

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

CRIMINAL REVISION APPLICATION NO. 136 OF 2002

Bhikah s/o Abaji Gadhekar,
age 45 years, occ. Service,
R/o Village Satara,
Near Ganpati Mandir,
Tq. and Dist. Aurangabad

...Applicant
[First informant]

VERSUS

- 1] Vinayak s/o Bapurao Shendre,
age 28 years, occ. Agriculture,
- 2] Bapu s/o Sonaji Shendre,
age 53 years, occ. Agriculture,
- 3] Ganesh s/o Bapurao Shendre,
age 33 years, occ. Agriculture,
- 4] Shivaji s/o Bapurao Shendre,
age 25 years, occ. Agriculture,
- 5] Kausabai w/o s/o Bapurao Shendre,
age 51 years, occ. Agriculture,

All R/o Roshangaon,
Tq. Badnapur, Dist. Jalna,

- 6] The State of Maharashtra

...Respondents
[Nos. 1 to 5 Original Accused]

.....
Shri B.G.Londhe, advocate for applicant
Respondent nos. 1 to 5 absent
Shri V.D.Godbharle, A.P.P. for respondent no.6
.....

CORAM : V.M.DESHPANDE, J.

DATED : 5th February, 2015

ORAL JUDGMENT : -

1] The first informant in Crime No. 115 of 1998, registered with police station Badnapur, District Jalna, is aggrieved by the judgment and order of acquittal, passed by the learned II Ad hoc Additional Sessions Judge, Jalna in Sessions Case No. 80 of 1999, by which respondent nos. 1 to 5/accused were acquitted by the court below for the offences punishable under Sections 306, 304 r/w 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

2] I have heard Shri B.G.Londhe, learned counsel for the applicant in extenso. Though, respondent nos. 1 to 5 were represented by their counsel, they remained absent at the time of hearing. Shri V.D.Godbharle, learned Additional Public Prosecutor is representing the State/respondent no.6.

Against the acquittal, respondent no.6 State did not prefer any appeal.

3] Marriage of Kavita, the daughter of the applicant took place with accused no.1 Vinayak on 2.2.1998. Accused nos. 2 and 5 are the parents of accused no.1 Vinayak; whereas

accused nos. 3 and 4 are his brothers.

4] According to first information report Exh.37, at the time of marriage itself the first informant Bhikan agreed to give Rs.25,000/-. Kavita started cohabiting at Roshangaon. She was treated nicely for a period of two months, however, when she made her visit to her matrimonial house at Satara at the time of Nag Panchami, it was disclosed that she should arrange for Rs.25,000/- as agreed in the marriage, since for non-fulfilment of the promise she was subjected to cruelty.

The first information report further states that at the time of Mahalaxmi Poojan also when Kavita along with her father-in-law accused no.2 visited her parental house, accused no.2 Bapurao asked that money be paid since he wanted to purchase the field. On the next day, both Kavita and Bapurao returned to Roshangaon.

The first information report further proceeds that on 4.9.1998 at 10 O' clock Bapurao met the first informant Bhikan in his Mill and told that Kavita was suffering from abdomen pain and she is admitted in the Civil Hospital. The first informant rushed to the Civil Hospital, however, he could see only the dead body of his daughter.

5] After completion of the investigation, charge sheet was filed. The postmortem report is at Exh.55. PW 5 Dr.

Sirsamkar has proved the same. At the time of drawing postmortem notes in respect of the probable cause of death, the doctor has opined as under : -

“Viscera has been preserved. The opinion regarding the cause of death is reserved till the report of C.A. is available.”

Thus, it is crystal clear that at the time of autopsy Dr. Sirsamkar was not sure about the cause of death.

The Chemical Analyser's report is at Exh.47. The result of analysis shows as under :-

“General and specific chemical testing does not reveal any poison in Exhs. (1), (2) and (3).”

In spite of the negative finding, the Dr. Sirsamkar, when he was in the witness box, stated that after seeing the chemical analysis report, it is his opinion that, deceased died due to cardio respiratory failure due to poisoning. While performing postmortem, doctor did not notice any external injuries on the dead body.

In absence of finding of poison in viscera and when at the time of conducting the postmortem report the doctor himself was not sure about the cause of death, not only that, he reserved his opinion till receipt of Chemical Analysis report, one cannot attach much importance to the testimony of doctor that there was respiratory failure due to poisoning.

6] The death occurred on 4.9.1998. The first informant was called by accused no.2. The first informant was informed by accused no.2 that his daughter is admitted in the hospital and he immediately rushed to the hospital. In spite of that, the first information report is lodged on 6.9.1998. Thus, there is a delay of two days, which remained unexplained in the prosecution case. Unexplained delay of two days, though opportunity was available to PW 1 Bhikan the first informant to lodge the report, is fatal to the prosecution.

7] The learned trial court has bestowed thoughtful consideration in respect of the presumption under Sections 113A and 113B of the Indian Evidence Act. The court below has correctly reached to the conclusion that there was no attempt on the part of the prosecution witness to persuade the accused persons not to cause illtreatment. Further, the evidence of Bhikan shows that at the time of marriage it was decided to give Rs.25,000/- to facilitate accused no.1 to procure service, however, the first information report further shows that on 30.8.1998 accused no.2 the father of accused Vinayak demanded Rs.25,000/- to purchase the agricultural land.

8] Learned Judge of the court below has also considered the evidence of PW 3 Sunita rightly in the light of the admission being brought on record that she visited police

station at the time of recording her statement along with her advocate. Further, her evidence also appears to be the improved version, is the finding given by the learned trial court.

9] The learned trial court appears to have been right in recording finding that the allegations of illtreatment and beating were extremely vague and not corroborated by any medical evidence. Further, Kavita's last visit to her parental house was at the time of Mahalaxmi Poojan. That time, it is not the case of any of the prosecution witness that she had disclosed that she was being subjected to cruelty and/or illtreated on account of demand.

10] The scope of Revision against acquittal is limited. The Revisional Court is not expected to re-appreciate the evidence, unless, it is shown that the impugned judgment is the outcome of perverse approach on the part of the court below. The learned counsel for the applicant was unable to point out any perversity in the impugned judgment. In that view of the matter, the Revision is meritless and is dismissed.

[V.M.DESHPANDE, J.]