

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.22 OF 2004

Navnath Devram Pandit,
Aged : 38 years,
Occu.: Agriculture,
R/o.: Pulwadi D.J., Wambori,
Taluka : Rahuri,
District Ahmednagar .. **APPLICANT**

VERSUS

The State of Maharashtra .. **RESPONDENT**

WITH

**CRIMINAL APPLICATION NO. 5970 OF 2015
IN
CRIMINIAL REVISION APPLIATION NO. 22 OF 2004**

- 1) Baijabai Ananda Virkar,
Age : 85 years, Occu.: Nil,
R/o.: Dhangarwadi Post Jeur (B),
Tq. : Ahmednagar,
District Ahmednagar
- 2) Bhimraj s/o Ananda Virkar,
Age : 50 years, Occu.: Agriculture,
R/o.: Dhangarwadi Post Jeur (B),
Tq. : Ahmednagar,
District Ahmednagar .. **APPLICANTS**

VERSUS

- 1) The State of Maharashtra
- 2) Navnath s/o Deoram Pandit,
Age : 45 years, Occu.: Agriculture,
R/o.: Pulwadi D.J. Wambori,
Tq. Rahuri District Ahmednagar .. **RESPONDENTS**

Mr. Deelip Patil-Bankar, Advocate along with
Ms. Pooja Patil-Bankar, Advocate for the applicant
Mr. S.B. Joshi, A.P.P. for the respondent/State
Mr. Appasaheb A. Shelke, Advocate for the applicants
in Criminal Application No.5970 of 2015.

CORAM : SANGITRAO S. PATIL, J.

ORDER : 28th JUNE, 2018

JUDGMENT :

The applicant has challenged the judgment and order dated 6th January, 2004 passed in Criminal Appeal No.54 of 2001 by the learned 2nd Additional Sessions Judge, Ahmednagar, whereby he confirmed the judgment and order dated 27th September, 2001 passed in Sessions Case No.191 of 2000 by the learned 1st Adhoc Sessions Judge, Ahmednagar, convicting the applicant for the offences punishable under Sections 498-A and 306 of the Indian Penal Code ("IPC", for short) and sentencing him to suffer rigorous imprisonment for one year and three years respectively, on these two counts besides the fine amount of Rs.500/- and Rs.1000/- respectively.

2. The applicant is the husband of the deceased Dwarka. Their marriage was performed in the year 1988.

The deceased Dwarka begot two daughters namely Vandana and Zumber and a son namely Pappu from this wedlock. She died on 24th September, 2000 by falling into a well situate near her dwelling house.

3. It is alleged that the applicant, his parents and sister-in-law used to illtreat the deceased Dwarka on some ground or the other. The informant namely Ananda Madhav Virkar, who is the father of the deceased Dwarka, had sold out his agricultural land in the year 1999. Since then the applicant, his parents and sister-in-law used to ask the deceased Dwarka to bring Rs.50,000/- from the informant. They had beaten and driven her out of the house. The informant sent the deceased Dwarka back to her matrimonial house and paid Rs.10,000/- to the applicant and his parents through one Maruti Shikare. However, the applicant and his parents were not satisfied. They sent the deceased Dwarka to her matrimonial house for bringing Rs.40,000/- more. The informant did not allow the deceased Dwarka to go back her matrimonial house. Thereafter, the applicant and his maternal uncle went to the house of the informant brought her back. The informant received a message on 24th September, 2000 at about 7.00 p.m. that the deceased

Dwarka had fallen into a well and expired. The informant his son and other relatives went to the house of the applicant. The informant lodged report against the applicant, his parents and sister on 25th September, 2000 on the basis thereof the above numbered crime came to be registered.

4. The investigation followed. The statements of witnesses were recorded. Spot panchanama was prepared. The Medical Officer, who conducted postmortem, opined that the deceased Dwarka died due to asphyxia due to drowning. After completion of the investigation, the applicant, his parents and sister came to be prosecuted for the above mentioned offences.

5. The learned Trial Judge framed charges against all the four accused for the above mentioned offences and explained the contents thereof to them. They pleaded not guilty and claimed to be tried. Their defence was that of total denial. It was suggested that the deceased Dwarka fell into the well accidentally.

6. The prosecution examined eight witnesses to establish guilt of the accused persons. The learned

Trial Judge scrutinized the evidence and found that no offence was established against the parents and sister of the applicant. He therefore, acquitted them. However, he found sufficient evidence to hold the applicant guilty for the offences punishable under Sections 498-A and 306 of the IPC. He, therefore, convicted and sentenced the applicant as stated above.

7. The applicant filed Criminal Appeal No.54 of 2001 challenging his conviction and sentence. The learned 2nd Additional Sessions Judge, Ahmednagar, heard the learned counsel for the applicant and the learned Public Prosecutor. The learned Judge did not find any fault in the judgment delivered by the learned Trial Judge. He, therefore, dismissed the appeal and confirmed the conviction and sentence passed against the applicant. The applicant has challenged the said judgment and order in this Criminal Revision Application.

8. The learned counsel for the applicant submits that the prosecution has examined the informant Ananda (PW-2), his son Bhimraj (PW-3) and his sister Parubai (PW-5) to prove guilt of the applicant for the above

mentioned offences. According to him, the evidence of these witnesses is not consistent *inter-se*. There are a number of improvements made by these witnesses. The learned Trial Judge and the learned Judge of the Appellate Court noticed material inconsistencies and improvements. However, they simply ignored them and wrongly convicted the applicant. The learned counsel submits that Dr. Rajendra (PW-7) states that he conducted postmortem of the body of the deceased Dwarka on 26th September, 2000 between 11.00 a.m. and 12.00 noon. The informant specifically deposes that he lodged First Information Report (FIR) (Exh.18) after funeral of the deceased Dwarka i.e. on 26th September, 2000. However, the FIR (Exh.18) bears date 25th September, 2000. The endorsement of the Police Station Officer also shows that it was filed on 26th September, 2000. Therefore, according to him, this FIR is not the same which has been filed by the informant on 26th September, 2000. The said FIR has been suppressed by the prosecution consequently the FIR cannot be used to corroborate the version of the informant. He then submits that though the children of the deceased Dwarka were present at the dwelling house on the date of incident, none of them has been examined by the

prosecution without assigning any reason. He then points out the evidence of the informant wherein he states that the deceased Dwarka was suffering from tuberculosis and that the applicant extended medical treatment to her till her death. Therefore, according to him, there was no question of ill-treating the deceased Dwarka by the applicant on any count. He submits that the applicant has been falsely implicated on the basis of a manipulated FIR. He then points out to the affidavits of the daughter of the applicant namely Vandana, that of Baijabai, the mother of the deceased Dwarka and Bhimraj (PW-3), the brother of the deceased Dwarka wherein they state that the applicant took every care of both of the daughters and son after the demise of Dwarka. Both of the daughters are married. They are residing at their matrimonial homes. They have no complaint against the applicant. The learned counsel submits that had the applicant really illtreated the deceased Dwarka and abetted her to commit suicide, the daughters and son, as well as the mother and brother of the deceased Dwarka would not have filed such affidavits in favour of the applicant. He submits that considering the facts and circumstances of the case, the impugned judgments and orders convicting and sentencing the applicant cannot be

said to be legal, proper and correct. The learned Trial Judge and the learned Judge of the Appellate Court did not appreciate the facts of the case properly and wrongly convicted the applicant. He, therefore, prays that the applicant may be acquitted.

9. The learned A.P.P. supported the impugned judgments and orders. He submits that the evidence of the informant has been corroborated by his son Bhimraj (PW-3) and sister Parubai (PW-5). From the evidence of these witnesses it is clear that the applicant used to illtreat the deceased Dwarka with a view to compel her to bring Rs.50,000/- from the father of the deceased Dwarka. He points out to the fact that previously there was a matrimonial dispute between the deceased Dwarka and the applicant, which was amicable settled in the year 1992. However, thereafter also the applicant was ill-treating the deceased Dwarka. According to him, the well, in which the dead body of the deceased Dwarka was found, was at the distance of about 100 feet from the dwelling house of the applicant. There were no utensils and other articles near that well to indicate that the deceased Dwarka had gone to that well to fetch water or clean the utensils. There was an injury on the chin of

the deceased Dwarka, which was ante-mortem. Therefore, it cannot be said that the deceased Dwarka fell into the well accidentally. He submits that the learned Trial Judge as well as the learned Judge of the Appellate Court have rightly considered the facts of the case as well as the evidence on record and rightly convicted and sentenced the applicant. He, therefore, prays that the Revision Application may be rejected.

10. So far as the offence under Section 498-A of the IPC is concerned, there is nothing in the evidence of the informant, his son Bhimraj (PW-3) and Parubai (PW-5) to show that the applicant ever beat or ill-treated the deceased Dwarka in any manner in their presence. Their evidence in respect of the alleged ill-treatment is hearsay. It is not admissible in evidence. In the absence of any direct evidence to show that the applicant subjected the deceased Dwarka to cruelty within the meaning of Section 498-A of the IPC, the offence under Section 498-A of the IPC cannot be said to have been established against the applicant.

11. The informant states that the applicant was demanding Rs.60,000/- and that he had paid Rs.10,000/-

to the applicant through one Maruti Shikare. Bhimraj (PW-3) states that the applicant and his family members were demanding Rs.50,000/- and that amount of Rs.10,000/- was paid to the applicant through one Maruti Shikare. Thus, there is inconsistency in the evidence of these witnesses in respect of the amount that was allegedly demanded by the applicant and his parents. Maruti Shikare, who is the brother-in-law of the Bhimraj (PW-3), has not been examined by the prosecution without assigning any reason. His evidence was necessary to establish the demand of money by the applicant and his parents and part payment of Rs.10,000/- to the applicant and his parents to satisfy their demand. In the absence of this material evidence the version of the informant and Bhimraj (PW-3) that the amount of Rs.10,000/- was paid to the applicant and his parents cannot be accepted.

12. Parubai (PW-5) also states that the deceased Dwarka was asked to bring Rs.50,000/-. However, it has come in her cross-examination that the accused demanded Rs.50,000/- and that her brother had paid Rs.10,000/- by selling the land was not stated by her before the police. This material omission has been proved through

the evidence of the Investigating Officer i.e. PSI Gaikwad (PW-8).

13. There is no specific evidence on record to show as to when the demand was made and as to when the amount of Rs.10,000/- was paid to the applicant and his parents. The evidence in respect of the demand of money is not inconsistent but also vague and general. It does not inspire confidence.

14. As seen from the affidavit of Vandana who is the daughter of the applicant, she was aged about 30 years in the year 2017. That means, she was aged about 17 to 18 years in the year 2004 when the incident took place. Her sister Zumber and brother Pravin are elder to her. Considering the age of Vandana, she would have been the best witness to state about the relations between the applicant and the deceased Dwarka. Had the deceased Dwarka been subjected to cruelty by the applicant, Vandana certainly would have disclosed the said fact. The prosecution has not examined Vandana as a witness without assigning any reason. The suppression of the evidence of this material witness would lead one to draw adverse inference that her evidence would not have

supported the prosecution.

15. It has come in the cross-examination of the informant that the deceased Dwarka was taking treatment for abdominal pains. He admits that the deceased Dwarka was suffering from tuberculosis since 1997. He admits that the applicant used to take the deceased Dwarka to hospital for treatment. He further admits that the deceased Dwarka was taking treatment for tuberculosis until her death. If this evidence is considered it would be difficult to accept the allegations made by the informant, Bhimraj (PW-3) and Parubai (PW-5) that the applicant used to subject the deceased Dwarka to cruelty and that he abetted to her to commit suicide.

16. Dr. Rajendra (PW-7) states that there was abrasion over chin having length at about $\frac{1}{2}$ inch suffered by the deceased Dwarka. He admits that the said injury was possible by fall while walking. The small abrasion having length of $\frac{1}{2}$ inch over chin of the deceased Dwarka by itself would not suggest that she was manhandled prior to her death.

17. There is nothing on record to show that the

applicant was present in his house when the deceased Dwarka fell into the well. The children, who were at home, have not been examined. The deceased Dwarka was suffering from tuberculosis since the year 1997. It is suggested that she fell into the well accidentally. The prosecution has failed to produce evidence on record to establish that the deceased Dwarka committed suicide because of the ill-treatment given to her. In the circumstances, the possibility of her falling into the well accidentally cannot be ruled out.

18. The learned Trial Judge as well as the learned Judge of the Appellate Court did not appreciate the facts of the case and the evidence on record correctly and properly. They ignored material inconsistencies and improvements in the evidence of the above mentioned three witnesses. They did not consider the fact that the applicant was extending medical aid to the deceased Dwarka until her death, who was suffering from tuberculosis from the year 1997. They did not consider the adverse affect on the case of the prosecution because of non-examination of material witnesses referred to above. They wrongly relied on hearsay evidence to convict the applicant of the offence under

Section 498-A of the IPC. In the circumstances, the impugned judgments and orders cannot to be said to be legal, proper and correct. They are not sustainable.

19. The prosecution has failed to establish guilt of the applicant for the above mentioned offences. He is liable to be acquitted. The fine amount of Rs.1500/- deposited by him in the Trial Court will have to be ordered to be refunded to him. In the result, I pass the following order:-

O R D E R

- (A) Criminal Revision Application is allowed.
- (B) The impugned judgments and orders convicting and sentencing the applicant for the offences punishable under Sections 498-A and 306 of the Indian Penal Code are quashed and set aside.
- (C) The applicant is acquitted of the offences under Sections 498-A and 306 of the Indian Penal Code.
- (D) The bail bonds of the applicant are cancelled. He is set at liberty.

- (E) The fine amount of Rs.1500/- be refunded to the applicant.
- (F) The Criminal Revision Application is accordingly disposed of.
- (G) In view of disposal of Criminal Revision Application, the pending Criminal Application No. 5970 of 2015 is disposed of.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

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