



2024:KER:86311

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

MONDAY, THE 18TH DAY OF NOVEMBER 2024/27TH KARTHIKA, 1946

CRL.APPEAL NO. 679 OF 2014

AGAINST THE JUDGMENT DATED 28.03.2014 IN CC NO.576 OF
2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, HOSDRUG

APPELLANT/COMPLAINANT:

KUNHAISU P.K.
AGED 42 YEARS, D/O.LATE ABDULLA, KOVVAL
PATTILLATH HOUSE, NEARPADNE JUMA MASJID,
P.O.PADNE, PADNE VILLAGE, HOSDURGTALUK,
KASARAGOD DISTRICT.

BY ADVS.
SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE

RESPONDENTS/ACCUSED 1 TO 5:

- 1 AYISUMMA L.K., W/O.JABBAR (DIED)*
AGED 61 YEARS.
- 2 BASHEER L.K
AGED 42 YEARS, S/O.LATE JABBAR



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- 3 RAIHANATH L.K
 AGED 38 YEARS, D/O.JABBAR

- 4 NASEEMA L.K
 AGED 35 YEARS, D/O.JABBAR

- 5 JAMEELA L.K
 AGED 56 YEARS, W/O.KHALID
 (ALL ACCUSED ARE RESIDING AT JAMALIYA
 MANZIL, KANTHILOT, PADNE VILLAGE, HOSDURG TALUK,
 KASARAGODDISTRICT, PIN - 671 122.)

- 6 STATE OF KERALA
 REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
 KERALA,

 R2 TO R5 BY ADVS.
 SRI.K.M.GEORGE
 SRI.P.K.MUHAMMED
 R6 BY SMT.MAYA M.N., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL
HEARING ON 18.11.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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Crl.Appeal No.679 of 2014

P.G. AJITHKUMAR, J.

Crl.Appeal No. 679 of 2014

Dated this the 18th day of November, 2024

JUDGMENT

This is an appeal against acquittal filed under Section 378(4) of the Code of Criminal Procedure, 1973 (Code).

2. The offences alleged in the complaint filed by the appellant are punishable under Section 498A read with Section 149 of the Indian Penal Code, 1860 (IPC). The Judicial Magistrate of the First Class-I, Hosdurg, after a full-fledged trial, found respondents No.1 to 5 not guilty and acquitted.

3. The 1st respondent expired during trial of the case.

4. Heard the learned counsel for the appellant, the learned counsel for respondents No.2 to 5 and the learned Public Prosecutor.

5. The marriage of the appellant was solemnised on 08.02.1987. At the time of her marriage, Rs.1,00,000/- was given to the husband. She had 20 sovereigns of gold ornaments. That ornaments and money were misappropriated



by the husband. After some time, husband went abroad. The appellant was residing along with respondents No.1 to 5 at their house. Before going abroad her husband used to harass her forcing her to pay Rs.50,000/-. After his going abroad, respondents No.1 to 5 used to harass the appellant both mentally and physically. After husband's return, the appellant was coerced to give more money and gold. Besides, she was pressurised to transfer her 25 cents of property in favour of her husband. Out of that, a portion was eventually transferred in the name of the 2nd respondent. The 1st respondent mortgaged the said property with HDFC Bank and availed a huge amount as loan. Repayment of the loan was thus defaulted. Later, the appellant was ousted from the house, which was constructed by her husband. By doing the aforesaid acts, respondents No.1 to 5 meted out cruelty against the appellant. Accordingly, the prosecution was initiated.

6. A detailed trial was held by the trial court following denial of charge by respondents No.2 to 5. PWs.1 to 4 were examined and Exts.P1 to P4 were marked. After consideration



of the said evidence, the trial court found that the evidence was totally insufficient to hold respondents No.2 to 5 guilty of the offences. There were allegations in the evidence of PW1 that she was compelled to part the property. The property was in the name of her husband. A part of the same was transferred in the name of the 2nd respondent, who is the brother of her husband. The oral testimony of PW1 alone is essentially available to establish harassment and cruelty allegedly meted out by respondents No.1 to 5. That evidence, without corroboration, is not sufficient to convict respondents No.2 to 5 for an offence punishable under Section 498A of the IPC. Therefore, the findings entered into by the trial court leading to the acquittal of respondents No.2 to 5 are not liable to be interfered with.

7. The Apex Court in **Chandrappa and others v. State of Karnataka [(2007) 4 SCC 415]** enunciated the following general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal;



- “(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;
- (2) The 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 questions of fact and of law;
- (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 the 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.”



8. In **Shyam Babu v. State of U.P. [(2012) 8 SCC 651]** the Apex Court held that it would not be possible for the appellate Court to interfere with the order of acquittal passed by the trial Court without rendering a specific finding, namely, that the decision of the trial Court is perverse or unreasonable resulting in miscarriage of justice. At the same time, it cannot be denied that the appellate Court, while entertaining an appeal against the judgment of acquittal by the trial Court, is entitled to re-appreciate the evidence and come to an independent conclusion. While doing so, the appellate Court should consider every material on record and the reasons given by the trial Court in support of its order of acquittal and should interfere only on being satisfied that the view taken by the trial Court is perverse and unreasonable resulting in miscarriage of justice. It was further held that if two views are possible on a set of evidence, then the Appellate Court need not substitute its own view in preference to the view of the trial Court which has recorded an order of acquittal.



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9. What the Apex Court held in **Central Bureau of Investigation v. Shyam Bihari and others [(2023) 8 SCC 197]** is that in an appeal against acquittal, the power of the appellate court to re-appreciate evidence and come to its own conclusion is not circumscribed by any limitation. But it is equally settled that the appellate court must not interfere with an order of acquittal merely because a contrary view is permissible, particularly, where the view taken by the trial court is a plausible view based on proper appreciation of evidence and is not vitiated by ignorance/misreading of relevant evidence on record.

10. Viewed in the light of the law laid down in the aforementioned decisions, I am of the view that the impugned judgment is not liable to be interfered with. Therefore, the appeal is dismissed.

Sd/-

P.G. AJITHKUMAR, JUDGE