

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 112 OF 2002

Ushabai Sanjay Jaiswal,
age 32 years, occ. Nil,
R/o Tal. Nawapur,
Dist. Nandurbar

...Applicant

VERSUS

- 1] The State of Maharashtra,
- 2] Sanjay Bhagirath Jaiswal,
age 34 years, occ. Business,
- 3] Bhagirath Jagannath Jaiswal,
age 63 years, occ. Business,
- 4] Tulsabai Bhagirath Jaiswal,
age 61 years, occ. Household,
- 5] Chandabai Bhagirath Jaiswal,
age 30 years, occ. Household,

Nos. 2 to 5 all r/o Nardana,
Tq.Sindkheda
- 6] Sau. Sangitabai Bansilal Jaiswal,
age 32 years, occ. Household,
R/O Nefhanagar (M.P.)
- 7] Jyotibai d/o Bhagirath Jaiswal,
age 25 years, R/o Naradana,
- 8] Vijay Bhagirath Jaiswal,
age 26 years, R/o as above,
- 9] Sau. Mandabai Rajendra Jaiswal,
age 34 years, occ. Household,
R/o Jalgaon,

10] Rajendra Pralhad Jaiswal,
age 39 years, occ. Business,
R/o Jalgaon

...Respondents

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Shri S.H.Jadhav, advocate h/f
Shri S.P.Brahme, advocate for applicant
Shri V.D.Godbharle, A.P.P. for respondent/State

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CORAM : V.M.DESHPANDE, J.

DATED : 2nd February, 2015

ORAL JUDGMENT : -

1] In Regular Criminal Case No. 87 of 1997, the learned Judicial Magistrate, First Class, Sindkheda on 24.4.2000 framed a charge for the offence punishable under Section 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against ten persons.

3] The learned Magistrate, after appreciating the prosecution case convicted original accused no.1 Sanjay, accused no.2 Bhagirath, accused no.3 Tulsabai and accused no.7 Vijay for the offence punishable under Sections 498-A r/w 34 of the Indian Penal Code and also under Sections 3 and 4 of the Dowry Prohibition Act. They were directed to suffer simple imprisonment for two years and to pay a fine of Rs.1,000/- in

default to suffer simple imprisonment for six months.

4] Though the learned Magistrate convicted the afore said accused persons, he acquitted original accused no.4 Chandabai, accused no.5 Sangitabai, accused no.6 Jyotibai, accused no.8 Mandabai and accused no.9 Rajendra, since according to the learned Magistrate the prosecution was unable to bring home the guilt of these accused persons for the offences punishable under Section 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

4] The present Revision is filed by first informant Ushabai challenging the acquittal of original accused nos. 4, 5, 6, 8 and 9.

5] I have heard Shri S.H.Jadhav, advocate holding for Shri S.P.Brahme, learned counsel for the applicant. He submitted that the learned trial court has committed wrong in acquitting the accused persons, in as much as according to him, on the same set of facts and same set of evidence, the learned Magistrate has convicted the other accused persons. Besides this, no other submission was made.

6] This court has called for the record and proceedings. The record contains the judgment and order, dated 11.11.2005 passed by the learned II Additional Sessions judge, Dhule in Criminal Appeal No. 14 of 2002. This Criminal Appeal No.14 of 2002 was filed by accused no.1 Sanjay, accused no.2 Bhagirath, accused no.3 Tulsabai and accused no.7 Vijay against their conviction. The learned lower appellate court allowed Criminal Appeal No. 14 of 2002, thereby he acquitted the appellants in Criminal Appeal No. 14 of 2002.

7] Since the only submission of the learned counsel for the present applicant was that on the same set of facts and evidence the learned Magistrate has convicted some accused, loses its force in the light of the judgment of acquittal passed by the learned Additional Sessions Judge in Criminal Appeal No. 14 of 2002. Needless to mention that no Appeal or Revision was filed either by the State or by the first informant challenging the acquittal granted by the learned lower appellate court in Criminal Appeal No. 14 of 2002.

8] Further, it is to be noted that the State has not questioned the order of acquittal passed by the learned Magistrate, Sindkheda, dated 28.3.2002 acquitting accused no.4 Chandabai, accused no.5 Sangitabai, accused no.6 Jyotibai, accused no.8 Mandabai and accused no.9 Rajendra.

9] With the assistance of both the learned counsel and the learned Additional Public Prosecutor I have gone through the impugned judgments on record. The view taken by the learned Magistrate acquitting these accused persons is based on the available material and evidence in the prosecution case. There is no perversity in the appreciation of the evidence by the learned trial court.

10] In that view of the matter, the present Revision fails and it is dismissed. Rule is discharged.

[V.M.DESHPANDE, J.]

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