

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.147 OF 2009

The State of Maharashtra)
(Through Nirmal Nagar Police Station))
(C.R. No.08/2002))Appellant/Complainant

V/s.

1. Eknath Rajaram Pawar)
Age : 61 years, Occu.: Barber,)
R/o. 163, 1/5, Badri Dasari Chawl,)
Jawahar Nagar, J.P. Road,)
Khar (E), Mumbai – 400 051)
2. Anita Eknath Pawar)
Age : 53 years, Occu.: Housewife,)
R/o. 163, 1/5, Badri Dasari Chawl,)
Jawahar Nagar, J.P. Road,)
Khar (E), Mumbai – 400 051)
3. Nandkumar Eknath Pawar)
Age : 33 years, Occu.: Barber,)
R/o. 163, 1/5, Badri Dasari Chawl,)
Jawahar Nagar, J.P. Road,)
Khar (E), Mumbai – 400 051)Respondents/Accused

**WITH
REVISION APPLICATION NO.279 OF 2008**

Mrs. Anamika Malhotra, APP for State – Appellant.
Ms. Ayushi Anandpara, Advocate appointed for respondents.
None for applicant in Revision Application.

**CORAM : K.R.SHRIRAM, J.
DATE : 22nd JANUARY 2021**

ORAL JUDGMENT :

CRIMINAL APPEAL NO.147 OF 2009

1 This is an appeal impugning an order and judgment dated 29th March 2008 passed by the Ad-hoc District Judge-3 and Additional Sessions Judge, Sewree, acquitting respondents (accused) of offences

punishable under Section 498(A) (*Husband or relative of husband of a woman subjecting her to cruelty*) and Section 306 (*Abetment of suicide*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC) on the basis that the prosecution was unable to prove, beyond all reasonable doubt, the commission of the alleged offences by the accused.

2 On 15th January 2001 since nobody appeared for respondents, this Court appointed Ms. Ayushi Anandpara, Advocate to represent respondents and assist the Court in appeal as well as revision application. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Ms. Anandpara, Advocate, for it has been of immense value in rendering the judgment.

3 The case of the prosecution is that victim was one Vaishali aka Namrata, the daughter of complainant (PW-1). Vaishali was married to accused no.3 on 25th April 1996. Accused nos.1 and 2 are the in-laws of Vaishali. Accused no.2 is also the sister of complainant's husband. Complainant's father-in-law had a saloon shop in Worli, which was given on rent to accused no.1. After 6 months of the marriage of Vaishali and accused no.3, Vaishali informed complainant that accused no.2 asked Vaishali to tell her mother, i.e., Complainant (PW-1), to stop taking rent for the saloon shop. Complainant (PW-1) refused on the basis that the actual rent for the saloon shop was Rs.6,000/- but the accused were only paying Rs.3,000/-. Further, her economic condition was not good and she would consider their

proposal once her son was employed. Thereafter, Vaishali informed complainant (PW-1) that the accused began to harass her and accused no.3 would beat her. In May 2001, Vaishali alongwith her two children visited Complainant (PW-1) at Chiplun and informed complainant (PW-1) of the harassment. In October 2001, Vaishali once again informed complainant (PW-1) that she was being harassed. Hence, complainant (PW-1) visited the accused and told them not to harass Vaishali. However, the accused told complainant (PW-1) not to visit the house again. From October 2001, the accused also stopped paying the rent for the saloon shop. On 8th January 2002, complainant (PW-1) received a call informing her that Vaishali was serious. Accordingly, PW-1 alongwith her son rushed to Mumbai. On reaching Mumbai, PW-1 came to know that Vaishali had committed suicide by setting herself on fire. Accordingly, on 9th January 2002, an FIR was lodged by complainant (PW-1) under Sections 498(A), 306 and 34 of the IPC against the accused.

4 On the basis of the FIR, the chargesheet was filed on 25th May 2002 before the Court of Metropolitan Magistrate, 32nd Court, Mumbai. The chargesheet mentions 12 witnesses to be deposed on behalf of the prosecution. By an order dated 11th July 2002, the case was committed to the Sessions Court as the charges under Section 306 is exclusively triable by the Court of Sessions. The charges were framed on 24th November 2007.

5 The prosecution led evidence of four witnesses. PW-1, complainant reiterated the contents of the FIR. Pertinently, her evidence

does not bear any reference to the fact stated in the FIR that she informed the accused that the saloon shop would fetch rent of Rs.6,000/- and that the accused were only paying Rs.3,000/-. Further, in her cross examination, PW-1 admits that her elder son is employed as a conductor with MSRTC since 1995 prior to the marriage of Vaishali but the stand taken by PW-1 is that she will consider not charging the rent after her son gets employed. Vaishali had already got married in 1996 and before that PW-1's son was already employed. PW-1 also admits that Vaishali had not informed her of the exact date on which the accused no.3 beat her and there was no contact between Vaishali and PW-1 from October 2001 and PW-1 also says for the first time she went to the house of the accused only in October 2001, i.e., 5 years after the marriage of Vaishali.

6 PW-2 was the cousin of Vaishali. PW-2 deposed that Vaishali's matrimonial home was 5 minutes away from his residence and they visited each other. When Vaishali visited his house, Vaishali informed PW-2 that the accused were harassing her on the point of rent of the saloon shop. Vaishali visited PW-2 in May 2001 and informed PW-2 of a quarrel between her and her husband. At that point, PW-2 visited the accused, but accused no.2 insulted PW-2 and told him not to visit again. PW-2 also visited the accused in October 2001 alongwith complainant (PW-1), at which time accused no.2 insulted him again. PW-2, in his cross-examination, has admitted that in his statement before the police, he has not stated the date or month when Vaishali used to visit his house and tell him about the alleged harassment

meted out by the accused to Vaishali and Vaishali visited him in May 2001 and the events of May 2001 and complainant (PW-1) visited the accused in October, 2001 alongwith him.

It has to be noted that the accused, complainant and PW-2 are all very closely related but still when Vaishali is supposed to have lamented to complainant about cruelty and for that matter to PW-2, they never went to the house of the accused before October 2001, i.e., for five years after marriage to even discuss and sort out the issues. More so, it is prosecution's case that the harassment started six months after the marriage, which would mean that it started some time in October or November 1996.

7 PW-3 was the neighbor of Vaishali. PW-3 deposed as to how she discovered that Vaishali had set herself on fire on 8th January 2002. PW-3 in her deposition does not mention or deal with any alleged harassment or cruelty meted out by the accused to Vaishali.

PW-3, in my view, is a star witness because PW-3 is the neighbour and PW-3 has said that she has known the family for the last 20 to 25 years. PW-3 also says that since she did not have a child of her own, Vaishali would leave her son with her to look after him. That shows the closeness between Vaishali and PW-3. Still PW-3 does not even whisper that Vaishali ever informed her about any harassment by the accused. It is also clear from the evidence of PW-3 that when Vaishali went to leave the child on 8th January 2002 with PW-3, she had already made up her mind to end her life because PW-3 says thereafter she saw smoke emanating from the

house of Vaishali. The evidence of PW-3 to a large extent matches the stand of the defence that Vaishali was suffering from itching on the skin and pains to her hands and foot and perhaps frustrated with this pains and itching, Vaishali would have ended her life. PW-3, in her evidence, states that Vaishali informed her when she left the child with her on 8th January 2002 short while before she burnt herself that “she was not feeling well and she had pains in hands and foot and therefore, she was taking rest and she asked me to look after her child. Accordingly, she left her son in my house.”

PW-4 is the Investigating Officer and nothing turns on his evidence.

8 The accused did not lead any evidence. However, in their statements under Section 313 of the Code of Criminal Procedure, they state that Vaishali was suffering from itching on the skin causing pain to her hands and feet and Vaishali may have committed suicide on being fed up with the disease. The fact that Vaishali committed suicide by pouring kerosene on her person and set herself ablaze was not disputed by the defence.

9 The Trial Court on the examination of the evidence of complainant (PW-1) has held that evidence of PW-1 is totally silent on the specific date/month of the beating and harassment by the accused. Further, complainant (PW-1) was not an eye-witness to the alleged harassment caused by the accused to Vaishali. The Trial Court also discredited the evidence of PW-2 due to the discrepancies in his statement before the police

and his evidence. Moreover, the Trial Court held that PW-2 was also not a witness to any specific incident of harassment. The Trial Court on an examination of law relating to offences under Section 498(A) also held that there must be a nexus between the cruelty, i.e., the harassment caused and the fact of committing suicide. In the present case, there are only two incidents, i.e., May 2001 and October 2001. No specific date or time has been mentioned. Hence, the allegations of harassment were held to be vague and only on hearsay and in the absence of specific evidence, the offence under Section 498(A) was held not to be proved. As regards the offence under Section 306, the Trial Court held that there was no evidence to show that the accused had instigated or abetted Vaishali to commit suicide. The evidence on record was not sufficient to prove the nexus between the harassment and cruelty on the part of the accused and the suicide by Vaishali. Hence, there was no question of the presumption under Section 113(A) of the Evidence Act being applicable either.

10 This Court in the judgment and Order dated 25th January 2018 in Criminal Appeal No. 548 of 2004, while discussing the scope of ‘cruelty’ under Section 498(A) of IPC, held as follows:

9. The cruelty which is envisaged under section 498-A of IPC may not be cruelty contemplated by other statutory provisions. Conduct which may constitute matrimonial cruelty or offence may not necessarily constitute cruelty within the meaning of explanation (a) or (b) of section 498-A of IPC. Explanation (b) is concededly not attracted since it is not even the case of the prosecution that Babibai was subjected to ill-treatment or harassment in order to coerce her or her family to fulfill any illegal demand. In order to demonstrate that the conduct of the accused constitute cruelty within the meaning of explanation (a) the prosecution was obligated to prove (i) the conduct was willful (ii) the willful

conduct was of such a nature as was likely to drive Babibai to commit suicide or (iii) the wilful conduct was of such a nature as is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of Babibai.

10....The cruelty, which is statutorily defined under section 498-A must be as a willful conduct which is likely to drive the woman to commit suicide or which is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. The willful conduct must be persistent and/or continuous. The willful conduct, in order to constitute cruelty within the meaning of explanation (a) of section 498-A must be, at least in close proximity of time to the incident. An aberration or stale incident, deplorable as the conduct or incident may be, would not constitute cruelty as is statutorily defined.

In the light of these principles of law, it was held as follows:

14..... The evidence of the prosecution witnesses is absolutely vague and bereft of particulars. Neither PW.1 nor PW.3 nor PW.4 have disclosed the month or the year in which the accused transferred two acres land to the deceased. The prosecution witnesses have not disclosed as to in which month or even year was the deceased subjected to cruelty. The evidence of the prosecution witnesses is sketchy and other than use of stereotyped expression like ill-treatment, torture and harassment no specific instance of cruelty or the nature and extent of cruelty is spoken by any of the prosecution witnesses.

11 In the context of ‘abetment’ of suicide under Section 306 of IPC, the Apex Court in the case of ***Ramesh Kumar V/s. State of Chhattisgarh***¹ held as follows:

10. Section 306 IPC provides that if any person commits suicide, whoever abets the commission of such suicide, shall be liable to be punished. The ingredients of abetment are set out in Section 107 IPC, which reads as under:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order

1. (2001) 9 SCC 618

to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

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.

12 On the basis of the above, the Apex Court held that no inference of the accused having abetted the suicide of the Victim was made out. Further, the prosecution also sought to suggest that for the purposes of adjudging whether the accused had abetted the suicide of Vaishali, the presumption under Section 113(A) ought to have been arisen against the accused. However, the Apex Court in the case of ***Hans Raj V/s. State of Haryana***², has laid down the following test for when the presumption under Section 113(A) of the Evidence Act would arise. It held as follows:

12. The question then arises as to whether in the facts and circumstances of the case the appellant can be convicted of the offence under Section 306 IPC with the aid of the presumption under Section 113-A of the Indian Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 IPC. Section 107 IPC lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish

2. (2004) 12 SCC 257

that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Indian Evidence Act under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The explanation to Section 113-A further clarifies that cruelty shall have the same meaning as in Section 498-A of the Penal Code, 1860 which means:

“498-A. (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) 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.

13. Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act. Under Section 113-A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word “cruelty” in Section 498-A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

13 In the present case, as in the above case, there is no direct evidence to establish the alleged harassment caused by the accused to Vaishali and accordingly, there is no question of the presumption under

Section 113(A) of the Evidence Act, coming into play.

14 The Apex Court in ***Ghurey Lal V/s. State of U.P.***³ 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;

3. (2008) 10 SCC 450

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.

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

4. (2014) 5 SCC 730

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

16 I have perused the impugned judgment, considered the evidence and also heard Mrs. Malhotra, 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.

17 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 strengthened by the Trial Court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

5. 1996 SCC (cri) 972

18 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.

19 Appeal dismissed.

20 The High Court Legal Services Committee to award fees of the learned counsel for respondents fixed at Rs.10,000/-.

REVISION APPLICATION NO.279 OF 2008

21 On 15th January 2021 one Mr. S. Mukharjee instructed by Mr. Aabad H.H. Ponda had appeared for applicant in revision application. Mr. Mukharjee stated that he will be arguing the matter for applicant. However, nobody is present today for applicant. In any event, in view of the conclusion that I have arrived at in the appeal, this revision application also is without merit.

22 Revision application dismissed.

Gauri A.
Gaekwad

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by Gauri A.
Gaekwad
Date: 2021.01.25
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(K.R. SHRIRAM, J.)