

(2020) 02 BOM CK 0107
In the Bombay High Court
Case No : Criminal Appeal No. 693 Of 2004

State Of Maharashtra

APPELLANT

Vs

Ashok @ Ramchandra Bhikaji Wagh And Ors

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 109, 323, 494, 498A, 504, 506
Code Of Criminal Procedure, 1973 — Section 313, 378, 386

Citation : (2020) 02 BOM CK 0107

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : Pallavi Dabholkar, Ankita Singhania

Final Decision : Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 17th February 2004 passed by the Judicial Magistrate, First Class, Shahapur, acquitting the accused of offences punishable under Section 498-A (Husband or relative of husband of a woman subjecting her to cruelty), Section 323 (Punishment for voluntarily causing hurt), 504 (Intentional insult with intent to provoke breach of the peace), 506 (Punishment for criminal intimidation), 494 (Marrying again during lifetime of husband or wife) read with Section 109 (Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment) of Indian Penal Code (IPC).
2. On 21st February 2020 since nobody was present in Court representing respondents, the Court appointed Ms. Ankita Singhania, an Advocate, as Amicus Curiae. At the request of Ms. Ankita Singhania, as she wanted to consider the papers, the matter was stood over to today. Even today,

nobody is present for respondents though the cause list shows the name of Advocate Mr. I.A. Bagaria and Ms. Uma I. Bagaria for respondent nos.1

to 4, 6 and 7. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Ms. Ankita

Singhania, learned Amicus Curiae.

3. It is prosecution's case that complainant - Surekha Ashok Wagh (PW-1) got married to Ashok @ Ramchandra Bhikaji Wagh (accused no.1)

on 27th June 1990 as per Hindu rites and rituals at Nashik. After marriage, they lived in the matrimonial home at Vasind and led a very happily

married life. There were other family members in the matrimonial home, which included the brother of accused no.1, sister of accused no.1, her

husband etc. and all were doing business of selling vegetables. Accused no.5 is alleged to be the second wife of accused no.1 and accused nos.6 and

7 are her parents.

During her stay with accused no.1, PW-1 gave birth to two children, a boy, who in the year 2003 was 8 years old and a girl, who in the year 2003 was

11 years old. Therefore, the boy would be today 25 years and the girl would be 28 years.

4. The father of complainant retired from H.A.L. on 28th February 2001 and he was working in H.A.L. as Driver. At the time of retirement,

complainant's father, who is PW-2 - Sadashiv Jagannath Pawar, received retirement benefits, which accused no.1 came to know about. It is

alleged that accused no.1 was of a greedy nature and also used to suspect PW-1 of immorality. According to PW-1, at the time of marriage and

thereafter, various household appliances, gold, cash of Rs.50,000/- were all given to accused no.1 within a period of three months of marriage and the

other accused, i.e., accused nos.2 to 4 were instigating accused no.1 against PW-1 and accused nos.1 to 4 were harassing and ill-treating her.

5. It seems on 28th February 2001, when PW-2 retired, accused no.1 saw the cheque of retirement benefits and accused no.1 demanded PW-1 to get

Rs.1 lakh from her father. PW-1 was completely helpless because her father (PW-2) had to conduct the marriage of her brother. Notwithstanding

that, accused no.1 used to mentally and physically harass complainant.

6. Accused no.1 got married to accused no.5 on 21st December 2003 at Siddhivinayak Temple, Palghar, while he was and he is still married to PW-1.

Therefore, PW-1 decided to lodge this complaint and after due investigation, chargesheet was filed. All accused pleaded not guilty and claimed to be

tried. Statement of all accused under Section 313 of the Code of Criminal Procedure was also recorded and the defence is of total denial.

7. Accused no.1 says that the complaint has been lodged at the instigation of PW-3, who is in service of police department. The same stand is taken by all the other accused.

8. The Apex Court in Ghurey Lal V/s. State of U.P. (2008) 10 SCC 450 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 reappraise 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.

The Apex Court in many other judgments including *Murlidhar & Ors. V/s. State of Karnataka* (2014) 5 SCC 730 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* 1996 SCC (cri) 972 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.

9. Admittedly, complainant (PW-1) led a very happily married life with accused no.1. Their date of marriage is 27th June 1990 and PW-1 left the matrimonial home on 28th March 2001. As per PW-1, accused was given lot of gold, household appliances and Rs.50,000/- within three months of her marriage, which means that these things were given in the year 1990. There is no explanation as to why the complaint was then lodged only on 4th January 2002. According to PW-1, accused no.1 demanded Rs.1 lakh when he saw the retirement benefits cheque in the hand of her father and her father retired on 28th February 2001. The complaint has been lodged on 4th January 2002. The delay is not explained. Moreover, complainant left the house leaving behind her children, who were on the date she left the house were 9 years and 6 years, respectively. PW-1 never filed any custody petition or any petition for divorce. PW-1 filed maintenance petition on 10th March 2003. The delay again has not been explained.

10. It is settled law that delay in lodging the complaint cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the complaint. At the same time, delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory. If prosecution fails to satisfactorily explain the delay, the delay could be fatal to prosecution. Learned Amicus tenders a copy of judgment of the Apex Court in State of Himachal Pradesh V/s. Gian Chand (2001) 6 SCC 71, in which paragraph 12 reads as under :

12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case. In the present case, PW1___the mother of the prosecutrix is a widow. The accused is a close relation of brother of late

husband of PW1. PW1 obviously needed her family members consisting of her in-laws to accompany her or at least help her in lodging the first information report at the police station. The incident having occurred in a village, the approach of the in-laws of PW1 displayed rusticity in first calling upon the father of the accused and complaining to him of what his son had done. It remained an unpleasant family affair on the next day of the incident which was tried to be settled, if it could be, within the walls of family. That failed. It is thereafter only that the complainant, the widow woman, left all by herself and having no male family member willing to accompany her, proceeded alone to police station. She was lent moral support by Ruldu Ram, the village Panch, whereupon the report of the incident was lodged. The sequence of events soon following the crime and as described by the prosecution witnesses sounds quite natural and provides a satisfactory explanation for the delay. It was found to be so by the learned Sessions Judge. The High Court has not looked into the explanation offered and very superficially recorded a finding of the delay having remained unexplained and hence fatal to the prosecution case. It is common knowledge and also judicially noted fact that incidents like rape, more so when the perpetrator of the crime happens to be a member of the family or related therewith, involve the honour of the family and therefore there is a reluctance on the part of the family of the victim to report the matter to the police and carry the same to the court. A cool thought may precede lodging of the FIR. Such are the observations found to have been made by this Court in State of Punjab Vs. Gurmit Singh & Ors., (1996) 2 SCC 38 4 and also in the case of Harpal Singh (1981) SCC CrL. 208. We are satisfied that the delay in making the FIR has been satisfactorily explained and therefore does not cause any dent in the prosecution case.

11. In this case, there is not even an attempt by the prosecution to explain the delay. It appears that PW-1 had no problems living alone with her parents but when PW-1 heard from her father that accused no.1 has married accused no.5 (which again has not proved), PW-1 decided to teach accused no.1 a lesson. It is unfortunate that in matters like this even the family members are getting dragged. Prosecution should refrain from dragging all family members unless there is enough specific evidence against the family members otherwise provisions of Section 498-A will

unfortunately be misused as a weapon.

12. The Apex Court in *Rajesh Sharma and Ors. V/s. State of Uttar Pradesh and Anr.* (2018) 10 SCC 472 in paragraph 19 gave directions as under:

19. Thus, after careful consideration of the whole issue, we consider it fit to give following directions :-

19.1. In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of

three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and

Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

19.2. The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

19.3. The Committee members will not be called as witnesses.

19.4. Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee

may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

19.5. Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

19.6. The committee may give its brief report about the factual aspects and its opinion in the matter.

19.7. Till report of the committee is received, no arrest should normally be effected.

19.8. The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

19.9. Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

19.10. The Members of the committee may be given such honorarium as may be considered viable.

19.11. It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

19.12. Complaints under Section 489A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such

designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than

one week) as may be considered appropriate. The training may be completed within four months from today;

19.13. In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him

in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

19.14. If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as

possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of

wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations,

requirement of further arrest/ custody and interest of justice must be carefully weighed;

19.15. In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

19.16. It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between

the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted;

19.17. Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant

exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

19.18. These directions will not apply to the offences involving tangible physical injuries or death.

13. It is alleged that accused no.1 got married to accused no.5 at Siddhivinayak Temple but in her cross examination, PW-1 says it is her father (PW-

2) who informed her. Therefore, the evidence is based on hearsay. Moreover, prosecution is relying on a receipt issued by the Siddhivinayak Temple,

which is at Exhibit 43. That is only a receipt of having received a donation of Rs.501/- from accused no.1. Therefore, even the allegation of offence

under Section 494 of IPC has not been proved.

14. Considering all these factors, the Trial Court has acquitted all the accused. Therefore, I see no reason to interfere in the impugned judgment.

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 they are proved guilty by

a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and

strengthened by the Trial Court. For acquitting the accused, the Trial Court rightly 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, need not be interfered with.

17. Appeal dismissed.

18. High Court Legal Services Committee to award fees of the learned Amicus Curiae fixed at Rs.10,000/-.