IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 83 OF 2004

Bhujangrao s/o. Madhavrao Barve ..Applicant
Age.45 years, Occ. Agri., [original
R/o. Wakhari, Tq. Basmath, complainant]
Dist. Hingoli.

Versus

1. The State of Maharashtra ..Non-applicants

2. Saraswatibai w/o. Ramrao Dhore
Age. 45 years, Occ.Agri.& Household,
R/o. Wakhari, Tq. Basmath,
Dist. Hingoli.

3. Balu s/o. Ramrao Dhore
Age.30 years, Occ. Agri.,
R/o. Wakhari, Tq. Basmath,
Dist. Hingoli.

Mr.S.R. Bagal, Advocate for the applicant.
Mr.A.R. Kale, A.P.P. for non-applicant No.1.
Mr.N.B. Patekar, Advocate h/f. Mr. P.R.Katneshwarkar, Advocate for respondent Nos. 2 & 3.

CORAM : Z.A. HAQ,J.
DATED : 20.12.2016

ORAL JUDGMENT :-

. Heard. The applicant (father of the victim) has approached this Court in revisional jurisdiction with the grievance that the judgment passed by the learned

Additional Sessions Judge, Parbhani acquitting the non-applicant Nos.2 and 3 (accused) of the offence punishable under sections 302, 498-A and 201 read with section 34 of the Indian Penal Code is unsustainable as it is based on improper and perverse appreciation of the evidence on record.

02. According to the prosecution, the marriage between the non-applicant No.3-Balu and victim Rekha was solemnized in 1999 and the incident has occurred on 11th February, 2003. The body of the victim - Rekha was found in the well situated in the field of Madhukar Gawande (P.W.8) which is adjacent to the field of the accused. The learned Additional Sessions Judge has recorded that the prosecution has failed to establish beyond doubt the guilt of the accused.

03. With the assistance of the learned Advocates for the applicant and non-applicant Nos.2 and 3 and the learned A.P.P., I have examined the record.

. Dr.N.M.Waghmare (P.W.2) has deposed that at the time of examination of dead body of victim Rekha on 12th February, 2003, he has noticed some ante-mortem external injuries. Dr.Waghmare opined that the cause of death was "asphyxia due to throttling" probably by one hand. In

the evidence, Dr. Waghmare reiterated the details of injuries as follows :-

(1) C.L.W. Left libia minora, 6x2x½ cms.

(2) C.L.W. Right libia minora, 3x1x½ cms.

Both injuries were ante-mortem.

(3) Abrasion on right side knee 1x½ cm.

(4) Contusion, four in numbers, to left side neck, 2x2 cms. with fracture of hyoid bone.

The above two injuries were ante-mortem.

(5) Multiple abrasion on left ear pinna.

(6) Abrasion on lower lip, 1x½ cms.

(7) Abrasion on left forearm, 2x1 cms.

(8) Abrasion on right knee joint, 2x1 cms.

(9) Abrasion on left abdominal wall, 2x2 cms.

The above injuries were post-mortem as mentioned in column No.17.

. There is corroborating evidence on record alleging complaint by victim Rekha about illtreatment by the accused. Maroti (P.W.9) uncle of victim Rekha has deposed that the victim Rekha had been to her house in the evening of 10th February, 2003 i.e. a day prior to the incident and was complaining about illtreatment by the accused.

04. Though the learned Additional Sessions Judge has heavily relied on some omissions and some minor contradictions, surprisingly he has overlooked the presumption as per section 113-B of the Indian Evidence Act. In my view the failure on the part of the learned Additional Sessions Judge to appreciate and examine the evidence in the light of presumption under section 113-B of the Indian Evidence Act has resulted in failure of justice.

05. The learned Advocate for the non-applicant Nos.2 and 3 - accused has submitted that the case of the prosecution is based on circumstantial evidence and the evidence on record is not sufficient to establish the chain so as to convict the accused. It is submitted that it would not be possible for this Court to re-appreciate the evidence in the revisional jurisdiction and to set aside the findings recorded by the learned Additional Sessions Judge acquitting the accused. In support of the submissions, the learned Advocate relied on the following judgments :-

Judgments given by the Hon'ble Supreme Court in the cases of :-

(i) Krishnan Vs. State represented by Inspector of Police, 2008(15) SCC 430.
(ii) State through C.B.I. Vs. Mahender Singh

Dahiya, 2011 (3) SCC 109.
(iii)Jagannath Choudhary & Ors. Vs. Ramayan Singh & Anr. 2002(5) SCC 659.
(iv) Bansilal & ors. Vs. Laxman Singh, 1986 Cri.L.J.1603.

06. The submissions made on behalf of the non-applicant Nos.2 and 3 (accused) regarding the scope of revisional jurisdiction and the powers of this Court to re-appreciate the evidence cannot be said to be incorrect or unacceptable. The legal position is well established. However, in the present case, I find that the learned Additional Sessions Judge has examined and appreciated the evidence on record completely overlooking the presumption under section 113-B of the Indian Evidence Act. The failure on the part of the learned Additional Sessions Judge to advert to the provisions of Section 113-B of the Indian Evidence Act and to examine and appreciate the evidence on record in the light of it, vitiates the judgment passed by him.

07. Surprisingly the State has chosen not to file appeal to challenge the judgment of acquittal. When the matter was taken up on 8th December, 2016, after examining the facts of the case, an order was passed directing the learned A.P.P. to call a report from the Law & Judiciary Department as to why appeal is not filed. The learned A.P.P. has placed on record the communication

sent by the Solicitor cum Dy. Secretary, Law & Judiciary Department, Aurangabad to the office of the Government Pleader, High Court of Judicature of Bombay, Bench at Aurangabad on 15th December, 2016 clarifying that the Department of Law & Judiciary had not received any proposal from the office of the District Government Pleader for filing the appeal. I fail to understand why the office of the District Government Pleader had not sent the proposal to the Department of Law & Judiciary for filing the appeal, in the facts of the present case. The dispensation of criminal justice cannot be at the mercy of the prosecutor or the investigating agency and the Courts cannot be silent spectators and cannot blink their eyes and overlook glaring facts.

08. In view of the considerations recorded above, I am of the view that the impugned judgment is required to be set aside and the matter has to be remitted to the Sessions Court for fresh decision. I am conscious that this Court should be extremely slow in adopting the course which I am adopting in this case, but in the facts of the present case, this Court would be failing in its duty, if the course proposed to be adopted is not followed.

. Hence, the following order :-

(i) The impugned judgment is set aside.

(ii) The matter is remitted to the Court of the Additional Sessions Judge, Parbhani for fresh decision. The learned Additional Sessions Judge, Parbhani shall pass fresh judgment. The learned Additional Sessions Judge shall not permit the parties to bring on record any fresh evidence and the judgment shall be passed on the basis of the evidence already on record.

(iii) The non-applicant Nos.2 and 3/accused undertake to appear before the learned Additional Sessions Judge, Parbhani on 27th January, 2017 at 11.00 a.m. and abide by the further orders/directions in the matter.

(iv) The learned A.P.P. shall inform the District Government Pleader about this order and the District Government Pleader shall ensure that the matter is attended on 27th January, 2017.

(v) The Criminal Revision Application is allowed in the above terms.

(vi) The Joint Secretary, Law & Judiciary Department, Aurangabad shall conduct an enquiry to examine the reasons because of which the Office of the District Government Pleader had not sent the proposal for filing appeal and if necessary, take appropriate action against the concerned.

[Z.A. HAQ,J.]

snk/2016/DEC16/crirev83.04