

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 8 OF 2004

- 1] Tulsiram S/o Shankar Bramhane
Age : 25 years, Occu : Labour
R/o. Borgaon Kasari, Tq. Sillod,
District : Aurangabad
- 2] Shankar S/o Ranuba Bramhane
Age : 70 years, Occu.: Nil,
R/o As above No.1
- 3] Ananda S/o Shankar Bramhane,
Age : 35 years, Occu.: Nil,
R/o. As above No.1
- 4] Rukhmanbai W/o Shankar Bramhane,
Age : 65 years, Occu.: Nil,
R/o As above No.1
- .. Petitioners

Vs.

The State of Maharashtra

.. Respondent

Ms. Varsha Ghanekar, Advocate h/f Mr. N.S. Ghanekar, Advocate
for the petitioners
Mr. K.D. Munde, APP for the respondent/State

CORAM : N.W. SAMBRE, J.
DATE : 19/09/2016

ORAL JUDGMENT:

The present revision is against the order of conviction.

2. The facts in brief as are necessary for deciding the Revision are as under:-

3. Original complainant – Rekhabai was married to accused no.1 – Tulsiram sometime in 1990. As there was demand of dowry of Rs.10,000-, a crime came to be registered being Crime No. 58 of 1995. Charge came to be framed against the present applicants at Exhibit 22 for the offences punishable under section 498-A, 323, 506 r/w. 34 of the Indian Penal Code. In support of the prosecution case, the prosecution has examined the original complainant PW1 – Rekhabai at Exhibit 32, PW2 – Ramlal Hase at Exhibit 37 – father of Rekha, PW3 – Bhausahab Hase at Exhibit 38 and PW4 – Dr. Korale.

4. The learned Magistrate, after considering the evidence brought in before it, has ordered conviction of the accused persons. Accused – Tulsiram, Shankar, Ananda and Rukhmanbai were held to be guilty for the offences punishable under section 498-A and 323 r/w. 34 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for 1 year for the offences punishable under section 498-A r/w. 34 and for six months for the offences punishable under section 323 r/w. 34 of the Indian Penal Code, with fine of Rs.200/- on each count, in default to suffer simple imprisonment for 1 month and 15 days respectively. Accused persons

were acquitted of the offence punishable under section 506 of the Indian Penal Code.

5. In appeal against conviction, being Appeal No. 32 of 2002, the learned Additional Sessions Judge, Aurangabad confirmed the conviction and dismissed the appeal. As such, the present Revision.

6. Heard learned counsel for the petitioners/accused and the learned A.P.P. for the respondent.

7. from the record, it is brought to my notice that petitioner no.2 - Shankar and petitioner no.4 - Rukhmanbai are more than 75 years of their age, are handicap and blind and as such, the non-bailable warrants issued against them, were not executed.

8. While trying to make out case for grant of acquittal, learned counsel for the petitioners made three fold submissions :

(a) That PW1 - Rekha, while deposing as the prosecution witness, has stated that the complaint in question came to be lodged out of mis-understanding.

(b) Second limb of submission is that there was compromise in between petitioner no.1 – Tulsiram and PW1 – Rekha and divorce deed is already executed.

(c) The third limb of submission is taking the overall appreciation of the evidence, as is brought on record, there is clear cut case of acquittal and as such, according to her, the Revision needs to be allowed.

. An alternate submission is made that the petitioners be released on the undergone sentences or by taking recourse to the Probation of Offenders Act.

9. The fact remains that accused no. 1 – Tulsiram and accused no. 3 – Ananda are behind bar in the present case, pursuant to the non-bailable warrants executed, as were ordered by this Court.

10. While opposing the Revision, the learned A.P.P. submits that both the Courts below have concurrently held that the involvement of the petitioners/accused in the crime in question was proved beyond reasonable doubt. According to him, all the facets of the matter, including that of the date of marriage, date of the assault, evidence of PW4 and injuries suffered by PW1 –

Rekha, were forming the basis of conviction. He would submit that the Revision needs to be dismissed.

11. Having bestowed my thoughts to the submissions made and upon appreciation of the evidence, as is brought on record, it is required to be noted that PW1 – Rekha, alongwith her father PW2 – Ramlal, have in clear terms, supported the case of the prosecution. Both the witnesses have brought on record that there was demand of dowry and from the evidence of PW4 – Dr. Korale, the injuries suffered by PW1 – Rekha were very much proved.

12. Apart from above, both the Courts below have minutely analyzed the evidence brought on record by the prosecution and has ordered the conviction.

13. So far as the submission of learned counsel for the petitioners *qua* the execution of the divorce deed and the admission given by the original complainant – Rekha that the complaint was lodged out of misunderstanding is concerned, I hardly find any evidence in support of the said contention. The evidence of PW1 – Rekha and PW2 – Ramlal – her father, is required to be appreciated, as was brought on record before the learned Magistrate while dealing with the prosecution case.

14. As such, the said contention of the learned counsel for the petitioners needs to be rejected, particularly in the light of the prayer for acquittal.

15. So far as the third submission is concerned, it is required to be noted that the offence in question, as has been alleged, took place in 1995 i.e. almost 20 years back. The fact that the original complainant – Rekha has already entered into the divorce deed with accused no.1 – Tulsiram, though finds place in the judgment of both the Courts below, however, that was not part of the original evidence that was brought before the learned Magistrate, as is observed hereinabove. It is brought on record that the petitioner no.2 – Shankar and petitioner no.4 – Rukhmanbai, who happen to be father and mother of the other two accused persons, are above the age of 75 years and both of them are handicap and blind.

16. Apart from above, the fact remains that Tulsiram and Ananda i.e. accused in the present case had already undergone part of the sentence, as was ordered by the learned Magistrate. It is also brought to the notice of this Court that during the pendency of the

present Revision, the petitioners have not indulged into commission of any other similar offence like the present one.

17. In view thereof, in my opinion, the submission of learned counsel for the petitioners that petitioners be granted benefit of the Probation of Offenders Act, particularly, in the background of the sentences already undergone, the physical and mental condition of the petitioner nos.2 and 4 and the divorce deed executed between original complainant – Rekha and petitioner no.1 – Tulsiram, needs to be accepted. As such, I propose to pass the following order :-

18. All the accused persons be forthwith released on probation.

19. Petitioner no.1- Tulsiram S/o Shankar Bramhane and Petitioner no.3 – Ananda S/o. Shankar Bramhane shall execute Bonds of one year before the Probation Officer, Sillod, District – Aurangabad, about their good behaviour.

20. The Probation Officer shall observe the conduct of the accused no.1 – Tulsiram S/o Shankar Bramhane and accused no.3 – Ananda S/o Shankar Bramhane for the said

period of one year and if noticed any default, he shall forthwith submit his report to the learned Judicial Magistrate First Class, Sillod, of any default committed by them.

21. The learned Judicial Magistrate First Class, Sillod, upon receipt of such report, if satisfied, may take both the accused into custody and shall submit the report to that effect to this Court. This Court, thereafter, shall pass appropriate order qua committing the petitioner no.1 - Tulsiram S/o Shankar Bramhane and petitioner no.3 - Ananda S/o Shankar Bramhane to the prison for undertaking the sentences, as ordered.

22. So far as petitioner no.2 - Shankar S/o Ranuba Bramhane, petitioner no.4 - Rukhmanbai W/o Shankar Bramhane are concerned, looking to their present health conditions, order of their simplicitor release on probation is ordered.

23. Criminal Revision Application stands disposed of with the above observations.

Sd/-
[N.W. SAMBRE]
JUDGE

arp/