

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

6 CRIMINAL REVISION APPLICATION NO. 104 OF 2005

Sandipan s/o Muktaram Naikwade
Age 56 yers, Occ. Govt. service
R/o. Pawar Gall, Georai,
Tq. Georai, District Beed

...Petitioner

versus

1. The State of Maharashtra
through District Superintendent
of Police, Jalna
(Copy to be served on Public
Prosecutor, High Court of
Judicature at Bombay,
Bench at Aurangabad)

2. Rangnath s/o Dagdu Kokate
Age 35 years, Occ. Agriculture
R/o. Nagobachi Wadi, Tq. Ghansawangi,
District Jalna

3. Mangalabai w/o Sukhdeo Kokate
Age 35 years, Occ. Household
R/o. Nagobachi Wadi, Tq. Ghansawangi,
District Jalna

4. Kamlakar s/o Narayanrao Mhaske
Age 25 years, Occ. Agriculture
R/o. Nagobachi Wadi, Tq. Ghansawangi,
District Jalna

...Respondents

...

Advocate for Applicants : Mr. B.A. Dhengle h/f Mr. S A Dhengale
APP for Respondent No.1: Mr. B.,V. Virdhe

Advocate for Respondents 2 to 4 : Mr. M.S. Kokate h/f Mr. S.J.Salunke

.....

CORAM : V. K. JADHAV, J.
DATED : 1st NOVEMBER, 2018

ORAL JUDGMENT:-

1. The original complainant has preferred this criminal revision

application against the judgment and order of acquittal passed by the II Ad-hoc Assistant Sessions Judge, Jalna dated 28.1.2005 in Sessions Case No. 95 of 2001 of the offences punishable under Section 498-A, 306 r.w. 34 of I.P.C.

2. At the outset, it has to be mentioned here that the matter has been amicably settled between the parties on the ground that deceased Shivkanya died leaving behind her son viz. Abhishek, who is now become college going student and at the time of incident, he was small child of one year. During the aforesaid period, Abhishek looked after by the petitioner and his family members. However, since last 2/3 years relations between the petitioner and respondents have become cordial and even respondent No.2 at present has also started taking care of son Abhishek. Even respondent No.2-father of Abhishek is agreed to take entire responsibility of the education of his son Abhishek and also agreed to transfer the agricultural land admeasuring 5 acres and 20 R situated at village Nagobachiwadi in the name of Abhishek and out of that 3 acres of land is already transferred in his name and remaining land will be transferred immediately in future. The parties thus arrived at settlement. However, the same is not permissible since the offences as alleged against the respondents accused are non compoundable. Thus, the pursis is taken on record. However, the offence cannot be

compounded.

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

a) The daughter of the complainant was given in marriage to respondent No.2 original accused on 8.5.1995. There was some misunderstanding and dispute in the marriage about expenses to be incurred for video shooting and also on account of some trifling reason, such as, not engaging good brass-band etc. It further reveals from the prosecution story that in the year 1996, the respondent accused started demanding amount of Rs.10,000/- and accordingly the complainant paid Rs.5000/- on account of said demand. Even when the deceased Shivkanya had been to her parents' house for delivery, accused husband has given message that he is contesting the election of Zilla Parishad and they have to pay the hire charges of jeep and thus, he demanded amount of Rs.10,000/-. It has been stated that the accused persons started harassing deceased on account of non-fulfillment of the said demand. Even deceased Shivkanya had disclosed all the instances of ill-treatment to her parents and other family members on her visits to her parents' house. Even she had informed that she fed up due to the conduct of respondent accused persons.

b) On 28.5.1997 deceased Shivkanya died by consuming poison. On the basis of the complaint lodged by the petitioner, crime came to be registered in the concerned police station and after due investigation, charge sheet was submitted before the Court. The respondent accused have pleaded not guilty to the charge. The prosecution has examined in all 5 witnesses to substantiate the charges levelled against the accused. The learned II Ad-hoc Assistant Sessions Judge, Jalna by judgment and order dated 28.01.2005 acquitted the respondents of the offences punishable under Sections 498-A, 306 r.w. 34 of I.P.C.

4. Learned counsel for the petitioner submits that in order to maintain cordial relations between two families and in view of the welfare and future career of son Abhishek, the parties have decided to settle the matter amicably. Learned counsel for the respondent accused has also admitted this position.

5. I have also heard the learned A.P.P. for the respondent State.

6. On careful perusal of the judgment and order of acquittal, I find that evidence of the complainant is not fully corroborated by the other witnesses. There are material contradictions about the demand

made by the accused persons and reason for the said demand. Apart from the same, almost each and every prosecution witnesses have inconsistently deposed about the demand made by the respondent accused persons. However, there is no evidence at all as to the ill-treatment extended to deceased Shivkanya on account of non-fulfillment of the said demand. In terms of the provisions of Section 498-A of I.P.C. every demand is not made punishable but the coercion extended to the wife on account of non-fulfillment of the said demand is made punishable. In the instant case, the court did not find any such evidence in respect of coercion extended to deceased Shivkanya. The learned II Ad-hoc Assistant Sessions Judge has therefore, rightly held that the prosecution has failed to prove the cruelty as defined under Section 498-A of I.P.C. If the cruelty is not proved the presumption under Section 113-A of the Evidence Act does not attract in the facts and circumstances of the present case. Consequently, there is no evidence about abetment of commission of suicide by Shivkanya on the part of the accused. Thus, considering the entire aspects of the case, the learned Judge of the trial court has rightly acquitted the respondents accused of the charges levelled against them.

7. It is well settled that 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 view of the ratio laid down by the Supreme Court in the case of **Vimal Singh vs. Khuman Singh and another, (supra)** and on careful perusal of the judgment and order of acquittal, I do not find any glaring illegality in the order of acquittal. The learned Judge of the trial Court has discussed the evidence elaborately and has rightly passed the order of acquittal. There is no substance in the criminal revision application. Hence, the following order:-

O R D E R

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

(V. K. JADHAV, J.)

rlj/