

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.988 OF 2007**

The State of Maharashtra	)	..Appellant
V/s.		
1 Ramesh Shivaji Harale	)	
Age-28 years, Occ Agriculturist	)	
2 Shivaji Tukaram Harale	)	
Age-70 years, Occ Agriculturist	)	
3 Balabai Shivaji Harale	)	
Age 60 years Occ Agriculturist	)	
All R/a Yede-Macchindra,	)	
Tal Walwa, Dist. Sangli	)	..Respondents
		(Orig. Accused Nos.1 to 3)

Mrs. Anamika Malhotra, APP for State
None for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 23rd APRIL 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 17th May 2007 passed by the Learned Additional sessions Judge Islampur, 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 323 (*Punishment for voluntarily causing hurt*) read with Section 34 (*Acts done by several persons in furtherance of common*

intention) of the Indian Penal Code. Ms Malhotra, Learned APP states that the appeal has been admitted only against accused no.1.

2 I have perused the impugned judgment and the evidence with the assistance of the Learned APP. Learned APP in fairness states that the evidence does not prove the alleged demand of Rs.2 lacs for which, the accused no.1 was alleged to have tortured and beaten his deceased wife Suvarna.

3 Prosecution interestingly has produced one Sanjay Ganpati Patil (P.W.-7) as an independent witness to prove the demand of Rs.2 lacs by the accused from the deceased. P.W.-7 states that he is from the village as one Mahadev Bapu Raskar, who was his friend and Mr. Raskar told him that daughter of Ashok Kolekar (P.W.-2-complainant), his maternal aunt's son was married to accused no.1 who was from Yedemachhindra. P.W.-7 says that accused no.1 had kept his son Prathamesh alongwith him and had left his wife deceased Suvarna at her parents house and 2 to 4 days thereafter, Mahadev Raskar and four others took Suvarna (deceased) with them and gone to the village of accused to drop her at her matrimonial house. P.W.-7 further deposed that accused no.1, his mother and father were demanding Rs.2 lacs from deceased Suvarna's parents and those people persuaded accused no.1 and his father not to demand since P.W.-2 did not have the sum of Rs.2 lacs. P.W.-7 has not stated anything about when the incident took place and he has further admitted that Mahadev Raskar was not so close to him that he would tell about his relatives to him. P.W.-7 further says that he

had no reason to visit Suvarna's parents' house or her in-law's house, nor he has acquaintance with accused no.1 and he did not have any conversation with Suvarna. It is not recorded in P.W.-7's statement before the police that Suvarna's husband or her in-laws demanded from Suvarna to bring Rs.2 lacs from her parents. There are many points, which have been raised by the Trial Court to acquit the accused, with which I agree. According to prosecution, the accused were demanding Rs.2 lacs to construct the RCC house, to take electricity connection etc. But in the investigation, police have not investigated as to whether the accused really wanted to construct the RCC house, or want to take electricity connection or whether they already had the electricity connection. The police have also not made enquiry with any independent witness nor the prosecution has examined any independent witness to find out whether the accused were really harassing Suvarna in connection with their demand for money. Even Mahadev Raskar, Bapu Raskar and Sanjay Hubale, whose names have come in evidence of other witness, have not been examined on behalf of the prosecution. Moreover, from the testimony of complainant itself, it appears that the relationship between accused no.1 and Suvarna was quiet cordial.

4 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 :

1. (2008) 10 SCC 450

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 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 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 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

2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

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.

6 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.

7 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.

8 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.

9 Appeal dismissed.

(K.R. SHRIRAM, J.)