

(2008) 01 BOM CK 0067
In the Bombay High Court
Case No : Criminal Appeal No. 69 of 2007

The State of Maharashtra

APPELLANT

Vs

Shaikh Sattar, Shaikh Babu, Jamila Shaikh Ebrahim and Ku.
Farjana

RESPONDENT

Date of Decision : 14-01-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2008) 01 BOM CK 0067

Hon'ble Judges : S.R. Dongaonkar, J

Bench : Single Bench

Advocate : Fulzele, app, for the Appellant; V.G. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Dongaonkar, J.—This is an appeal preferred by the appellant. State to challenge the judgment of the learned Judicial Magistrate First Class, Court No. 1, Nagpur in Regular Criminal Case No. 17/1995, by which he recorded acquittal of the respondents for the offence punishable u/s 498A, read with Section 34 of the Indian Penal Code.

2. The facts leading to the prosecution of the respondents were that the respondent No. 1 Shaikh Sattar is husband of the alleged victim Parvin Bano. Respondent No. 2 Shaikh Babu is brother of the husband Shaikh Sattar. Respondent No. 3 Jamila Shaikh Ebrahim is the mother of the said Shaikh Sattar, whereas, respondent No. 4 Ku. Farjana is sister of respondent No. 1 "husband of said Parvin. on 14.8.1994, the father of Parvin Bano namely Abdul Wahab" P.W. 2 filed a report against the respondents in Police Station Ganeshpeth, Nagpur saying that respondents are subjecting the said Parvin Bano to cruelty. According to him, respondents were demanding Zumka, necklace etc. to Parvin Bano. So also respondent No. 1 Shaikh Sattar used to demand Rs. 10,000/for starting garage. For these demands, it is alleged, all the respondents used to beat Parvin Bano. It is alleged that Parvin Bano was to be admitted in the hospital and

thereafter her father Abdul Wahab reported to the police. It is also alleged that one of such incident had occurred on 19.6.1994 i.e. prior to this incident for which also complaint was lodged to the Police Station, upon which the offence was registered. After due investigation, the respondents came to be charge-sheeted for the aforesaid offences in the court of Judicial Magistrate First Class, Nagpur.

3. The charge was framed against respondents. Same was explained to them. They pleaded not guilty. Their defence is that of total denial. The prosecution led evidence of four witnesses in order to establish the guilt of the respondents. P.W. 1 Parvin is wife of respondent No. 1. Her statement before Police is at Exh.21. P.W. 2 Abdul Wahab is the father of said Parvin Bano. He has lodged report to Police Station which is at Ex.24. P.W. 3 Ayubkhan is examined as per Ex. 23. He is neighbour of respondents, he has deposed about the quarrel between the complainant Parvin Bano and the respondent for the demand of dowry and also regarding ill- treatment. P.W. 4 Shakil is witness to spot panchnama, he has however, turned hostile to the prosecution. The Investigating Officer was not examined.

4. The learned trial Judge found that there was enormous delay in recording the statement of the victim Parvin Bano at whose instance the report was lodged. It is the observation of the learned trial Judge that the cruelty as required u/s 498A of the I.P.C. is not established. As such learned trial Judge held respondents not guilty of the offence charged and therefore, he acquitted them by the judgment rendered on 19.11.1996 which is impugned in this appeal against acquittal.

5. Learned A.P.P. while challenging the judgment in appeal has contended that the fact of ill-treatment because of demand of money as well as some articles has been established. Learned trial Judge has come to a wrong finding that the delay in recording the statement has defeated the prosecution case. According to him, witnesses examined by the prosecution are quite reliable and their evidence clearly shows that the respondents were ill-treating and harassing said Parvin Bano for demand of dowry, some amount as well as some articles. He therefore, contends that the judgment rendered by the learned trial Judge should be reversed and the respondents be convicted.

6. As against this, learned Counsel for the respondent has supported the judgment for the reasons recorded by the learned trial Judge. According to him, the view taken by the learned trial Judge can not be said to be perverse or untenable on the facts of the case and therefore, the same cannot be reversed.

7. The law as regards the assessment of the judgment of acquittal in appeal is well settled in AIR 2007 SCW 1850 Chandrappa and Ors. v. State of Karnataka. The following are the principles laid down regarding the powers of the appellate Court while dealing with the appeals against the order of acquittals:

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on question of fact and of laws;

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him 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 his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. It has been further held that,

Even though in an appeal against acquittal, powers of appellate Court are as wide as that of the trial Court and it can review, reappraise and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the instant case, the view taken by the trial Court for acquitting the accused and extending benefit of doubt was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well- established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.

8. Here is the case where report was lodged on 14.8.1994. There are two reports lodged by father of Parvin Bano i.e. P.W. 2. Abdul Wahab. The record shows that the offence was registered against the respondents on 14.8.1994 at about 10.30 p.m. Statement of Parvin Bano appears to have been recorded on 22.11.1994. Spot panchnama appears to be recorded on 23.11.1994. Surprisingly, further statement of other witnesses appear to be recorded on 2.1.1995. The observations of learned trial Judge that there is enormous delay in recording statement of prosecution witnesses, including Parvin Bano, weakens the prosecution case, can not be said to be incorrect. The prosecution has failed to examine I.O. to explain the delay in recording the statement of these witnesses. It also appears that the investigating officer has not recorded the statement of other witnesses, who could be the natural witnesses to the disclosure of ill-

treatment and demands of the amount. The view taken by the learned trial Judge as to whether the facts of the case did not bring the respondents within the purview of the offence u/s 498A of the I.P.C. seems to be debatable, but fact remains that the statement of the main witnesses in the present case were recorded after a long time after the registration of the offence for which there is no specific explanation. It clearly shatters the prosecution.

9. In these circumstances, view taken by the learned trial Judge to acquit the respondents cannot be said to be perverse to the record and liable for interference in appeal by this Court.

10. In this view of the matter, the appeal needs to be dismissed. Same is dismissed.