and that he was requested by accused no.1, when he was leaving the hospital, either him or his son Nitin, who has not been examined, should go and meet Sarika in the house as she was sitting alone. PW-2 says that he did not go but he went to Rajapur directly. I ask myself could a father, whose daughter was allegedly being harassed for not meeting unlawful demand of Rs.50,000/-, would go away from her residential area without even visiting her or atleast asking his son to go and visit his sister. All these raises a doubt about the veracity or truthfulness of evidence being given by PW-2 as well.

11 The evidence of PW-3 indicates that she has deposed several material facts for the first time in the Court and all those do not find mention in the statement recorded by the Police. PW-5, the Investigating Officer, confirms these omissions.

PW-4 says he withdrew Rs.30,000/- from the Credit Society and he had Rs.10,000/- in his house and the amount of Rs.40,000/- was given to accused no.3 on 10th July 2007. But according to prosecution, the demand of Rs.50,000/- was made on 9th July 2007 and PW-4, in his cross examination, admits that he did not withdraw the money on 9th July 2007 or on 10th July 2007. Therefore, it is not possible to accept or believe what the

prosecution says that PW-4 withdrew Rs.30,000/- for paying it over to accused no.3 on 10th July 2007.

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 :

1. (2008) 10 SCC 450

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.

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.

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.

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 he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal,

3. 1996 SCC (cri) 972

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, 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.)

Gauri A.
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