

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.811 OF 2008**

The State of Maharashtra)
(through Khandala Police Station)) ..Appellant

V/s.

1 Bhagwan Kondiba Bhosale)
Age 53 yrs.

2 Laxmibai Bhagwan Bhosale)
Age 45 yrs.)

3 Satish Bhagwan Bhosale)
Age 28 yrs.)

4 Sandeep Bhagwan Bhosale)
Age 26 yrs.)

5 Sou. Vidhya Sandeep Bhosale)
Age 19 yrs.)

All R/o. Ajanuj, Taluka Khandala,)
District Satara)

..Respondents
(Org. Accused Nos.1 to 5)

Mrs. Anamika Malhotra, APP for State
Mr. Rahul S. Kate for Respondent

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

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 26-11-2006 passed by the Learned 5th Additional sessions Judge Satara, acquitting the 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 304-B (*Dowry Death*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code.

2 Khandala police station received an information on 7-7-2005 that a lady by name Shubhangi S. Bhosale has died by hanging. The informant was accused no.1, father in law of deceased Shubhangi. P.W.5 registered accidental death case and started inquiry. Spot panchanama was drawn and a rope was seized, even inquest panchanama was conducted and body was sent to PHC Khandala for postmortem. After postmortem, the body was given to the accused for cremation.

3 During the course of inquiry, P.W.-1, father of Shubhangi, filed a report on 8-7-2005 alleging that Shubhangi was his daughter and given in marriage to accused no.3 on 11-2-2004 and after marriage Shubhangi was co-habiting with the joint family of the accused at Village Ajanuj, Taluka Khandala. According to P.W.-1 he had given 1 and half tola gold to the accused in dowry and the marriage was conducted entirely at his expenses. All accused were related to Shubhangi, accused no.1 was father in law, accused no.2 mother-in-law, accused no.3 husband, accused no.4 brother of husband and accused no.5 was the wife of accused no.4. Straightaway, I will have to observe that there are no allegations against accused no.5 because accused no.5 got married to accused no.4 just one month before Shubhangi hung herself.

4 P.W.-1 has alleged that the accused which would mean (only accused nos.1 to 4) treated Shubhangi well for about 6 months after her marriage. Thereafter she was subjected to cruelty and accused of not doing any house hold work. Shubhangi used to frequently visit her parents house and lament to them the harassment meted out by the Accused. Shubhangi would inform her parents that the entire house hold work was given to her and she was not even given sufficient food to eat. Shubhangi has also informed her parents that the accused would insult her.

5 About 8 days after the marriage of accused nos.4 and 5, Shubhangi called P.W.-1 and informed him that the accused were demanding Rs.50,000/- from her parents for construction of house and on that ground subjected her to cruelty. P.W.-1 informed Shubhangi that he was not in a position to meet the demand of the accused. P.W.-1 further contended that on 7-7-2005 at about 7.00 p.m. his younger brother Tukaram who has not been examined, informed him that he has received a telephonic information from one Sanjay Bhosale that Shubhangi has committed suicide by hanging. Immediately, he alongwith his family members went to village Ajanuj, where they were informed that the dead body has been taken to PHC Khandala for postmortem. P.W.-1 with his family members went to PHC Khandala and saw the dead body. P.W.-1 found ligature marks around the neck of Shubhangi. The body was cremated at Village Ajanuj and on the next day P.W.-1 went to the police and lodged a report against the accused. Based on the complaint, police registered the offence and after investigation and

recording of statements of witnesses the accused were arrested under arrest panchanama. Charge sheet was submitted and charges were framed. JMFC Khandala committed the case to the Sessions Court. The accused pleaded not guilty and claimed to be tried. According to the accused, Shubhangi, at the time of marriage to accused no.3 was pursuing S.Y.B.A. course and after marriage continued to pursue her B.A. course. Shubhangi would attend the college at Someshwar Nagar by commuting daily from village Ajanuj. Shubhangi was keen to make a career in the police but she could not clear the entrance examination hence, Shubhangi was frustrated. The accused have denied they ever treated Shubhangi with cruelty and on the contrary were really looking after her very well. The accused have also denied they ever demanded money or abetted Shubhangi to commit suicide by harassing her mentally and physically.

6 To drive home the charge, prosecution examined 6 witnesses. P.W.-1, P.W.-2 and P.W.-3 were the father, mother and brother of Shubhangi. P.W.-4 was the Doctor, who conducted the postmortem. P.W.-5 and P.W.-6 were the Investigating Officers.

7 With the assistance of the Learned APP and Mr. Kate, I have perused the evidence, documents and impugned judgment.

Evidence of P.W.-1 is not in conformity with the FIR lodged. Evidence of P.W.-2 and P.W.-3 is not in conformity with their statements recorded by the police. Of course, the fact that Shubhangi committed suicide by hanging is not disputed.

8 Every case of cruelty cannot be an offence under Section 498A. It is only when the harassment is shown to have been committed for the purpose of coercing a woman to meet the unlawful demand that would amount to cruelty and is punishable under Section 498A. It is also not disputed that accused no.2 was suffering from cancer and other than her the only female member in the house before accused no.5 got married to accused no.4, was Shubhangi. Admittedly, Shubhangi was pursuing her B.A. education by commuting daily from her matrimonial home to college and back. It is common knowledge that Shubhangi would, therefore, be out of the house for the most of time during the day. Accused no.2 was suffering from cancer and was the only other woman in the house. The fact that accused nos.1, 2, 3, and 4 of course is the brother in law, and accused no.5 is a newly married bride, allowed Shubhangi to go to the college every day and pursue her education notwithstanding, serious illness of accused no.2 makes it difficult to accept or believe that the accused would have treated Shubhangi with cruelty. P.W.-1 to P.W.-3 have also admitted that Shubhangi during the examination time would stay for about two months with her parents so that she can study undisturbed. If there was any sort of harassment by the accused, I would not have expected them to allow Shubhangi (a) to take further education by being away from the house for most of the day and (b) allow her to stay in her parents house for two months to prepare for the examination.

9 P.W.-1 in his cross-examination has admitted that the accused were

financially sound and the accused were aware that the parents of Shubhangi were not financially sound. Also admittedly accused no.1 was working as a peon in veterinary hospital at Khandala and accused no.4 was working as a Lecturer in Agricultural College at Khandala. Accused no.3 was an LIC agent. It is also admitted that the accused was in possession of a house property at Village Ajanuj and till the marriage of accused no.4 which was just one month before the suicide, matrimonial home of Shubhangi was sufficiently big for the joint family. I therefore, find it difficult to accept that the accused would have demanded Rs.50,000/- for construction of house.

10 Another reason the evidence of P.W.1 to P.W.-3 is difficult to be accepted is, because P.W.-1 to P.W.-3 have denied in their cross-examination that they were present at the time of inquest panchnama and spot panchnama, but P.W.-5 has stated in his evidence that relatives of Shubhangi were present while preparing the inquest panchnama and they never made any complaint against the accused. The defence of the accused that Shubhangi was frustrated because she could not clear the police entrance examination, is confirmed by the fact that the witnesses have admitted that Shubhangi had appeared for police entrance examination but could not clear. Prosecution has further admitted that Shubhangi also made an attempt to get admission for B.Ed but she failed. Therefore, the fact that Shubhangi might have committed suicide due to frustration in not clearing the entrance examinations and hence committed suicide, cannot be ruled out. Moreover, the entire evidence on the point of mental and physical

cruelty contained only general allegations. What kind of mental and physical ill treatment was meted out to Shubhangi is also of general nature.

11 It is well settled law that each and every harassment is not sufficient to hold the accused persons guilty, but it is only the harassment, which ultimately forced the deceased to commit suicide, is material. In the present case cruelty and mental and physical ill treatment and harassment alleged by the prosecution is of general nature. In the present case the entire evidence on the point of mental and physical cruelty is of general allegations. The evidence of P.W.-1 to P.W.- 3 does not inspire confidence. Their evidence lack necessary assurance, which is required in criminal trial, to bring home guilt, especially in respect of the offences of present nature. It appears to me that the evidence of interested witnesses, i.e., P.W.-1 to P.W.-3 is not cogent, reliable and convincing to satisfy the same. Considering the above observations and conclusions, it may be further noted that the prosecution has not only failed to prove cruelty within the meaning of the clause, but also cruelty was of such a nature and degree, that it compelled deceased Shubhangi to end her life.

12 As regards the offence of abetment there is no direct evidence with the prosecution as Shubhangi committed suicide. Less than 7 years of marriage means there is presumption available under Section 113A of the Indian Evidence Act but the same is also rebuttable presumption. Before drawing such presumption, it is necessary to prove that Shubhangi was treated with cruelty and then only the presumption of abettment can be

drawn. As stated earlier, there is no evidence whatsoever of abetment which requires incitements or egging Shubhangi to commit suicide.

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 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

1. (2008) 10 SCC 450

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.

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.

2. (2014) 5 SCC 730

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 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

3. 1996 SCC (cri) 972

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.)