

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL REVISION APPLICATION NO. 215 OF 2003

Sunita Balkrushna Kendhale,
Age - 25 years, Occup-Household,
R/o. Pokuri-Kendhali, Tq. Mantha,
Dist. Jalna.

...Petitioner

Versus

1. Bhimrao S/o Rambhau Hulmukh,
Age – 75 years, Occup-Agri.
2. Kawshlyabai w/o Bhimrao Hulmukh,
Age – 67 years, Occup-Household,
3. Gayabai w/o Madhukar Hulmukh,
Age – 41 years, Occup-Household,
4. Kalindabai w/o Prakash Hulmukh,
Age-29 years, Occup-Household.
5. Indubai w/o Rajesh Hulmukh,
Age-29 years, Occup-Household

All R/o. Ganga-Chincholi,
Tq. Ambad, Dist. Jalna. (Dismissed against R-3, 4, 5, 8 and 9)

6. Ram s/o Bhimrao Hulmukh,
Age – 26 years, Occup-Service,
Massodari Vidhalay, Tirthpuri,
Tq. Gansavangi, Dist. Jalna.
7. Madhukar s/o Bhimrao Hulmukh,
Age – 45 years, Occup-Agri.
8. Rajesh s/o Bhimrao Hulmukh
Age-30 years, Occup. Agri.
9. Prakash s/o Bhimrao Hulmukh,
Age – 35 years, Occup-Agri.

All R/o Ganga – Chincholi,
Tq. Ambad, Dist. Jalna.

10. State of Maharashtra,
Through : Secretary,
Law & Judiciary Dept.
Mantralaya, Mumbai.

**...Respondents
(Respondents No. 1 to
9 Orig. Accused)**

.....
Shri. A. N. Nagargoje, Advocate for the applicants
Shri. G. N. Chincholkar, Advocate for respondents No. 1, 2,
6 and 7
Shri. S. G. Nandedkar, APP for respondent/State
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**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 16TH, 2015.**

ORAL JUDGMENT: -

. Heard respective Counsel.

2. The applicant herein happens to be the daughter of the original complainant in Sessions Case No. 50 of 2000. Being aggrieved by the judgment and order, thereby acquitting the accused of the offences punishable under Sections 498-A, 306 and 304-B read with 34 of the Indian Penal Code as well as Section 3 and 4 of the Dowry Prohibition Act, 1961 read with 34 of the Indian Penal Code, the present revision application is filed.

3. Such of the facts necessary for the decision of this revision application are as follows :-

That, deceased Sangita was the daughter of the original complainant. That, Sangita was married to the present respondent No. 6 on 5th May, 1996. She was residing in a joint matrimonial family. It is alleged that the mother-in-law i.e. respondent No. 2 and the other respondents herein had taunted Sangita to the effect that, in the eventuality Ram had got married to somebody else, he would have received dowry of Rs. 1.00 Lakh. It is alleged that, on occasion of Diwali festival the couple had been to the maternal house of Sangita. They did not wait for the father of Sangita and had left the house soon after they had met other members of the family. On 22nd February, 1997 the father of Sangita received a message that Sangita has sustained burns and was admitted in Civil Hospital, Jalna and that she was serious. The parents of Sangita and other relatives rushed to the Hospital. They had enquired about the cause of burns however, they had not received satisfactory answers from the accused persons. He, therefore, approached the police station and lodged a report alleging therein that since accused No. 6 had not got married to a girl from the near relations, he had sustained a loss of Rs. 1.00 Lakh, for which Sangita was held responsible and that they had all set Sangita

on fire pouring kerosene on her person. On the basis of the said report Crime No. 30 of 1997 was registered at Gondi Police Station as against accused for offence punishable under Section 498-A read with 34 of the Indian Penal Code (IPC). Sangita had succumbed to the burn injuries on the same day hence, Section 304-B of the IPC was added. After completion of investigation charge-sheet was filed and the case was committed to the Court of Sessions and registered as Sessions Case No. 50 of 2000. The prosecution examined nine witnesses to bring home the guilt of the accused. The learned Sessions Judge vide judgment and order dated 3rd April, 2003 has been pleased to acquit all the accused of all the charges levelled against them.

4. Learned Counsel for the applicant submits that the learned Sessions Judge has not appreciated the evidence in its proper perspective and the same has resulted into grave miscarriage of justice. The learned Sessions Judge has held that an expression that, 'the husband of Sangita would have received Rs. 1.00 Lakh towards dowry in the eventuality that he had got married to somebody else' by itself amounts to cruelty as contemplated under Section 498-A of IPC. According to learned Counsel, the very fact that Sangita was taunted is sufficient to hold that the accused persons had meted Sangita with cruelty

and ill-treatment. Learned Counsel for the accused – respondents submits that, the only evidence is of an expression that 'they would have received dowry' however, there is no cogent and convincing evidence on record to show that the accused persons had demanded Rs. 1.00 Lakh towards dowry from the parents of Sangita. There is no evidence even to show that she was being ill-treated on account of non-fulfillment of the demand of the dowry by her parents. This Court is of the opinion that the learned Sessions Judge has rightly held that there is no demand at all by the accused for Rs. 1.00 Lakh or remaining amount of dowry and mere desire or expression of desire is not sufficient to constitute offence under Section 498-A of the Indian Penal Code.

5. As alleged by the prosecution, the second incident which is treated as ill-treatment is the departure of accused No. 6 along with Sangita from his in-law's house without waiting for his father-in-law. This allegation by itself would not appeal to any prudent mind that the said act on the part of the accused No. 6 would amount to a cruelty. The learned Sessions Judge has rightly held that there is no evidence worth its name to convict the accused for the offences with which they are charged.

6. It is the case of the prosecution that at the time of Diwali, Sangita had visited her maternal house along with her husband and, thereafter, had never visited the house would show that there was no proximity between the alleged harassment and death of the Sangita. The prosecution has relied upon the evidence of PW-6, whose daughter was also admitted in Civil Hospital and that she was on the adjacent bed in the said ward. It is the case of the prosecution that Sangita had sustained 100% burns. Upon perusal of the substantive evidence of PW-6, it appears that she has specifically deposed before the Court that Sangita was crying loudly for about half an hour. Upon enquiry, she had disclosed that she was set ablaze by her father-in-law and the other accused persons. It is elicited in the cross-examination of PW-6 that Sangita was admitted in the Hospital by her husband and father-in-law. She was lying on the bed in the hospital. PW 6 was not previously acquainted with Sangita or her family members. According to the witnesses, Sangita had vomitted black substance and, therefore, she had not spoken a single word. According to her, Doctor and nurses were present when she had talked with Sangita however, no other witness is examined to substantiate the oral dying declaration made to PW-6. PW-6 has stated that she had

informed the parents of Sangita about the oral dying declaration made to her by Sangita. It is pertinent to note that, in the first information report lodged by father of Sangita that there is no allegation that, any person had informed him that Sangita has died a homicidal death at the hands of the accused. PW 1 has also not deposed before the Court about the disclosure statement made to him by PW 6. In view of this, the substantive evidence of PW 6 would not inspire the confidence of the Court. Learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Vidhya Devi vs State of Haryana** reported in 2004 AIR SC 1757 wherein the case rests upon evidence wherein there was specific demand for dowry. In that case, there was evidence on record to show that the deceased was not only tortured by physical beating but was said to have been locked in a room for four days from where she managed to escape and reached the house of her sister Krishna in the same place. In the present case, the said citation need not be considered as there is no evidence worth its name in respect of the nature of ill-treatment meted out to deceased-Sangita. Learned Counsel for applicant has further placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Deena Dayal & ors. Versus State of U.P.** reported in 2009 AIR SC 1238, wherein there was positive evidence of

cruelty and ill-treatment for demand of dowry. Both the citations are based upon the facts in the respective cases. In view of this, the present revision application being *sans* merit deserves to be dismissed and is accordingly dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)

sgp