

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

CRIMINAL REVISION APPLICATION NO.218 OF 2013

Dalbirsingh S/o. Mukhtiar Choudhary, .. Applicant
Versus
Balbirsingh S/o. Chotesingh Tangad,
and others .. Respondents

Mr.R.D.Mande, Advocate for the petitioner.
Mr.U.M.Mote, APP for the respondent/State.

CORAM : SMT.SADHANA S. JADHAV,J.
DATED : 23.03.2015

P.C. :-

1. Heard. Present application is filed by the original complainant in Sessions Case No.68 of 2006. The applicant herein challenges the correctness and validity of the judgment and order delivered by 2nd Adhoc Additional Sessions Judge, Nanded, dated 31th August, 2006, thereby acquitting the respondent for the offences punishable under Section 498-A and 306 r/w 34 of the Indian Penal Code. It is the case of the prosecution that Sapna, wife of respondent No.3 committed suicide in her matrimonial house on 24.09.2005 at about 03.30 p.m. Kapil was married for two and half years. It is alleged by the prosecution that the deceased was harassed and ill-treatment by members of her matrimonial family and that they were demanding one motor and Rs. One Lakh for household expenses. Sapna had informed about it to her parents

whenever she visited to her matrimonial house. It is alleged that two months prior to the incident the complainant and Sapna had been to her matrimonial house at Ahmednagar. Her husband has asked the complainant as to whether he had made sufficient arrangements to fulfill the demand of Rs. One Lakh. The complainant had requested his son-in-law that he would make arrangement subsequently and that he should take Sapna for cohabitation. His daughter had informed that she is being illtreated. On 24.09.2005 at about 08.00 p.m. the complainant received a message that his daughter had expired. Upon enquiry it revealed that Sapna committed suicide by hanging. On 26.09.2005 he lodged the report about the incident at the police station. The investigation was set in motion. The accused were arrested and subsequently enlarge on the bail.

2. The husband of deceased Sapna i.e. respondent No.3 was working as a military personnel.

3. It is pertinent to note that on 24.09.2005 initially the report was lodged under Section 174 of the Criminal Procedure Code and was registered as A.D. No.35 of 2005. It appears that the inquest panchanama and the spot panchanama as well as the postmortem was conducted in A.D. enquiry. The respondent No.3 had lodged the report

which is at Exhibit.22. It was stated in the A.D. enquiry that in the morning of 24.09.2005 there was trifling quarrel between the couple. At the time of incident the respondent No. 3 was at home. He was watching T.V. The transmission of television was disturbed and therefore he tried to set the antenna right and at that time he noticed that Sapna had hanged herself to the ceiling fan.

4. Perused the the postmortem notes. Except ligature mark which is an indication of commission of suicide, there is no other injury on her person which would indicate that she was physically assaulted prior to the incident.

5. There is no substantive evidence to the effect that the respondent herein had abetted the commission of suicide by Sapna. The learned Judge has rightly held that there is no instigation or abettment for the commission of suicide. It is true that there was trifling quarrel between the couple as narrated by the respondent No.3 in his A.D. report.

6. The allegations in respect of demand of Rs. 1 Lakh has not been substantiated and it is pertinent to note that at Trial no charge was framed under Section 304-B of Indian Penal Code. The only charge that was framed was

under Section 498-A & 306 of Indian Penal Code. The complaint also has been lodged two days after the incident. Learned counsel for the applicant fairly submits that delay in the present case cannot be held to be fatal, for the simple reason that PW-1 is resident of Jaipur, Rajasthan. What needs to be considered is not the delay in initiating the prosecution but the substantive evidence adduced by the prosecution.

7. In the cross-examination of PW-1 it is elicited that there is no mention in his report that when he had been to his home, he had told accused No.3 that he shall pay Rs.1 Lakh after two months and requested him to keep his daughter. There are inherent omissions and contradictions in the evidence of the witnesses. The learned counsel further submits that PW-1 has lodged the report before the funeral of his daughter. However it can be seen from the substantive evidence of PW-1 that he had not enquired with any independent persons about the cause of death or whether Sapna was illtreated in her matrimonial house.

8. The learned Sessions Judge has appreciated the evidence in its proper perspective and held that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Merely because Sapna had committed suicide within seven years of marriage, on the

basis of presumption under Section 113-A of the Indian Evidence Act, no conviction can be recorded that in all probabilities the respondents must have instigated or abetted commission of suicide.

9. It is incumbent upon prosecution to adduced substantive evidence to that effect.

10. The presumption under Section 113-A of the Act could be invoked only when the prosecution has discharged the initial onus of proving that the accused had subjected the deceased with cruelty. The presumption can be drawn by the Court only after the prosecution discharges that onus. This Court is of the opinion that the learned Sessions judge has recorded sound and justifiable reasons for recording an acquittal in favour of the respondent and no interference is warranted in revision. Hence the revision sans merits. The Criminal Revision Application stands rejected.

[SMT. SADHANA S. JADHAV, J.]