

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 50 OF 2005

Shivaji s/o Rangnath Gavhane
Age 39 years, Occ. Agriculture
R/o. Shiral, Tq. Pathardi
Presently Shani Shingnapur,
Tq. Newasa, District Ahmednagar

...Petitioner

versus

1. Nandu Kisan Jadhav
Age 22 years,
2. Kisan Pandharinath Jadhav
Age 56 years,
3. Sau. Janabai Kisan Jadhav
Age 45 years,

All R/o. Mokal Chol,
Taluka Rahuri, District Ahmednagar

(R. Nos.1 to 4
original accused)

4. Raghunath Jagannath Gavhane
Age 28 years, Occ. Sonai,
Taluka Newasa,
District Ahmednagar

5. State of Maharashtra
(Copy served on the Public
Prosecutor, High Court,
Bench at Aurangabad)

...Respondents

.....

Mr. R.N. Chavan h/f Mr. Vijay Sharma, advocate for the petitioner
Mr. B.V. Virdhe, A.P.P. for respondent No.5-State

.....

CORAM : V. K. JADHAV, JJ.

**Date of Reserving
the Judgment :30.08.2018**

**Date of pronouncing
the Judgment : 11.09.2018**

JUDGMENT :-

1. Heard learned counsel for the petitioner and learned A.P.P. for the respondent-State. None present for respondent Nos. 1 to 4 original accused.

2. Being aggrieved by the judgment and order dated 07.01.2005 passed by learned 4th Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case No. 172 of 2004 thereby acquitting respondent Nos. 1 to 4 herein (original accused) of the offences punishable under Sections 498-A and 306 r.w. 34 of I.P.C., the petitioner has preferred this criminal revision application.

3. Brief facts giving rise to the present criminal revision application are as follows:-

a) The petitioner-complainant had two wives viz. Mirabai and Suman. Out of said wedlock, he had five daughters, including deceased Jyoti @ Savitri, begotten from elder wife. Deceased Jyoti was brought up by her maternal uncle P.W.3-Janardhan Jadhav when she was one year's old. The marriage of deceased Jyoti was performed by P.W.3 Janardhan with accused No.1 on 29.4.2004, for which he had spent an amount of Rs.51,000/- and also presented the

articles as per the custom. Accused Nos. 2 and 3 are parents of the accused No.1 whereas accused No.4 is the husband of his married sister.

b) After the marriage, deceased Jyoti was treated well for a period of fortnight. Thereafter, all accused persons started demanding Rs.25,000/- for purchase of buffalo and deceased Jyoti, in turn had informed about the same to P.W.1 her father and P.W.3 maternal uncle and they had assured her to pay the amount after sale of sugarcane. Because of non fulfillment of said demand, deceased Jyoti was ill-treated by the accused persons. It was the further case of the prosecution that deceased Jyoti had witnessed illicit relations between accused No.3 and 4 and because of this, the ill-treatment to deceased Jyoti was aggravated by the accused by exerting pressure on her not to disclose anybody about the incident of illicit relations between accused Nos. 3 and 4. Deceased Jyoti used to disclose to her parents and maternal uncle about the state of affairs whenever she had been to them. But all the while she was sent back for cohabitation assuring to pay the amount lateron.

c) On account of "Adhik-Mas", P.W.3 Janardhan Jadhav had invited accused Nos. 1 to 3 alongwith deceased Jyoti for dinner. P.W.1 Shivaji and his wife also attended the said function. At that time

also, they learnt from deceased Jyoti about the ill-treatment being meted out by her at the hands of accused persons. But she was again sent back for cohabitation. At one point of time. P.Ws. 1, 3 and 4 had been to the matrimonial house of deceased Jyoti and tried to convince the accused persons to treat her well, but in vain.

d) On 12.8.2004, accused No.3, who happens to be real sister of the petitioner, had been to his house in the morning and informed him that deceased Jyoti is missing from the house. The petitioner in turn informed P.W.3 on phone about this fact. Thereafter, the petitioner and his brother Laxman went to Jyoti's home, where Raju, step brother-in-law of deceased Jyoti informed that she had committed suicide by jumping in the well and pointed out her dead body which was lying in the Jwar crop. P.W.3 Janardhan then informed Vambori police outpost on phone and police came at the spot. In the meanwhile, information about occurrence of incident was given by accused No.1 Shivaji to village Police Patil that deceased Jyoti lost her life by accidental fall in the well. The Police Patil in turn informed about the same to Vambori police. Thereafter, the petitioner lodged report at Rahuri police station on 13.8.2004. On the basis of which C.R. No. I-147 of 2004 came to be registered against the accused persons for the offences under Sections 498-A and 306 r.w. 34 of I.P.C. and further investigation was carried out. On completion

of investigation, charge sheet came to be filed on 22.9.2004. The case was committed to the Court of Sessions and it was numbered as Sessions Case No. 172 of 2004. The learned 4th Ad-hoc Additional Sessions Judge, Ahmednagar framed charge against the accused persons for the offences punishable under Sections 498-A, 306 r.w. 34 of I.P.C. All accused persons pleaded not guilty to the charges and claimed to be tried. The prosecution has examined in all 5 witnesses to substantiate the charges levelled against the accused. The defence of the accused is of total denial and false implication.

e. The learned 4th Ad-hoc Additional Sessions Judge, Ahmednagar, upon considering the evidence of prosecution witnesses as well as documentary evidence on record, acquitted the accused persons of the offences punishable under Section 498-A, 306 r.w. 34 of I.P.C. as aforesaid.

4. Learned counsel for the petitioner submits that the learned Judge of the trial court has not appreciated the evidence on record in its proper perspectives, which resulted into marriage of justice. Learned counsel submits that, the learned Judge has taken distorted view of the matter in arriving at the conclusion that the accused are not guilty of the offences with which they were charged. Though the prosecution by leading cogent and credible evidence has established

the guilt of the accused for the aforesaid offences, the learned Judge has utterly failed to appreciate the said evidence. The learned Judge has not considered that the prosecution by examining material witnesses, has established that deceased Jyoti was treated with cruelty and was mentally and physically harassed, to meet the unlawful demand of Rs.25,000/- for purchase of buffalo and as such, the offence under Section 498-A r.w. 34 of I.P.C. stood proved against the accused persons. Since deceased was married to accused No.1 on 29.4.2004 and she committed suicide, by jumping in the well on 12.8.2004 i.e. within a period of four months, the prosecution has established that she was treated with cruelty as envisaged under Section 498-A of I.P.C. and further that deceased Jyoti committed suicide. In this case, it was absolutely necessary to raise the presumption under Section 113-A of I.P.C. and to further to convict the accused persons for the offence punishable under Section 306 of I.P.C. since it was a clear case of suicide of the deceased having been abetted by the accused. Learned counsel for the petitioner submits the life of deceased Jyoti has become miserable in the house of her in-laws because of her continuous torture, harassment and ill-treatment merely because her father and maternal uncle were not in a position to meet or comply with the unlawful demand of Rs.25,000/- by the accused persons. Thus, deceased Jyoti was forced to put an end to her life and the accused

were responsible for the same.

5. Learned A.P.P. for the respondent State submits that the prosecution has examined in all five witnesses to substantiate the charges levelled against the accused. After the marriage, deceased Jyoti was treated nicely for fortnight and thereafter all accused persons started demanding Rs.25,000/- for purchase of buffalo. Deceased Jyoti had informed about the same to her father P.W.1 and her maternal uncle P.W.3 and they assured her to pay the amount after sale of sugarcane. However, thereafter deceased Jyoti has witnessed the illicit relations between accused Nos. 3 and 4 and as such, ill-treatment against her stood aggravated by all accused by imparting pressure upon deceased Jyoti as not to disclose the illicit relations to anybody. Even though deceased Jyoti disclosed the same to her father and maternal uncle, she again subjected to ill-treatment at her matrimonial home and thus deceased Jyoti died within four months from her marriage. The learned Judge of the trial court has not considered the effect of presumption under Section 113-A of the Evidence Act.

6. In the case of ***Vimal Singh vs. Khuman Singh, reported in 1998 (7) SCC 223***, the apex Court while discussing the power of the High Court in the matter of interference with the order of acquittal, by

referring the decision of the Supreme court in the case of ***K. Chinnaswamy Reddy vs. State of Andhra Pradesh, reported in (AIR) 1962 SC 1788***. In paras 8 and 9 of the judgment, the Supreme Court has made the following observations:-

"8. The legal position as to the powers of the High Court in revision in the matter of interference with the order of acquittal is no longer res integra, as the law in this regard is very well settled. Suffice it to refer to in this regard a decision of this Court in K. Chinnaswamy Reddy vs. State of Andhra Pradesh (AIR) 1962 SC 1788) wherein it was held, thus :

"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 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 the a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.....

Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the

evidence may be reappraised - after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also".

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 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."

7. In the case of ***Sheetala Prasad and others vs. Sri Kant and Anr. reported in 2010 AIR (SC) 1140***, the Supreme Court in para 9 has made the following observations: -

"9. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar

nature, retrial or rehearing of the appeal may be ordered.”

8. Thus, by applying above stated principle to the facts of the case in hand, I find that as per the prosecution evidence, deceased Jyoti was subjected to ill-treatment on two counts, firstly on account of non fulfillment of demand of cash amount of Rs.25,000/- and secondly, on the count that she had witnessed illicit relations of her mother-in-law with other co-accused. Admittedly, deceased Jyoti died within four months of her marriage. Secondly, as observed by the trial court, on the basis of prosecution evidence that there is no evidence as to what sort of ill-treatment being extended to deceased Jyoti for non fulfillment of so called demand of cash amount of Rs.25,000/- for purchase of buffalo. On the other hand, on the basis of admission given by P.W.1 and P.W.3, who happened to the father and maternal uncle, respectively, of deceased Jyoti, learned Judge of the trial court has negated the said aspect of the demand on the part of the accused. Furthermore, if at all deceased Jyoti had witnessed certain illicit relations of her mother-in-law with co-accused, in all probabilities, it is difficult to accept that deceased Jyoti would end her life because of that.

9. So far as presumption under section 113-A of the Evidence Act is concerned, the words “all other circumstances of the case” would indicate that the presumption is discretionary. In the instant case,

learned Judge of the trial court has given satisfactory reasons for non applicability of the said presumption under section 113-A of the Evidence Act.

10. In the result, I do not find that any case is made out so as to cause interference in the order of acquittal by exercising the revisional jurisdiction. The trial court has considered each and every piece of evidence and by well reasoned order acquitted the accused. Learned counsel for the revision petitioner has failed to point out that the trial court has considered the irrelevant evidence and wrongly brushed aside the admissible evidence as inadmissible. In view of the same, I do not find any substance in this criminal revision application. Hence, the following order:-

O R D E R

- I. Criminal revision application is hereby dismissed.
- II. Rule stands discharged.

(V. K. JADHAV, J.)

rlj/

Rangnath
Laxmanrao
Jadhav

Digitally signed
by Rangnath
Laxmanrao
Jadhav
Date: 2018.09.14
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