

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 72 OF 2005

Trimbak Shamrao Bansode
Age 50 years, Occu: Agril.,
R/o Warudkazi, Tq. and
District : Aurangabad

... Petitioner
(Orig. Complainant)

Versus

1. Babasaheb Raibhan Patil
Age 23 years, Occu: Agril.,
R/o Ladsawangi,
Taluka & Dist. Aurangabad.

2. Raibhan S/o Dhondiba Patil,
Age 50 years, Occu: Agril.,
R/o As above.

3. Ashabai w/o Raibhan Patil,
Age 48 years, Occu: & R/o
As above.

4. Sayaji s/o Annarao Kharpe,
Age 45 years, Occu & R/o
As above.

5. The State of Maharashtra

... Respondents
(Resp. 1 to 4 Ori. accused)

.....

Mr. P. P. Khandagale Patil, Advocate for the applicant.

Mr. D. M. Shinde h/f Mr. S. K. Barlota, Advocate for respondent
nos. 1 to 4

Mr. P. K. Lakhotia, APP for respondent No.5.

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CORAM : V. K. JADHAV, J.
DATED : 04th JANUARY, 2019

ORAL JUDGMENT :-

1. This criminal revision application has been preferred against the judgment and order of acquittal passed by III Ad-hoc Additional Sessions Judge, Aurangabad dated 07.12.2004 in Sessions Case No. 81 of 2004.

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

a. As per the prosecution case, on 10.09.2003, deceased Meena- wife of accused no.1 consumed poison in her matrimonial home and she died in hospital on account of the same on 12.09.2003. On the basis of the complaint lodged by her father, namely, Trimbak Bansode on 15.11.2003, crime came to be registered in the concerned police station. It has been alleged in the complaint that marriage of deceased Meena was solemnized with accused no.1 on 23.03.2003 and in the said marriage he has paid Rs.50,000/- to accused no.1 as dowry. After marriage and during the course of cohabitation, deceased Meena had reported to her parents that all the accused were abusing her and subjecting her to cruelty on

account of demand of Rs.25,000/- for purchase of motorcycle. She had also disclosed to them that the accused extended beating to her and also insisted her to bring the said amount from her parents. Consequently, the complainant had paid that amount to them. It has also been alleged in the complaint that the accused were abusing and beating the deceased for the reason that she had witnessed illicit relationship of accused Ashabai with accused Sayaji.

b. On the basis of the complaint, aforesaid crime no.15 of 2004 came to be registered with Karmad Police Station and after completion of investigation, the concerned Investigating Officer has submitted the charge-sheet. The learned Ad-hoc Additional Sessions Judge framed charge against the accused for the offence punishable under Sections 498-A, 304-B r/w Section 34 of IPC. All the accused pleaded not guilty to the charge and claimed to be tried. The prosecution has examined in all seven witnesses to substantiate the charge levelled against the accused. After recording statement of the accused under Section 313 of Cr.P.C. and after hearing the arguments, learned Judge of the trial court has acquitted the accused of the offence punishable under Sections

498-A, 304-B r/w Section 34 of IPC. Hence this Criminal Revision Application.

3. Learned counsel for the applicant submits that deceased Meena was subjected to cruelty as defined under Section 498 of IPC and in order to substantiate the same, the prosecution has examined PW1 Trimbak Bansode - father of deceased, PW3 Rahibai Bansode – mother of deceased, PW4 – Balu Bansode and PW5 – Shalikram Bansode, uncles of deceased Meena. Learned counsel submits that the trial court has disregarded their evidence for no valid reason. Deceased Meena died within two years of her marriage and there are allegations about demand of dowry. Deceased Meena was subjected to cruelty as defined under Section 498-A of IPC and as such, in terms of the provisions of Section 113B of the Indian Evidence Act, 1872, dowry death was required to be presumed. However, learned Judge of the trial court has not considered the same and erroneously acquitted the accused.

4. Learned counsel for the respondents accused submits that even though deceased Meena died on 12.09.2003, PW1 Trimbak has lodged the complaint belatedly on 15.11.2003 without

explaining the delay in lodging the complaint. Learned counsel submits that as deposed by the parents and uncles of deceased Meena, cruelty was attributed to the accused on account of demand of Rs.25,000/- for purchase of motorcycle and the prosecution witnesses have admitted that an amount of Rs.25,000/- was handed over to PW4 Balu Bansode who has paid that amount to the accused when he had accompanied Meena to the house of accused. Thus, there is no reason for the accused to continue to subject her to cruelty. So far as the alleged illicit relationship between accused Ashabai and accused Sayaji is concerned, there is no reason for deceased Meena to commit suicide on account of the same, nor the same would come under 'dowry death' in any manner. Otherwise also, there are no details about the said allegations and there is no satisfactory evidence to substantiate the same. PW1 Trimbak has also admitted in his cross-examination that deceased Meena was disappointed and frustrated because accused Babasaheb (her husband) was suffering from convulsion and even she was reluctant to go for further cohabitation with him. Learned counsel submits that the trial court has therefore rightly acquitted the accused.

5. The ratio regarding interference with the order of acquittal passed by the trial court has been laid down in the case of **Vimal Singh vs. Khuman Singh**, reported in **1998 (7) SCC 223** in which case 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 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."

6. In the instant case, there is an inordinate delay in lodging the complaint which goes unexplained. If at all deceased Meena was subjected to ill-treatment on account of non-fulfillment of some demand and if she had consumed poison on account of the same, due to which she died on 12.09.2003, it was expected from her father to lodge complaint immediately after her death. Even during the course of inquiry of Accidental Death (AD), father of deceased has not lodged any complaint and even there were no allegations about ill-treatment being extended to deceased during her co-habitation with her husband. There is considerable delay of two months in lodging the complaint for which no explanation has been tendered. Furthermore, there is no question of subjecting deceased Meena to cruelty once the amount of Rs.25,000/- has been paid. There is no evidence as to what further led the accused persons to extend cruelty to deceased Meena. So far as the allegations about witnessing illicit relationship between accused Ashabai and accused Sayaji, even if it is assumed that deceased Meena had an occasion to witness their illicit relations, it is difficult to believe that she consumed poison on account of the same. There is no reason for her to end her life because of the illicit relations between accused Ashabai and accused Sayaji. PW1 Trimbak has specifically

admitted in his cross-examination that deceased Meena was disappointed and frustrated because her husband Babasaheb was suffering from convulsion. She had also disclosed the same to her parents. Even she was not ready to go for further cohabitation on account of the said reason.

7. In view of the same, I do not think that the judgment and order of acquittal under revision suffers from any glaring illegality or has caused miscarriage of justice. Hence, the Criminal Revision Application is hereby dismissed and accordingly disposed of. Rule stands discharged.

(V. K. JADHAV, J.)

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