

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 233 OF 2005

Meera w/o Vikas Latpate
Age 21 years, Occu. House hold,
R/o Pimpaldari, Taluka Gangakhed,
District Parbhani. ... Applicant

Versus

1. The State of Maharashtra
Through the P.P., High Court,
Bench at Aurangabad.
2. Vikas s/o Manchakrao Latpate,
Age 23 years, Occu.- service,
R/o. Borda, Taluka Gangakhed,
District Parbhani.
3. Ashok s/o Manchakrao Latpate,
Age 22 years, Occu.- Education
R/o Borda, Taluka Gangakhed,
District Parbhani.
4. Manchakrao s/o Dnyanoba Latpate,
Age 53 years, Occu.- Service,
R/o Borda, Taluka Gangakhed,
District Parbhani.
5. Sow. Kiskandabai w/o Manchakrao Latpate,
Age 45 years, Occu.- Household,
R/o Borda, Taluka Gangakhed,
District Parbhani.

(Revision dismissed as against respondent
Nos. 3 to 5 vide order dated 21.02.2006) ... Respondents

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Mr. J. M. Murkute, Advocate for the Applicant.
Mr. A. P. Basarkar, APP for Respondent No.1-State.

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CORAM : V. K. JADHAV, J.
DATED : 12th FEBRUARY, 2019

ORAL JUDGMENT :-

1. The applicant/original complainant has preferred this Criminal Revision Application against the judgment and order of acquittal dated 30.05.2005 passed by the I/c. Judicial Magistrate, First Class, Parbhani in R.C.C. No. 539 of 2002.

2. The prosecution case, in brief, is as under:

a. The informant - Meera married with accused no.1 Vikas on 05.05.2001 and after marriage, she went the house of the accused for co-habitation. She had started cohabiting in a joint family of accused nos. 1 to 4. They were living in a rented house situated at Lokmanya Nagar, Parbhani. She was treated well for initial period of two/three months after marriage. Thereafter, she was subjected to ill-treatment for non-fulfillment of an unlawful demand of Rs.2,00,000/- for purchasing a plot. The informant was admitted in Navjivan Hospital, Parbhani for delivery. She had to undergo cesarean operation. However, on the fifth day of her delivery, she was subjected to beating in the hospital itself. On 29.09.2002, all the accused persons assaulted the informant and drove her out of

the house. They removed her ornaments and sent her to her parents' place by Jintur-Latur S.T. bus. On the basis of the complaint lodged by the informant, crime no.189 of 2002 came to be registered and after due investigation, the police submitted the charge-sheet.

b. Learned Magistrate framed charge Exhibit 17 under Sections 498-A, 504, 506-II r/w 34 of IPC against all the accused persons. The respondents/accused pleaded not guilty to the charge and claimed to be tried. The prosecution has examined in all six witnesses to substantiate the charge levelled against the accused. After the prosecution evidence was over, statements of the accused persons came to be recorded under Section 313 of the Criminal Procedure Code, 1973. The defence of the accused persons was of denial. According to them, they had never made any demand and never subjected the informant to cruelty on account of non-fulfillment of any such demand. The informant was insisting for a separate residence and since accused no.1 was intending to stay with his parents, the informant has filed a false case against him.

c. After hearing both sides, learned Judicial Magistrate, First Class, Parbhani, by the judgment and order dated 30.05.2005,

which is under revision, acquitted the respondents-accused of the offence punishable under Sections 498-A, 504, 506-II r/w 34 of IPC. Hence this Criminal Revision Application.

3. Learned counsel for the applicant/informant submits that the evidence of the applicant, her parents and her uncles is consistent, trustworthy and reliable. The applicant-informant was treated well for two/three months after her marriage and thereafter, she was subjected to ill-treatment on account of non-fulfillment of an unlawful demand of Rs.2,00,000/- for purchasing a plot. The prosecution witnesses have deposed about two incidents. The informant was subjected to ill-treatment on account of the said demand. Thus, there is clear-cut evidence about coercion for fulfillment of the unlawful demand of a huge amount of Rs.2,00,000/- for purchase of a plot and as such, the prosecution has proved the ingredients of Section 498-A of IPC. However, the learned Magistrate ignored the direct evidence on this point and acquitted the accused.

4. None present for the respondent-accused.

5. I have also heard learned APP for respondent no.1-State.

6. The prosecution witnesses have deposed about the unlawful demand of the accused persons for purchasing a plot. However, the evidence about coercion for fulfillment of the said demand is not satisfactory. The evidence of the prosecution witnesses is self-contradictory and they have also contradicted each other on material points. According to the informant, accused no.1 has assaulted her in the hospital for non-fulfillment of the said demand of Rs.2,00,000/- for purchasing a plot. It was the fifth day after her cesarean operation and thus it is difficult to believe that the informant, who gave birth to a male child by facing cesarean operation, was subjected to beating by her husband in the hospital itself for non-fulfillment of the said demand of Rs.2,00,000/- for purchasing a plot. The applicant-informant has deposed about the assault on her person in the hospital for the reason of non-fulfillment of demand of money. However, PW Bapurao Munde, who happened to be the father of informant, has deposed that accused no.1 has scuffled with the informant on the ground that there are visitors more in number in the hospital. The applicant-informant has not stated anything about the visitors in the hospital and that she was subjected to beating on the count of said visitors by her husband. On the other hand, PW4 Kamalbai, who happened

to be the mother of informant, has deposed that accused no.1 (husband of the informant) has assaulted the informant in the hospital with fist and kick blows. The applicant-informant never deposed that she was assaulted by her husband accused no.1 with fist and kick blows. It thus appears that PW4 Kamalbai has exaggerated the prosecution story. Learned Judge of the trial court has rightly observed that these three important witnesses have deposed about the said incident in different manner. Learned Judge is also right in observing that beating and scuffle are different in its own context. It is also pertinent that in the hospital, if at all the informant was subjected to beating by the accused persons, the said incident would have been witnessed by many other independent persons. However, except the applicant-informant and her parents, nobody has come forward to depose about it. There is no record available that the applicant-informant has complained about the same to the concerned Doctor.

7. So far as the second incident of beating as deposed by the prosecution witnesses, it has occurred on 29.09.2002. The applicant-informant is the sole witness to the said incident. According to her, she was subjected to beating by all the accused persons by closing the door. Learned Judge has rightly observed

that the accused persons were residing in a *wada* and the informant must have raised a hue and cry and shouted for help if she was extended beating by the accused persons in furtherance of their common intention. However, the prosecution has not examined any independent witness from the said *wada* to substantiate the allegations made against the accused persons. It is also pertinent that the informant has not deposed as to why she was beaten by all the accused persons after closing the door of the house. After her delivery, she went for further cohabitation and stayed there for one and half months. Furthermore, according to the informant, she was sent to her parents by Jintur-Latur S.T. bus by removing her ornaments. She was sent to her parents' house on .29.09.2002 at about 4.00 p.m. According to the defence of the accused, the informant went to her parents' house along with her uncle and maternal uncle who came there to fetch her. PW5 Gangadhar Munde, who is cousin uncle of the informant, has deposed and brought an altogether new story. He was serving as a driver in the S.T. Department at Gangakhed. On 29.09.2002, he was present at at the Gangakhed S.T. stand. The applicant-informant met him at the S.T. stand and requested him to take her to Pimpaldari. Accordingly, he left her at Pimpaldari. It is pertinent that the

informant Meera has not deposed that she met with PW5 Gangadhar at any time on 29.09.2002. On the other hand, the informant deposed that she directly went to Pimpaldari by Jintur-Latur S.T. bus. PW3 Pandurang is the maternal uncle of the informant. He is a teacher by profession residing at Jintur. On 29.09.2002, for the first time he came to know about the demand for money made by the accused. His evidence is hearsay. He has no personal knowledge. There are material omissions and contradictions in his evidence. He has not stated in his statement made before police that accused no.1-husband was demanding the amount for purchasing a plot. He has improved his version in terms of the prosecution story. He is not a reliable witness.

8. It further appears from the admissions given by the informant and her mother in cross-examination that accused no.1 (husband of the informant) was managing the regular medical treatment to the applicant-informant during her pregnancy. He was taking her to Navjivan Hospital, Parbhani for regular check-up. He had also put a condition to the parents of the applicant-informant that delivery of the informant should be in the Navjivan Hospital only. Though accused no.1 allowed the informant's parents to take the informant

to their house during her pregnancy period, but suggested to them, as admitted by the parents, that delivery should take place in the Navjivan Hospital. It thus appears that the respondent/accused no.1 was taking care of his wife. He provided regular medical treatment to her during her pregnancy to avoid any untoward incident and he suggested her admission for delivery only in Navjivan Hospital at Parbhani. Learned Magistrate has rightly observed that there is no evidence about the threats given to the informant. There are vague allegations about the abuses.

9. Interference with the order of acquittal passed by the trial court is limited only to certain extent i.e. (1) if the order under revision suffers from any glaring illegalities or (2) has caused miscarriage of justice. In the case of *Vimal Singh vs. Khuman Singh*, reported in *(1998) 7 SCC 223* the Supreme Court, while discussing the power of 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 para nos. 8 and 9 of the judgment, 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."

10. In the light of the ratio laid down by the Supreme Court and in view of the discussion above, I do not find that the impugned judgment and order of acquittal suffers from any glaring illegality or has caused any miscarriage of justice. There is no error of law, impropriety of procedure or non-application of mind. I find no substance in this Criminal Revision Application. Hence, the following order:

ORDER

Criminal Revision Application No. 233 of 2005 is hereby dismissed and disposed of accordingly. Rule stands discharged.

(V. K. JADHAV, J.)

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