

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.641 OF 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the calendar and judgment dated 10.10.2007, passed by the Sessions Judge, Mahila Court, Vijayawada, in Sessions Case No.125 of 2005.

2. The revision petitioner herein is PW.8, whereas respondent Nos.1 & 2 are A.1 & A.2 and respondent No.3 is the State in Sessions Case No.125 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Sessions Case before the trial Court.

3. The brief facts of the case are that Poranki Radhika (hereinafter referred to as 'the deceased') is the wife of A.1. A.2 is the mother of A.1. Both the accused are residents of Hanumanthapuram village in Pamidimukkala Mandal. PWs.7 & 8 are the parents of the deceased and they are the residents of Santhipuram in Visakhapatnam. Marriage of the deceased with A.1 was held on 29.12.2009 at Kaveri Kalyana Mandapam in Visakhapatnam. At the time of marriage, Ac.1-00 of land situated at Batlapalika village in Pamaru Mandal of East Godavari District was given by the parents of the deceased towards Pasupukumkuma besides presenting gold ornaments to A.1 and the deceased. A scooter was also given to A.1. Some time after the marriage, both the accused started harassing and ill-treating the deceased demanding her to sell away Ac.1.00 of land and to bring that amount and also for the reason that she was not conceiving early and her parents had not given cash at the time of marriage. The accused also harassed her suspecting that she got her pregnancy aborted at Visakhapatnam at the instance of her parents. Whiles, the deceased

again conceived pregnancy and she was admitted in Usha Nursing Home, Vuyyuru for delivery by her parents and she delivered a male child there and thereafter, she was taken to her parents' house in Visakhapatnam. When her male child was 11 months old, the deceased was brought by A.1 to their house on the ground that her father was admitted in the hospital due to his illness and he wanted to see his grand son. Thereafter also, both the accused were harassing and ill-treating the deceased for bringing money by selling Ac.1-00 of land. Whiles, on 21.09.2004 at about 2:00 p.m, the deceased telephoned her parents from the house of Poranki Gangaraju of Hanumanthapuram and asked them to come and take her to their house for the reason that both the accused abused and abetted her to die. A.1 also beat the deceased with hands. Both the accused did not send the deceased to her parents' house even though her father requested the accused to send the deceased to their house in Visakhapatnam. Thus, due to the said harassment of both the accused and the abetment of the accused, the deceased committed suicide in the early hours of 22.09.2004 by hanging in the house of the accused. After receiving the information of commission of suicide by the deceased, PW.1 went to the house of accused, found the deceased dead in hanging position and gave a written report Ex.P1 to the police. After receiving the report, PW.12-Sub-Inspector of Police registered the case in Cr.No.119 of 2004 for the offence punishable under Section 174 Cr.P.C and took up investigation. PW.12 visited the scene of offence on 22.09.2004, observed the scene of offence, prepared the rough sketch and got the scene of offence photographed. On receiving information about the death of the deceased, her parents came to the house of the accused. The Mandal Revenue Officer, Pamidimukkala, also visited the scene of offence, conducted inquest over the body of the deceased on 23.09.2004 and recorded the statements of the parents and other blood relatives of the deceased. PW.12-Sub

Inspector of Police also examined and recorded the statements of witnesses in this case and thereafter he altered the section of law from Section 174 Cr.P.C to Sections 498-A & 306 I.P.C. On 25.09.2004 at 09:00 a.m, PW.12 arrested the accused at their house and later sent them to the concerned Court for judicial custody. After receiving the post-mortem report and other reports and after completing the investigation, PW.12 filed charge sheet into the Court.

4. The learned II Additional Chief Metropolitan Magistrate, Vijayawada, took cognizance of the case for the offences punishable under Sections 498-A & 306 I.P.C and thereafter, committed the case to the Court of Metropolitan Sessions Division, Vijayawada, who made over the same to the Court of Sessions Judge, Mahila Court, Vijayawada, for disposal according to law. On appearance of the accused, the Sessions Judge, Mahila Court, Vijayawada, framed charges for the offences punishable U/Secs.498-A & 306 I.P.C against the accused. During trial, on behalf of the *de facto* complainant, PWs.1 to 13 were examined and Exs.P1 to P14 & MO.1 were got marked. Ex.D1 was marked during the cross examination of PW.7.

5. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposed against them. The accused denied the incriminatory material and reported no oral or documentary evidence on their behalf. After hearing arguments and after perusing the record, the learned Sessions Judge held that the prosecution failed to prove the guilt of both the accused for the offences punishable under Sections 498-A & 306 I.P.C beyond all reasonable doubt and acquitted them from the above charges.

6. Aggrieved by the judgment passed by the trial Court PW.8- mother of deceased preferred the present revision case.

7. The learned counsel appearing for the revision petitioner/

PW.8 argued that the Sessions Court gave a wrong finding without considering the evidence of prosecution witnesses; that the Sessions Court ought to have seen the statements of the accused given before the Mandal Revenue Officer which clearly indicate that the deceased was beaten and insulted in front of neighbours and relatives just before her death; that the trial Court erred in observing that the deceased hanged herself and post-mortem examination had not given the indication about the cause of death; that the injuries on the body of the deceased clearly corroborated the evidence of PWs.1 & 2 about the beating received by the deceased in the hands of the accused; that the alleged contradictions in the evidence of witnesses are very minor and their evidence is natural in the circumstances even though the Panchayat Secretary, who is one of the mediator to the scene of offence, turned hostile. It is also argued by the learned counsel that at the time of marriage, the parents of the deceased has given Ac.1-00 of land as Pasupukunkuma and the accused asked money for cultivation; that they paid Rs.1,50,000/- to the accused, but instead of that accused started harassing the deceased for selling Ac.1-00 of land; that prior to the incident, deceased addressed two letters Exs.P7 & P8, wherein she categorically stated that accused are harassing her and the trial Court without considering the evidence on record acquitted the accused from the charges punishable under Section 498-A & 306 I.P.C. It is further argued by the learned counsel that the deceased died within seven years of the marriage, therefore presumption that the death was due to harassment and ill-treatment by the husband and in-laws had to be drawn, but the trial Court failed to draw the said presumption and all the material points available in the evidence of prosecution witnesses were omitted by the trial Court and relied upon the cases laws reported in (1) ***K. Chinnaswamy Reddy v. State of Andhra Pradesh and another***^[1], wherein it is held at para 7 as follows:

“7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles”.

(2) **Ganesha v. Sharanappa and another**^[2], wherein it is held at para 11 as follows:

“11. However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to re-appraise the evidence in light of the observation of the revisional court and take an independent view uninfluenced by any of the observations of the revisional court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has

been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order re-trial”.

(3) ***Bindeshwari Prasad Singh @ B.P.Singh and others v. State of Bihar (now Jharkhand) and another***^[3], wherein it is held at para 15 as follows:

“15. The High Court has noticed the fact that the State had preferred an appeal against the acquittal of the appellants. That appeal was dismissed by the High Court on the ground of limitation. In principle that makes no difference, because the dismissal of the appeal even on the ground of limitation is a dismissal for all purposes. As observed earlier, the jurisdiction of the High Court in dealing with an appeal against acquittal preferred under Section 374 of the Code of Criminal Procedure is much wider than the jurisdiction of revisional court exercising jurisdiction under Section 401 of the Code of Criminal Procedure against an order of acquittal at the instance of a private party. All grounds that may be urged in support of the revision petition may be urged in the appeal, but not vice versa. The dismissal of an appeal preferred by the State against the order of acquittal puts a seal of finality on the judgment of the trial court. In such a case it may not be proper exercise of discretion to exercise revisional jurisdiction under Section 401 of the Code of Criminal Procedure against the order of acquittal at the instance of a private party. Exercise of revisional jurisdiction in such a case may give rise to an incongruous situation where an accused tried and acquitted of an offence, and the order of acquittal upheld in appeal by its dismissal, may have to face a second trial for the same offence of which he was acquitted”.

(4) ***Hira Lal and others v. State (Govt. of NCT), Delhi***^[4], wherein it is held as follows:

“9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence to dowry death

as well as for raising a presumption under Section 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

(5) **State of Andhra Pradesh v. Raj Gopal Asawa and another**^[5],

wherein it is held at para 11 as follows:

"11. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration

(a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

(6) **K. Prema S. Rao and another v. Yadla Srinivasa Rao and others**

with **State of Andhra Pradesh v. Yadla Ranga Rao and another**^[6],

wherein it is held at paras 18 & 25 as follows:

"18. Clause (a) of the Explanation under Section 498A, IPC defines cruelty to mean a 'wilful conduct of the husband of such nature as is likely to drive the women to commit suicide.' In the instant case, the accused pressurised and harassed the deceased to part with the land received by her from her father as "Stridhana." As a method adopted for harassment the Postal Mail of her relatives sent to her was suppressed by the husband who was in a position to do so being a Branch Post Master in the village. When the letters were discovered by the wife and she handed them over to her father (PW1) she was driven out of the house. This cruel conduct of the husband led the wife to commit suicide. The trial court and the High Court were, therefore, perfectly justified on this evidence to hold accused No. 1 guilty of the offence of 'cruelty' under Section 498A. As a result of such cruel treatment the wife was driven to commit suicide. Thus offence of abetment of committing suicide punishable under Section 306, IPC is clearly made out against accused No. 1 and for that purpose presumption under Section 113A of the Evidence Act can be raised against him. Section 306, IPC reads thus:

"306. Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

113A. Presumption as to abetment of suicide by a married woman - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that **she had committed suicide within 6 period of seven years** from the date of her marriage and that her husband or such relative of her husband **had subjected her to cruelty**, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation - For the purposes of this section, "cruelty;" shall have the same meaning as in

Section [498A](#) of the Indian Penal Code."

25. As provided in Section [215](#) of Cr.P.C. omission to frame charge under Section [306](#) IPC has not resulted in any failure of justice. We find no necessity to remit the matter to the trial court for framing charge under Section [306](#) IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section [306](#), IPC and a consequent failure of justice. The said facts found in evidence, which justify conviction of the appellant under Section [498A](#) for cruel treatment of his wife, make out a case against him under Section [306](#) IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section [304B](#) which is punishable with minimum sentence of seven years rigorous imprisonment and maximum for life. Presumption under Section [113A](#) of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section [498A](#), IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section [498A](#), IPC"

(7) **Bhupendra v. State of Madhya Pradesh**^[7], wherein it is held at para 28 as follows:

"28. It was held that Section [306](#) of the Indian Penal Code is wide enough to take care of an offence Under Section [304B](#) also. However, an offence Under Section [304B](#) of the Indian Penal Code has been made a far more serious offence with imposition of a minimum period of seven years imprisonment with the sentence going upto imprisonment for life. Considering the gravity of the offence it is treated separately from an offence punishable Under Section [306](#) of the Indian Penal Code. On this basis, this Court **Satvir Singh v. State of Punjab** [(2001) 8 SCC 633], rejected the contention that if a dowry related death is a case of suicide it would not fall within the purview of Section [304B](#) of the Indian Penal Code at all. Reliance in this regard was placed on **Shanti and Anr. v. State of Haryana** [(1991) 1 SCC 371] and **Kans Raj v. State of Punjab and Ors** [(2000) 5 SCC 207] wherein this Court held that a suicide is one of the modes of death falling within the ambit of Section [304B](#) of the Indian Penal Code".

(8) **Bakhshish Singh v. State of Punjab and another**^[8], wherein it is held at paras 31 & 32 as follows:

"31. This Court in several cases observed that minor inconsistent versions/discrepancies do not necessarily demolish the entire prosecution story, if it is otherwise found to be creditworthy. In **Sampath Kumar v. Inspector of Police** [(2012) 4 SCC 124], this Court after scrutinizing several earlier judgments relied upon the observations in **Narayan Chetanram Chaudhary v. State of Maharashtra** [(2000) 8 SCC 457] to the following effect:

"21.`42.. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness

unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person.

32. In **Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra** [(2010) 13 SCC 657], this Court observed as follows:

30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan [(2008) 17 SCC 587]).

(9) **Indra Pal Singh v. State of Uttar Pradesh** with **Jagat Singh v. State of Uttar Pradesh**^[9], wherein it is held at paras 32 & 35 as follows:

“32. Thus, the High Court has rightly held that there was no real inconsistency between the ocular testimony of eye witnesses and medical evidence. The finding of the learned trial judge on this point was contrary to the proper appreciation of the eye witnesses' account corroborated by the medical evidence and the High Court is right in rejecting the said finding of the trial court.

35. It is well-settled that if the eye witness is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would honestly be interested in ensuring that real culprits are punished. We do not find any merit in any of the submissions of the appellants; therefore, we confirm the convictions”.

and prayed the Court to allow the revision case.

8. On the other hand, the learned counsel appearing for respondent Nos.1 & 2/A.1 & A.2 argued that the evidence of PWs.7 & 8, who are

father and mother of the deceased, suffers from material omissions and contradictions and full of improvements; that PW.12-Investigating Officer in his cross-examination clearly stated that Exs.P7 & P8 letters were not brought to his notice during investigation; and that the hand writings of the deceased were not proved. It is also argued that PWs.7 & 8 in their cross-examination admitted that they have not stated to the police or the Mandal Revenue Officer that they presented gold ornaments and saree articles to the accused and also admitted that A.1 has not asked to arrange another Rs.40,000/-; that the evidence of PWs.7 & 8 is interested one; that except the evidence of PWs.7 & 8, there is no other independent evidence to prove the alleged harassment; that there is no evidence produced by the prosecution to prove that dowry was given to A.1; and that Ac.1.00 of land that was given to the deceased as pasupukunkuma does not amount to dowry and any such amount paid as lease amount will also not come under dowry. It is also argued that the prosecution failed to explain the details of harassment meted out by the deceased in the hands of A.1 & A.2; that the deceased being highly educated always wants to go to her parents' house and her parents used to convince her to stay with her husband-A.1, and thus the prosecution failed to prove the ingredients of cruelty and there is no evidence to prove that accused abetted the deceased to commit suicide. It is also argued that the evidence of PWs.2 to 4 who turned hostile along with other evidence is not sufficient to hold that the accused harassed the deceased and abetted her to commit suicide; that after considering the evidence of PWs.7 & 8, the trial Court rightly acquitted the accused for the offences punishable under Sections 498-A & 306 I.P.C. The learned counsel also argued that ordinarily, the High Court under Section 401 Cr.P.C does not interfere with the order of acquittal passed by the trial Court by exercising the revisional powers, unless there has been manifest error of law or procedure and relied upon the case laws reported in (1)

Vimal Singh v. Khumam Singh and another ^[10], wherein it is held at para 9 as follows:

“9. Coming to the ambit of power of High Court Under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. Infact, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant Under Section 304 Part -1 and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal.”

(2) **Hydru v. State of Kserala** ^[11], wherein it is held at para 3 as follows:

“3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can therefore only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court.”

(3) **Indrajit Suresh Prasad Bind and others v. State of Gujarat**^[12],

wherein it is held at para 9 as follows:

“9. To establish the offence of dowry death Under Section 304B, Indian Penal Code the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence Under Section 498A, Indian Penal Code the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in Clauses (a) and (b) of the Explanation to Section 498A, Indian Penal Code. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the Appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed from Ext. 31 written by PW 3 to the deceased on 25-04-2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not being misbehaved with. No other material having come in evidence to establish that the Appellants instigated the deceased to commit suicide, it is difficult for the Court to hold that the Appellants had in any way abetted the suicide by the deceased on 18-05-2004.”

(4) **Venkatesan v. Rani and another**^[13], wherein it is held at para

9 as follows:

*“9. The observations in para 9 in the case of **Vimal Singh v. Khuman Singh** [(1998) 7 SCC 223] would also be apt for recapitulation and, therefore, are being extracted below.*

9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the Accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.”

and finally stated that the finding of the trial Court needs no

interference and prayed the Court to dismiss the revision case.

9. Now, the point for determination is:

Whether the revision petitioner herein is entitled to set aside the judgment dated 10.10.2007 passed by the trial Court in Sessions Case No.125 of 2005, as prayed for or not?

10. **P O I N T:** Before going into the merits of the case it is to be noted that the revisional jurisdiction of the High Court, while examining an order of acquittal is extremely narrow. It ought to be exercised only in cases where the trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Further, the interference with the order of acquittal passed by the trial Court is limited only to exceptional cases, when it is found that the order under revision suffers from glaring irregularity or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked.

11. Now, it is to be seen whether the trial Court has committed such irregularities while acquitting the accused for the offences punishable under Sections 498-A & 306 I.P.C or not. As per the evidence available on record, PWs.7 & 8 are the parents of the deceased and residents of Visakhapatnam. They performed the marriage of the deceased with A.1 on 29.12.1999 at Visakhapatnam. A.2 is the mother of A.1. Both the accused are residents of Hanumanthapuram village in Pamidimukkala Mandal. There is no dispute that at the time of marriage, PWs.7 & 8 gave Ac.1.00 of agricultural land to the deceased as pasupukunkuma and one year after the marriage, PW.7 gave Rs.12,000/- to the accused towards lease amount of Ac.1.00 of wet land. But, giving Ac.1.00 of the land towards pasupukunkuma and

payment of lease amount of the land cannot be treated as dowry. At the most, it is a gift given by parents to the deceased.

12. There is no dispute as per the record that on the early hours of 22.09.2004, the deceased committed suicide by hanging in the house of the accused in Hanumanthapuram village. After her death, PW.13 conducted post-mortem over the dead body of the deceased and issued Ex.P14 post-mortem report opining that the cause of death was hanging due to cardio respiratory failure. Prior to sending the body for post-mortem examination, PW.11-the then Mandal Revenue Officer of Pamidimukkala village conducted inquest over the dead body of the deceased on the same day in the presence of PW.10-Sarpanch of the village, Revenue Inspector and Village Secretary and prepared Ex.P3 Inquest report. PW.11 stated in his evidence that the deceased committed suicide by hanging. PW.1-Pancyhayat Secretary of Hanumanthapuram village visited the house of the accused, found the dead body of the deceased and lodged a complaint under Ex.P1 to the police, Pamidimukkala, and the same was registered as a case in Cr.No.119 of 2004 under Section 174 Cr.P.C. The Investigating Officer, after conducting investigation and recording statements of the witnesses, altered the section of law to Secs.498-A & 306 I.P.C on 23.09.2004.

13. PW.1 in his evidence stated that when he was at his house, he came to know that the deceased committed suicide by hanging in her house. Immediately, he went to Hanumanthapuram village, visited the house of the accused and found the deceased lying down at the verandah of their house. There, he prepared report-Ex.P1 and sent the same to Pamidimukkala Police Station through his village servant. PW.2, who is a retired teacher and resident of Hanumanthapuram village, stated that on the date of incident, he was out of station; that on the next day, he returned to the village at 10:00 a.m and came to

know about the death of the deceased; that on the same night, at about 07:00 p.m, the Sub-Inspector of Police called him to prepare the scene of offence observation report, and accordingly, he drafted Exs.P2 & P3 scene of offence report and inquest report. PW.2 has not supported the case of prosecution. According to him, police has not seized any material in his presence. PW.3 stated that he is the resident of Hanumanthapuram village and that PW.2 is his senior paternal uncle. PW.3 also has not supported the case of prosecution. On the other hand, PW.3 stated that A.1 and deceased were leading their marital life properly and that he do not know the reason for the death of the deceased. PW.4 is also the resident of Hanumanthapuram village. He also has not supported the case of prosecution and turned hostile. PW.5 is the farm servant of the accused. He stated that the deceased and A.1 were leading their marital life properly; that on the date of incident, A.1 raised huge cries, and thereafter, they opened the door forcibly and saw the deceased hanging to a fan and himself and A.1 brought her down by cutting the saree. PW.6 is the photographer, who took the photographs of the deceased at the scene of offence under Ex.P6. PW.9 is the Assistant Panchayat Secretary of Hanumanthapuram village. He stated that on 22.09.2004, the Mandal Revenue Officer called him to the house of the accused; that he signed on the report, which was drafted by another mediator; that he did not observe the injuries on the body of the deceased; and that the village Sarpanch C.Sarojini was also present at that time. PW.9 also has not supported the case of prosecution and was declared hostile. PW.10, who is the Ex-Sarpanch of the village, stated that she know both the accused, but she do not know the deceased; that on the date of incident, she went to the house of the accused and found the dead body of the deceased lying at the house of the accused; that in her presence, the Mandal Revenue Officer conducted inquest over the dead body of the deceased and drafted Ex.P3 inquest report; and that

PW.9 was also present at that time. She further stated that she do not know the reason for the death of the deceased. PW.11-Mandal Revenue Officer, stated that on 22.09.2004, he conducted inquest over the dead body of the deceased under Ex.P3 in the presence of PWs.9 & 10; and that he recorded the statements of PWs.1, 5, 7 & 8. PW.12-Sub-Inspector of police registered the case, investigated and filed charge sheet against the accused. PW.13-doctor conducted post-mortem on the dead body of the deceased and issued post-mortem certificate Ex.P14. According to PW.13, the cause of the death of the deceased was hanging due to cardio respiratory failure.

14. PWs.7 & 8 are the father and mother of the deceased. PW.7 stated that he performed the marriage of his daughter on 29.12.1999 with A.1 at Visakhapatnam and at that time, he presented 30 gms of gold ornaments to his daughter and Ac.1.00 of wet land towards pasupukunkuma; that he also presented gold chain, gold ring and wrist watch to A.1; and that ten days thereafter, he presented saree articles to the accused i.e., one double cot with bed and pillows, two tumblers, one Bajaj Chetak scooter, one Usha sewing machine etc., PW.7 further stated that one year after the marriage, he gave Rs.12,000/- towards lease amount of Ac.1.00 of wet land to his daughter; that in the year 2001, A.1 came and asked him to arrange Rs.50,000/- towards investment as he intended to take Ac.3.00 of land on lease and he gave Rs.50,000/-; that six months thereafter, A.1 again asked to arrange Rs.40,000/-, but he could not give the said amount to the accused and thereafter the accused started harassing the deceased by demanding her to bring amounts; that when his daughter telephoned him about the harassment, he brought her to his house; that two or three months later, A.2 came to their house and made some galata to send the deceased to their house; that ten days thereafter, he sent the deceased to the house of the accused and in the year 2002, she gave birth to a male child. PW.7 also stated that his daughter wrote two

letters Exs.P7 & P8 to him, wherein she stated that accused were demanding to sell her land and bring money for business purposes; that one day prior to the death also, she called him and asked him to take her to his house; and that she also stated that both the accused were beating, abusing and harassing her and she informed him through the telephone of PW.3. PW.7 further stated that his daughter committed suicide by hanging. In the cross-examination, PW.7 admitted that deceased studied B.A, whereas A.1 discontinued his intermediate; that he did not stated to the police that he presented gold ornaments and other articles to the deceased and also admitted that he did not stated to the police that A.1 asked to arrange Rs.40,000/- and he could not pay the same due to which the accused harassed his daughter. PW.7 also not stated that his wife-PW.8 admitted the deceased in Usha nursing home at Vuyyuru, where she was treated as inpatient for one month and that his wife also got admitted deceased in the hospital for delivery. The evidence of PW.8 is also in similar lines. According to PW.8, her daughter informed them about the harassment of the accused through Exs.P7 & P8 letters. In the cross-examination, PW.8 admitted that she is a graduate and her father was a retired Tahsildar; that deceased passed B.A, whereas A.1 discontinued Intermediate; that she also not stated to the police that at the time of marriage, they gave gold ornaments and other articles as stated by her in the chief-examination and she also not stated to the police that she got admitted her daughter in the hospital at Vuyyuru and got treated for one month as inpatient. She also admitted that deceased and A.1 attended 'Shastipurthi' function of her father. Therefore, the evidence of PWs.7 & 8 shows that the accused never demanded Rs.40,000/-. Further, they admitted in the cross-examination that they have not stated about the harassment of the accused towards the deceased regarding the demand of money and also not stated the harassment by the deceased to them over telephone. Admittedly, the prosecution has

failed to prove the specific nature of harassment made by the accused towards the deceased. Further, Exs.P7 & P8 are the letters alleged to have been written by the deceased were not proved. Those letters were also not handedover to the Investigating Officer by PWs.7 & 8. Only at the time of giving evidence, Exs.P7 & P8 were produced. Therefore, the prosecution has not proved that the deceased addressed letters to PWs.7 & 8 and informed about the harassment meted out by her in the hands of the accused. Admittedly, whenever the deceased came to the house of PWs.7 & 8, A.2 or A.1 used to come to their house and take the deceased and the child. Except oral testimony of PWs.7 & 8 that the accused demanded more money from the deceased and harassed her, in that regard there is no other independent evidence. Marriage of the deceased with A.1 was performed in the year 1999 and in the year 2004 she died. There is no independent evidence produced by PWs.7 & 8 showing that A.1 & A.2 were harassing their daughter for the sake of money. No police complaint was also given. No panchayat was held to prove the alleged harassment. Further, the evidence of PWs.7 & 8 regarding the demand of more amounts of Rs.40,000/-, giving gold ornaments and other utensils are subsequent developments and PWs.7 & 8 has not stated these facts to the police at the time of investigation. The prosecution has not proved the specific nature of harassment made by the accused. The Investigating Officer in his evidence also stated that PWs.7 & 8 has not stated to him that the accused were demanding the deceased to sell the lands and give money.

15. As seen from ***K. Chinnaswamy Reddy's case*** (first cited supra) relied upon by the learned counsel for revision petitioner, it is open to the High Court in revision to set aside an order of acquittal even at the instance of private parties. The learned counsel for respondent Nos.1 & 2/accused stated that in this case the State has not filed any revision against the order of acquittal whereas PW.8 filed the revision. The

revision petitioner is relying upon this case law to prove that even at the instance of private parties it is open to the High Court in revision to set aside the order. It is held in this case that such an exercise by the High Court can be made only in exceptional cases when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. In the present case, the contention of the learned counsel for revision petitioner is that the trial Court has not appreciated the evidence of PWs.7 & 8 properly and acquitted the accused from the charges under Sections 498-A & 306 I.P.C.

16. Section 401(3) Cr.P.C forbids the High Court from converting the order of acquittal into one of conviction. Now, it is to be seen whether the trial Court has discussed the evidence of PWs.7 & 8 properly or not. As discussed above, PWs.7 & 8 are the parents of the deceased. Prior to the death of the deceased, they never raised any allegation that A.1 & A.2 were harassing the deceased during her life time. Even assuming without admitting that they received the letters under Exs.P7 & P8, PWs.7 & 8 never tried to call for a panchayat between the families and not informed any of the elders of both the families and further, if the harassment is of serious nature, they should have given a complaint to the police. But no complaint is given. The trial Court after considering the evidence of PWs.7 & 8 held that there are improvements in the evidence and the material evidence was omitted before the police when PWs.7 & 8 were examined. Therefore, the contention of the learned counsel for revision petitioner that the trial Court wrongly came to the conclusion and acquitted the accused without considering the evidence of PWs.7 & 8 cannot be accepted.

17. In **Ganesha's case** (second cited supra) relied upon by the learned counsel for revision petitioner, the Hon'ble Supreme Court held that the High Court, while exercising the power under Section 401 Cr.P.C, can exercise all powers of appellate Court specified in Sec.386

Cr.P.C except the power of the appellate Court to convert a finding of acquittal into that of conviction. In the said case, the Hon'ble Supreme Court also held that in exceptional cases the High Court in revision can set aside an order of acquittal and direct retrial of the case and the said retrial in revision is permissible only in cases where acquittal is based on misreading of evidence or non-consideration of evidence or perverse appreciation of evidence or wherein the trial Court shut out the evidence which otherwise ought to have been considered or overlooked the material evidence clinching the issue. In the present case, except PWs.7 & 8, the other evidence is not sufficient to prove the ingredients/charges of Secs.498-A & 306 I.P.C. None of the witnesses have spoken that the accused harassed the deceased during her life time and thus abetted the deceased to commit suicide. The trial Court considered all the aspects while discussing the evidence of PWs.7 & 8 and other prosecution witnesses. It is not explained by the revision petitioner, what is the error committed by the trial Court by overlooking the evidence, which is clinching the issue. Further, the facts and circumstances of the case relied upon are not relevant to the facts of the present case.

18. Further, in ***Bindeshwari Prasad Singh's case*** (third cited supra) relied upon by the learned counsel for revision petitioner, the Hon'ble Supreme Court clearly held that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant and also held that the High Court on appreciation of evidence on record may reach a conclusion different from that of the trial Court. But, that by itself is no justification for exercise of revisional jurisdiction under Section 401 Cr.P.C against the order of acquittal. In the present case, the revision petitioner has not proved how the judgment of the trial Court was perverse and also not pointed out about any defects in the procedure. Whatever evidence was on record, the trial Court considered the same and

passed the order of acquittal and there was no improper acceptance or rejection of evidence. Therefore, this case law is not applicable to the facts of the present case.

19. The learned counsel for the revision petitioner also relied upon **Hira Lal's case** (fourth cited supra), wherein the Hon'ble Supreme Court held that Section 304-B I.P.C and Sec.113 B of the Indian Evidence Act, 1872 (for short 'the Act') were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. In view of the said decision, the prosecution has to prove that deceased died due to harassment of the accused in demanding dowry. PWs.7 & 8 in this case has not stated that A.1 demanded dowry of Rs.50,000/-. In the cross-examination, PWs.7 & 8 stated that A.1 requested PWs.7 & 8 to provide Rs.50,000/- so that he can take additional Ac.3-00 of land on lease. At that time also, deceased has not informed her parents that A.1 & A.2 were harassing her. Further, the request of PWs.7 & 8 to arrange Rs.50,000/- cannot be treated as demand of dowry. It is an undisputed fact that period of operation of Section 113-A of the Act is seven years. Presumption arises as to dowry death, when a woman commits suicide within a period of seven years from the date of marriage and the said presumption is a rebuttal one. The prosecution wholly relied upon by the evidence of PWs.7 & 8, who are parents of the deceased. In their evidence, they are unable to explain what harassment was made by the accused on their deceased daughter while she was alive. Therefore, this case law is also not applicable to the present facts of the case.

20. The learned counsel for respondent Nos1 & 2/accused argued that the deceased stayed in the town along with her grand parents up to her eleventh year and thereafter, she finished her studies. She is a graduate studied at Visakhapatnam and A.1 discontinued his

intermediate studies and the deceased is not happy while living with A.1 in the village and always she wants to go to her parents' house and her parents want to keep the deceased with the accused. The studies of deceased and A.1 are admitted by PW.7. Further, PW.7 admitted that A.1 and deceased attended the 'Shastipurthi' function of grand parents of the deceased. Therefore, there was possibility that deceased wants to stay in towns/cities where her parents and grand parents are residing.

21. The learned counsel for the revision petitioner relied upon ***Raj Gopal Asawa's case*** (fifth cited supra) to prove that the prosecution is able to prove that soon before her death, the deceased has been subjected to cruelty or harassment in connection with any demand for dowry by A.1 & A.2. In the present case, it is not the case of prosecution that the accused harassed and behaved cruelly with the deceased for the sake of dowry. Further, the charge under Section 304-B I.P.C was not framed and also the evidence of PWs.7 & 8 with regard to the demand of A.1 for providing Rs.50,000/- will not amount to dowry. Therefore, this case law is also not applicable to the present facts of the case.

22. In so far as ***K. Prema S. Rao's case*** (sixth cited supra) relied upon by the learned counsel for revision petitioner is concerned, it is to be seen how it is relevant to the present facts the case. In the said case law, the charges under Sections 306 & 498-A I.P.C were already framed and both the Courts justified that prosecution failed to prove the said charges. If the said case law is taken into consideration, the facts found in the evidence justify conviction under Section 498-A I.P.C for cruel treatment of the wife and under Section 306 I.P.C for abetment of commission of suicide by the wife. In the present case, both the charges were not proved by the prosecution in view of the evidence produced by the prosecution. Therefore, this case law is also not

applicable to the present facts of the case.

23. Now, in so far as ***Bhupendra's case*** (seventh cited supra) relied upon by the learned counsel for revision petitioner is concerned, the burden of proof lies on the prosecution that the accused abetted the deceased to commit suicide. In the said case, it was held by the Apex Court that Section 306 I.P.C is wide enough to take care of an offence under Section 304-B I.P.C, but in this present case, the prosecution failed to prove that A.1 & A.2 abetted the deceased to commit suicide. Further, the prosecution also failed to prove that there is a demand of dowry by the accused to the deceased. Therefore, the above case law is also not applicable to the facts of the present case.

24. Further, ***Bakhshish Singh's case and Sunil Kumar Sambhudayal Gupta's case*** (eighth and ninth cited supra) relied upon by the learned counsel for revision petitioner are concerned, they are not relevant to the present facts of the case as there are no eye witnesses examined by the prosecution to prove that accused abetted the deceased. The witnesses from Hanumanthapuram village have not supported the case of prosecution. Prosecution has not produced the evidence of independent witnesses. Except the parents of the deceased, no one was examined even on behalf of the deceased. There is no dispute that the evidence of eye witnesses, who are related to the deceased, is reliable and believable. But in the present case, no such witnesses were examined.

25. Thus, a perusal of the entire evidence of prosecution shows that except PWs.7 & 8, there is no other evidence on record to prove the alleged harassment made by the accused to the deceased before her death. Giving land to their daughter as pasupukunkuma and giving lease amount to her cannot be treated as dowry. Further, A.1 requesting to arrange Rs.50,000/- for taking land on lease also cannot be treated as demand for additional dowry. The other evidence

produced by the prosecution failed to prove the ingredients of Sections 306 & 498-A I.P.C. Further, the evidence of PWs.7 & 8 is also silent regarding the details of the harassment and ill-treatment made by the accused towards the deceased. Thus, in view of the evidence on record, the Sessions Judge, Mahila Court, Vijayawada rightly held that when the evidence of PWs.7 & 8 is excluded from consideration, there is no other material before the Court to prove the allegation of harassment and ill-treatment meted out by the deceased in the hands of the accused. It is also not proved that the accused abetted the deceased, due to which she died by hanging. Therefore, in view of the evidence on record, I am of the view that the finding given by the trial Court needs no interference and the revision is devoid of merits and is liable to be dismissed.

26. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 10.10.2007, passed by the Sessions Judge, Mahila Court, Vijayawada, in S.C.No.125 of 2005.

27. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 17.04.2015

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[1] (1963) 3 SCR 412

[2] (2014) 1 SCC 87

[3] 2002 CRI.L.J. 3788

[4] (2003) 8 SCC 80

[5] (2004) 4 SCC 470

[6] (2003) 1 SCC 217

[7] (2014) 2 SCC 106

[8] (2013) 12 SCC 187

[9] (2008) 16 SCC 648

[10] (1998) 7 SCC 223

[11] (2004) 13 SCC 374

[\[12\]](#) (2013) 14 SCC 678

[\[13\]](#) (2013) 14 SCC 207