

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 990 OF 2007

The State of Maharashtra
(Through Panchavati Police Station
Nashik, Dist. Nashik)

....Appellant
(Orig. Complainant)

V/s.

1. Sureshkumar Nekiram Agarwal
Deceased, case abated against him

(Abated)

2. Jitendra Sureshkumar Agarwal
Age : 32 years

3. Yogesh Sureshkumar Agarwal
Age : 30 years

4. Rakesh Sureshkumar Agarwal
Age : 26 years

5. Ananda Sureshkumar Agarwal
Age : 19 years

6. Rajkumari Sureshkumar Agarwal
Age : 50 years

7. Rakhi Yogesh Agarwal
Age : 21 years

All R/o. 1/9, Harshawardhan Society,
Makhmalabad Naka, Panchavati,
Nashik.

....Respondents
(Orig. Accused)

Ms. P.N. Dabholkar, APP for State.
None for Respondents/Accused.

CORAM : K.R.SHRIRAM, J.
DATED : 12th MARCH, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 28th

February, 2005 passed by the 3rd Additional Sessions Judge, Nashik acquitting the respondents (hereinafter referred as accused) of offence punishable under Sections 498 A (*Husband or relative of husband of a woman subjecting her to cruelty*), 306 (*Abetment of suicide.—If any person commits suicide*), 323 (*Punishment for voluntarily causing hurt*), 504 (*Intentional insult with intent to provoke breach of the peace*) r/w Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code.

2. According to prosecution, the complainant P.W. 6 had many siblings, one of whom was Laxmibai who was married to Jitendra Accused No.2, resident of Nashik. The marriage took place on 24/02/1995. The parents of Laxmibai incurred huge marriage expenses. In addition a sum of Rs.1,50,000/- was given as dowry and ornaments, utensils and other gifts were also given. After marriage Laxmibai went to Nashik to reside with her in-laws and others. Suresh Kumar Agarwal Accused No.1, died during the trial and the case abated against him. Accused Nos.3, 4 and 5 were brothers of Accused No.2, Accused No.6 was mother of Accused No.2 and Accused No.7 was wife of Accused No.3. All were living together at Nashik. For two years everything was peaceful for Laxmibai. Then fire took place in the chivada factory of accused which caused them loss. It is alleged that accused started abusing Laxmibai and blamed her for bringing bad luck. They asked Laxmibai to bring a sum of Rs.50,000/- from her parents. It is

prosecution's case that P.W. 6 complainant gave Rs.40,000/- to Accused No.2. It is also alleged that when P.W. 6 complainant went to the house of Laxmibai during Rakshabandhan, Laxmibai told him that her in-laws told her that she could not cook food properly and they required to cook food for her.

3. Accused thereafter wanted to purchase a flat as the flat which they were using were rented premises and therefore asked Laxmibai to bring a sum of Rs.1,50,000/- from her parents. According to P.W. 6 a sum of Rs.1,50,000/- was also paid to Accused No.2. Despite making these payments, Laxmibai was continued to be ill treated by her in-laws.

4. Prosecution further states that on 07/06/2002 Laxmibai informed P.W. 6 over telephone that her in-laws were insisting that she and her husband - Accused No.2 and their children live separately for which she was being told to get Rs.5,00,000/- from her parents to purchase a flat. It seems complainant P.W. 6 told Laxmibai that they were not in a position to meet that demand and he would visit her house and explain situation to her in-laws.

5. On 08/06/2002 P.W.6 received telephone call at about 10.30/11.00 p.m. from Suresh Kumar (Accused No.1), father-in-law of Laxmibai, that Laxmibai had consumed poison and her body had turned

black and yellow and she has lost consciousness. Suresh Kumar asked P.W. 6 to reach Nashik immediately. At that time, P.W. 6 informed Accused No.1 to admit Laxmibai in hospital and follow doctor's advise. At 1.30 a.m., Accused No.2 called P.W. 6 and informed him that Laxmibai had expired. Thereafter, P.W. 6 and his relatives reached Nashik. They found the body of Laxmibai in the morgue and found strangulation marks on her neck. After postmortem, body was handed over to complainant.

6. On 09/06/2002 at about 1.30 p.m., complaint was lodged with police accusing accused for ill treating Laxmibai on account of unlawful demand. Investigation commenced, statement of neighbours and relatives of Laxmibai was recorded, postmortem report collected and charge-sheet was submitted. Charges were framed and accused pleaded not guilty and claimed to be tried. Defence is of total denial and false implication.

7. To prove this case, prosecution led evidence of 8 witnesses namely Sumeet Shashikant Kasav, Panch as P.W. 1 ; Sharayu Dindorkar, Neighbour of Laxmibai as P.W. 2 ; Jayashree Sunil Kulkarni, Neighbour of Laxmibai as P.W. 3 ; Makrand Premal Patel, Medical Officer as P.W. 4, Dr.Pradeep Mhalu Wagh, Medical Officer who conducted postmortem as P.W.5, Ishwarlal Shivcharan Agarwal, Complainant – Brother of Laxmibai as P.W. 6, Ashokkumar Shivcharan Agarwal, Brother of Laxmibai as P.W. 7 and Sukdeo Hiranman Patil, Investigating Officer as P.W. 8.

8. Defence produced photographs which are at Exhibit 50 to 73 during cross-examination of the complainant PW. 6. Accused also produced some documents at the time of their statement under Section 313 of The Code Of Criminal Procedure, 1973 was recorded to show their financial position, investments made by them, income tax paid and that each of them were running independent business.

9. The Trial Court concluded based on evidence that there was suicidal death of Laxmibai.

10. Law on what would amount to an offence under Section 498A, has been well discussed in catena of judgments. It is settled law that under Section 498A of IPC, every cruelty is not an offence. The cruelty must be of such a degree as contemplated by the Section, i.e., it must be willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb and health of the woman.

11. As regards Section 306, it reads as under :

“306. Abetment of suicide. — If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

What is abetment and who is an abettor can be found in Sections 107 and 108 of IPC which read as under :

“107: Abetment of a thing :- A person abets the doing of a thing, who:-

(1) Instigates any person to do that thing; or

(2) 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 to the doing of that thing; or

(3) Intentionally aids, by any act or illegal omission, the doing of that thing.”

“108. Abettor. — A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.”

12. The courts have held that the evidence must suggest or indicate that accused knew or had a reason to believe that deceased would commit suicide.

13. To prove cruelty, the prosecution has first led evidence of P.W. 2 and P.W. 3 neighbours of accused. Unfortunately, both these witnesses do not support the case of prosecution. P.W. 2 and P.W. 3 turned hostile. Prosecution's case was that Laxmibai had an opportunity to talk to these two witnesses and had complained to them about ill treatment by accused. P.W. 2 has admitted that police enquired with her and recorded her statement but flatly denied that it was read over to her and has also denied that she ever told police that deceased Laxmibai used to tell her about ill treatment by accused. Same is the case with P.W. 3.

14. The other two witnesses on whose evidence prosecution has relied for proving cruelty is P.W. 6 and P.W. 7 brothers of Laxmibai. P.W. 6 is also the complainant. Evidence of these two persons does not inspire confidence. They have mentioned about demand of Rs.1,50,000/- at the time of marriage and that it has been paid to accused but the FIR is silent about that.

Even on the incident of fire at chivada factory there is inconsistency in the FIR and the deposition. As per FIR Laxmibai was happy for about two years and thereafter fire took place. But in the oral version before the court, they stated one or two months after the marriage there was fire at chivada factory.

15. P.W. 6 and 7 stated that they gave Rs.1,50,000/- to accused for purchase of flat but P.W. 6 is absolutely cagey about having any source of income and how these amounts were paid. The Trial Court has recorded his hesitancy to disclose the source of income. P.W. 6 could not even tell whether any income tax were paid by them. The Trial Court has rightly doubted the version of prosecution that money was given to accused. Same is the case of P.W. 7. The Trial Court has listed many such contradictions and inconsistencies in the evidence of P.W. 6 and P.W. 7. Suffice to say I agree with these observations.

16. It is also alleged that complainant was not ready to accept dead

body of his sister but was compelled to accept the same as there was no provision to keep the dead body in cold storage. P.W. 6 could not explain why he was not ready to accept dead body but his evidence reveals that after he accepted the dead body, he handed over it to accused and it was accused who conducted cremation and last rites on Laxmibai.

P.W. 6 says that at the time of cremation he told to all accused and relatives that accused has murdered his sister Laxmibai and Roshanlal relative of accused threatened him to keep quiet. But in the FIR which was lodged soon after the cremation there is no mention of any such threat being given at the time of cremation.

17. As regards charge under Sections 323 and 504 of the Indian Penal Code, no evidence has been adduced. Therefore, the Trial Court was correct in concluding that prosecution has failed to prove beyond reasonable doubt the charges levelled against accused.

18. 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

¹ (2008) 10 SCC 450

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.

19. 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.

20. 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.

² (2014) 5 SCC 730

³ 1996 SCC (Cri) 972

21. I have perused the impugned judgment, considered the evidence and also heard Ms. P.N. 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.

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

23. 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.

24. Appeal dismissed.

(K.R. SHRIRAM, J.)