

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 CRIMINAL REVISION APPLICATION NO. 9 OF 2005

Shaikh Imam s/o Shaikh Banu
Age 60 years, Occ. Agriculture
R/o. Golegaon, Tq. Gangapur
District Aurangabad

...Applicant
(Ori. complainant)

versus

1. The State of Maharashtra

2. Sk. Akil s/o Ajj,
Age 25 years, Occ. Driver,
R/o. Nandgaon, Tq. Vaijapur
District Aurangabad

3. Sk. Ajj s/o Sk. Shahabuddin,
Age 55 years, Occ. Driver
R/o. Nandgaon, Tq. Vaijapur
District Aurangabad

4. Sk. Dadabhai s/o Sk. Shanabuddin,
Age 60 years, Occ. Driver
R/o. Nandgaon, Tq. Vaijapur
District Aurangabad

5. Najmabi w/o Sk. Ajj,
Age 50 years, Occ. Household,
R/o. Nandgaon, Tq. Vaijapur
District Aurangabad

6. Sugrabai w/o Sk. Dadabhai
Age 55 years, Occ. Household
R/o. Nandgaon, Tq. Vaijapur
District Aurangabad

...Respondents
(R. Nos. 2 to 6
Ori. Accused)

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Advocate for Applicant : Mr. V A Nimbalkar
APP for Respondent No.1: Mr. P.K. Lakhotiya
Advocate for Respondent Nos. 2 to 6 : Mr. S.D. Hiwrekar

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CORAM : V. K. JADHAV, J.
DATED : 19th OCTOBER, 2018

ORAL JUDGMENT:-

1. This criminal revision application is preferred by the original complainant against the judgment and order of acquittal dated 29.10.2004, passed by the Vth Ad-hoc Assistant Sessions Judge, Aurangabad, in Sessions Case No. 134 of 2004.

2. Brief facts of the prosecution case are as follows:-

The marriage of deceased/Anisa with respondent accused No.1 had taken place ten months prior to the death of deceased/Anisa. After the marriage, deceased/Anisa had been to matrimonial house and started cohabiting with respondent-accused No.1, who was residing in the joint family. Deceased/Anisa was treated well initially for a period of six months but thereafter she was subjected to ill-treatment on account of unlawful demand of Rs.40,000/- for purchasing of auto rickshaw. Deceased/Anisa had reported the said demand and ill-treatment being extended to her on account of non fulfillment of the same to her parents and on 28.3.2004, deceased/Anisa was taken to the Government Hospital, Vaijapur. After her death in the hospital, the opinion about probable cause of death of deceased/Anisa was due to respiratory paralysis attack due to acute chemical poisoning. On the basis of complaint lodged by the present applicant, crime No. 47 of 2004 came to be

registered at Vaijapur police station. After completion of investigation, the concerned investigating officer has submitted charge sheet before the court for the offences punishable under Sections 304-B, 306, 498-A r.w.34 of I.P.C. against the respondents-accused persons. The prosecution has examined in all seven witnesses to substantiate the charges levelled against the accused persons. After recording the statements of respondents-accused under Section 313 of Cr.P.C. and after hearing learned counsel appearing for the respondents-accused, the learned Vth Ad-hoc Assistant Sessions Judge, Aurangabad, by judgment and order dated 29.10.2004 acquitted the respondents accused Nos. 1 to 5 (respondent Nos. 2 to 6 herein) for the offences punishable under Sections 304-B, 306, 498-A r.w. 34 of I.P.C.

3. Learned counsel for the applicant submits that deceased/Anisa died within 10 months from her marriage. After six months of her marriage, the respondents accused started demanding Rs.40,000/- for purchase of auto rickshaw. Deceased/Anisa was subjected to cruelty on account of non fulfillment of the said demand and in consequence therefore, under some abnormal circumstances, she was taken to Government Hospital, Vaijapur where she died. Learned counsel submits that death of deceased/Anisa, as per the opinion expressed by the concerned Medical Officer, who has

conducted the post mortem examination, is otherwise than under the normal circumstance. Learned counsel for the applicant submits that P.W.1 is the father, P.W.4 mother and P.W.5 is real brother of deceased/Anisa, and their evidence is consistent and trustworthy. These three witnesses have categorically stated that deceased/Anisa complained them about unlawful demand made by the accused persons and she was being subjected to ill-treatment on account of non fulfillment of the said demand. Learned counsel submits that the prosecution has succeeded in proving the cruelty as defined under Section 498-A of I.P.C. and as such the presumption under Section 113-A of Evidence Act stands attracted in this case. Deceased/Anisa died within 10 months from her marriage and the prosecution has proved cruelty as defined under Section 498-A of I.P.C. Learned counsel submits that even the trial court has not considered the consistent evidence of those witnesses and even not given thought to draw presumption of Section 113-A of Evidence Act, to the facts and circumstances of the case and erroneously acquitted the respondents/accused persons.

4. Learned counsel for the respondents-accused persons submits that as per the allegations made in the complaint and so far as the prosecution story is concerned, the deceased/Anisa was treated well for a period of six months after the marriage and thereafter she was

subjected to ill-treatment on account of non fulfillment of unlawful demand of Rs.40,000/- for purchase of auto rickshaw. Learned counsel submits that it is difficult to believe that only for four months deceased/Anisa was subjected to ill-treatment to such an extent that she left with no other alternate but to commit suicide. Learned counsel submits that though the prosecution witnesses have consistently deposed about unlawful demand, there is no evidence at all as to the manner in which deceased/Anisa was subjected to cruelty, as defined under Section 498-A of I.P.C. Learned counsel submits that the trial court has rightly concluded that it is not dowry death. So far as the charge under section 306 r.w. 34 of I.P.C. is concerned, the prosecution has miserably failed to prove the cruelty as defined under Section 498-A of I.P.C. and as such presumption under Section 113-A of Evidence Act does not attract. In absence of any presumption, as contemplated under Section 113-A of Evidence Act, there is no evidence about abetment to commission of suicide of deceased/Anisa. Learned counsel submits that even the C.A. report is silent and concerned Medical Officer, who has conducted the post mortem examination, has expressed opinion about the cause of death merely on post mortem appearance or guess work. There is no Histo - pathological report. Learned counsel submits that the trial court has rightly acquitted the accused persons. No interference is required.

Learned counsel for the respondents-accused in order to substantiate his submissions, placed reliance on the following cases:-

- i) Indrajit Sureshprasad Bind and others vs. State of Gujarat, reported in (2013) 14 SCC 678;
- ii) Ramu Shankar Wagh vs State of Maharashtra, reported in 2014 ALL MR (Cri.) 1792

6. Learned A.P.P. submits that even if the C.A. report is silent, there are various reasons like evaporation, vomiting, urine, due to which poisonous substance may not be found in the viscera, the concerned doctor, who has conducted the postmortem examination can very well form his opinion on the basis of post mortem appearance. Learned A.P.P. submits that there is sufficient evidence about suicidal death of deceased/Anisa. Learned A.P.P. submits that there is consistent evidence about unlawful demand.

7. The interference in the order of acquittal passed by the trial court, is limited only to the following exceptional cases:-

- i) order under revision suffers from glaring illegalities,
- ii) or has caused miscarriage of justice,

- iii) or when it is found that the trial court has no jurisdiction to try the case,
- iv) or where the trial court has illegally shut the evidence which otherwise ought to have been considered,
- v) or Where the material evidence which clinches the issue has been overlooked and
- vi) where the admissible evidence is wrongly brushed aside as inadmissible.

8. In the case of ***Vimal Singh vs. Khuman Singh and another***, reported in ***AIR 1998 SC 3380***, in para 7 of the judgment while coming to the ambit of power of the High Court under Section 401 of Cr.P.C., the Supreme Court has made the following observations:-

“7. 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 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. In fact, 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 - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal."

9. In the instant case, the prosecution evidence is consistent about unlawful demand of Rs.40,000/- made by the respondents accused for purchase of auto rickshaw. In terms of clause "b" of explanation to section 498-A of I.P.C. harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The demand is required to be proved by the prosecution. There is no evidence as to manner in which deceased/Anisa was subjected to ill treatment. In catena of judgments, the Supreme Court and even this court have held that

mere demand is not sufficient to constitute or attract the ingredients of Section 498-A of I.P.C. It has been held consistently that the harassment is of such a nature to drive the woman to commit suicide. In the instant case, though the prosecution witnesses have deposed about the fact of unlawful demand made by the respondents-accused, there is no reference to any specific instance or manner in which deceased/Anisa was subjected to ill-treatment. Consequently, in absence of proof of cruelty as defined under Section 498-A of I.P.C. presumption under section 113-A of Evidence Act does not attract. Even if the necessary requirements of Section 113-A of Evidence Act are fulfilled, the court has to consider the application of presumption under Section 113-A of Evidence Act, having due regard to other circumstances. Deceased/Anisa was treated well initially for a period of six months. There is no evidence as to what happened in remaining period of four months so as to led her to commit suicide. So far as the said demand of Rs.40,000/- for purchase of auto rickshaw is concerned, it has no connection with the marriage. Learned counsel for the applicant has also accepted the same that it is not the case of dowry death. So far as the suicidal death is concerned, there is no reason to interfere in the findings recorded by the trial court, however, the learned Judge of the trial court has rightly held that the prosecution has failed to prove the charge as to abetment for commission of suicide of deceased/Anisa.

10. In the case of ***Indrajeet Supreshprasad Bind and others vs. State of Gujarat (supra)*** relied upon by learned counsel for the respondents-accused, the Apex Court in para 9 of the judgment has made the following observations:-

“9. To establish the offence of dowry death under Section 304-B, IPC 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, IPC 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, IPC.

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.”

11. In the case of ***Ramu Shankar Wagh vs. State of Maharashtra (supra)*** relied upon by learned counsel for the

respondents-accused, this court in the given set of facts, which are almost identical to the present case, held that the cruelty aspect having not been proved, no question of raising presumption under Section 113-A of the Evidence Act and in such a case, it is for the prosecution to establish on the basis of other evidence that accused had intentionally aided or abetted commission of suicide.

12. In view of above discussion and considering the ratio laid down by the Apex Court and also similar view expressed by this court in the case of ***Ramu Shankar Wagh vs. State of Maharashtra (supra)***, I find it difficult to persuade myself for taking any other view in this matter. I find no fault in the judgment and order of acquittal passed by the trial court. Hence the following order:-

O R D E R

- I) Criminal Revision application is hereby dismissed. Rule discharged.
- II) Criminal revision application is disposed of accordingly.

(V. K. JADHAV, J.)

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