

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

928 CRIMINAL REVISION APPLICATION NO.75 OF 2005

Bhagwan s/o Yeshwantrao Lad
Age : 55 years, Occu: Labour,
R/o. Sanjaynagar, Old Jalna,
Taluka and District Jalna.

... Petitioner
(Ori.Complainant)

Versus

1. The State of Maharashtra
Through Kadim Jalna Polce Station,
Taluka and District Jalna,
(Copy to be served on Govt. Pleader,
High Court of Bombay, Bench at
Aurangabad)
2. Nandkishor s/o Ramdas Avghad
Age : 23 years, Occu: Labour.
3. Ramdas s/o Sunderrao Avghad
Age : 47 years, Occu: Labour.
4. Sudamati alias Saraswati w/o Ramdas Avghad,
Age : 43 years, Occu: Household.
5. Shivhari s/o Sunderrao Avghad
Age: 36 years, Occu: Labour,
All the above respondents are
R/o. Kucharwata, Old Jalna,
Taluka and District Jalna.

... Respondents
(Respdt Nos. 2 to 5
orig. accused)

.....

Advocate for the revision petitioner : Mr. A. V. Indrale Patil
Advocate for respondent no.1-State : Mr. B. V. Virdhe

.....

CORAM : V. K. JADHAV, J.
DATED : 17th JANUARY, 2019

ORAL JUDGMENT :-

1. This Criminal Revision Application is preferred by the original complainant against the judgment and order of acquittal passed by the Additional Sessions Judge, Jalna dated 30.11.2004 in Session Case No.127 of 2003.

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

a. Deceased Kashibai @ Kalpana was given in marriage to accused no.1 and their marriage was solemnized on 19.04.2003. After marriage, deceased Kalpana started cohabiting at the house of the accused. As per the prosecution story, she was treated well for about one and half months and thereafter, she was subjected to ill treatment on account of non-fulfillment of an unlawful demand of Rs.10,000/- to start a business, namely, garage.

b. On 14.09.2003, deceased had been to her parents' house and disclosed to the informant and other family members that she was being ill treated by the accused. She told them that she was not given food for about two days and she was also subjected to beating for non-fulfillment of the said demand of Rs.10,000/-. She

told them that she may be killed in case the amount as per the demand is not paid to them. The informant has promised her to pay the amount within a week. Next day, at about 2.00 p.m., the brother-in-law of the deceased had been to the house of the informant and informed them that deceased was not feeling well. Thus, the informant had been to the house of the accused. He saw the deceased lying in the wada. She was not in a position to speak or identify the persons. She was taken to the hospital of one Dr. Rakh. The informant had also noticed foul smell of poison from the mouth of the deceased at the time of taking her to the hospital. From Rakh hospital, she was taken to Mutha hospital for scanning. However, she died in the hospital.

c. On the basis of the complaint lodged by the informant, crime came to be registered for the offences punishable under Sections 302, 498A, 201 r/w Section 34 of IPC. Charge was framed against the accused. All of them pleaded not guilty and claimed to be tried. The prosecution has examined in all eight witnesses to substantiate the charge levelled against the accused. The defence of the accused was of denial. According to them, on the day of incident, all of a sudden the deceased felt giddiness and she fell on the ground when accused nos. 2 and 3 were in the house. Accordingly, they gave a

message to the parents who were residing at a short distance from their house. The deceased was immediately shifted from their house to an expert Doctor. However, she died. All the relatives of the deceased were present and they did not consent for postmortem (PM) examination and therefore funeral was performed. They have been falsely implicated in the case.

d. After recording statements of the accused under Section 313 of Criminal Procedure Code, 1973 and after hearing both sides, learned Additional Sessions Judge acquitted all the accused of the offence punishable under Sections 302, 201, 498A r/w 34 of IPC.

3. This Court, by order dated 03.02.2006, granted Rule only for the offence punishable under Section 498A r/w 34 of IPC against respondent nos. 2 to 5-original accused. Thus, it is required to be seen whether or not the learned Judge of the trial court has rightly acquitted the accused of the offence punishable under Section 498A r/w 34 of IPC.

4. Learned counsel for the applicant/original complainant submits that evidence of PW1 Bhagwan (father of deceased) and PW3 Shantabai (mother of deceased) is reliable, trustworthy and

consistent. Both of them have deposed about the ill treatment being extended to the deceased, as disclosed to them by her, on account of non-fulfillment of the said demand of Rs.10,000/-. The deceased was subjected to beating, starvation etc. PW4 Arun - brother-in-law of the informant has also corroborated the prosecution story about the ill treatment being extended to deceased at her matrimonial home. Learned counsel submits that there was an unlawful demand of cash amount for starting a garage and deceased was subjected to various types of ill treatments on account of non-fulfillment of the said demand. Though there is sufficient evidence about cruelty as defined under Section 498A of IPC against the accused, the learned Judge of the trial court has erroneously acquitted them.

5. None present for respondent nos. 2 to 5.

6. I have also heard learned APP for the respondent-State.

7. On careful perusal of the evidence of PW1 Bhagwan, it appears that he has deposed that the accused treated the deceased Kalpana well for about one and half months. Thereafter, they started ill-treating her. They used to beat her and compel her to get

up at 4.00 a.m. Otherwise, they used to give her a kick blow. According to PW1 Bhagwan, he has stated before the police that the accused was not providing food to the deceased and used to give her kick blows if she did not wake up at 4.00 a.m. However, when he was confronted with the contents of the FIR Exhibit 30, he could not explain as to why the same is not appearing in the FIR. It thus appears that PW1 Bhagwan has exaggerated the prosecution story by making additions about the type of ill-treatment being extended to deceased. It is pertinent that PW3 Shantabai was however silent about this type of ill-treatment. She has deposed that deceased used to tell them about the ill-treatment and the demand of amount and accordingly they called all the accused and requested them not to ill-treat the deceased and also promised them to pay the amount. PW4 - brother-in-law of the informant has brought an altogether different story. According to him, after marriage, deceased was treated well for about two to three months. It is to be noted here that the time span is very little and it is not clear as to what happened during the remaining period of two months. He has only deposed that the parents of deceased disclosed to him that the deceased was ill-treated by the accused persons on account of certain demand. PW7 Balaji, who happened

to be the minor brother of the deceased, has deposed that after marriage, the accused was not providing food to the deceased. On the day of the incident, deceased met him and asked him to meet her after the school time was over. She wanted to give some message to him, however, there are no further details as to what she wanted to convey to him. He has come with an altogether different story by deposing that after marriage, deceased was not provided food by the accused. Thus, the evidence is insufficient and unsatisfactory so as to attract the ingredients of Section 498A of IPC. PW1 Bhagwan has improved the story and his exaggerated version cannot be accepted. Furthermore, there is delay of four days in lodging the complaint. Had there been any ill-treatment, as deposed by these witnesses, being extended to the deceased, they would not have waited for four days to lodge the complaint. It is also part of the evidence that PW1 Bhagwan has not given his consent for postmortem examination and as such, there is no certificate mentioning the cause of death. Consequently, learned Judge of the trial court was constrained to record a finding to the effect that there is no evidence at all about the homicidal death as alleged by the prosecution. Though PW1 Bhagwan has tried to explain his conduct and behaviour, the learned Judge of the trial

court has discarded the same for the reason that if at all deceased was subjected to cruelty on account on non-fulfillment of certain demand, PW1 Bhagwan would not have given consent for claiming the dead body of his daughter without there being a postmortem examination. Furthermore, even though PW1 Bhagwan has deposed about the form of ill-treatment as disclosed to him by the deceased, no details about the same are given by him. In fact, the span was very little. Had there been any ill-treatment as deposed by PW1 Bhagwan, it would have been easier for him to specify the events as far as the said ill-treatment extended to the deceased is concerned. Furthermore, surprisingly PW3 Shantabai is silent about the form of cruelty the deceased was subjected to on account of non-fulfillment of the said demand of cash amount of Rs.10,000/-.

8. In the case of *Ravindra Pyarelal Bidlan and others vs. State of Maharashtra*, reported in *1993 Cri.L.J. 3019*, this Court (Coram : A.C. Agarwal,J.) in para 25 and 26 of the judgment, has made the following observations:

“25. The learned Judge of the trial court has already found the accused not guilty the offences under S. 306 of the Indian Penal Code and has acquitted the accused. He has found that the prosecution has failed to make

goods its cause in respect of cruelty as explained under Clause (a) of S. 498A, I.P. Code. He has based his order of conviction on the cruelty as explained in clause (b) of S. 498A, I.P. Code. Section 498A provides that when a husband or a relative of the husband of a woman subjects such woman to cruelty he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. The term cruelty has been defined in the explanation to S. 498A. Hence, it is not any and every cruelty that it is made punishable but only the cruelty as defined under the explanation. Explanation (a) provides that cruelty means any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Hence, under Clause (a) the cruelty has to be of such a gravity as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. If cruelty is by itself established and the fact of suicide is also established, it would not be sufficient to bring home the guilt of committing cruelty as defined in explanation (a). A reasonable nexus had to be established between the cruelty and the suicide in order to make good the offence of cruelty. Alternately, the cruelty established has to be of such a gravity as is likely to drive a woman to commit suicide etc. If suicide is established it has further to be established that it was occasioned on

account of cruelty which was of sufficient gravity so as to lead a reasonable person placed in similar circumstances to commit suicide. Since the trial Court has found the evidence in this behalf wanting it is not necessary to dilate further on his matter.

26. Sub-clause (b) of the explanation to S. 498A provides that cruelty means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Sub-clause (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet an unlawful demand. Hence, mere harassment by itself is not cruelty. Mere demand for property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this is made punishable under the section. In other words, it is not every harassment or every type of cruelty that would attract Section 498-A. It must be established that the beating or harassment was with a view to force the wife to commit suicide or to fulfill illegal demands of the husband or the in-laws.”

9. In the case of ***State of Maharashtra vs. Ashok Chotelal Shukla*** reported in ***AIR 1997 SC 3111***, the Supreme Court in para 31 of the judgment has made the following observations:

“31. Even with respect to the evidence of harassment and cruelty, the High Court has held that it is insufficient for holding that Vibha was driven to commit suicide because of harassment and cruel treatment by the respondent. The fact that after the incident of 26.11.1983 the respondent had approached Vibha and her parents on the very next day and apologized and no other incident either of demand of money or ill treatment had taken place after that date makes it doubtful if harassment and cruel treatment given by the respondent was the immediate cause of committing suicide. Before a person can be convicted under Section 498A, IPC the prosecution has to prove that he committed acts of harassment of cruelty as contemplated by that Section and that harassment or cruelty was the reason for the suicide. What we find in this case is that no specific charge was framed against the respondent. As rightly pointed out by the High Court no evidence was led to show that either her separation from Rachna or the incident of 26.11.1983 had weighed heavily on her mind and that had driven her to commit suicide. Neither the parents nor the sister of Vibha have deposed about any complaint made by her regarding any ill treatment by the

respondent after the incident of 26.11.1983. Moreover, the evidence of these witnesses show that Vibha was to go to her in laws place at Dadar and stay with them as she was not keeping good health. If she was under mental strain because of any ill treatment or harassment by the respondent or her in laws she would have preferred to go and stay with her parents. These are the factors which were taken into consideration by the High Court for arriving at the conclusion that the prosecution has failed to establish beyond reasonable doubt that Vibha committed suicide because of ill treatment or cruelty by the respondent. The view taken cannot be regarded as unreasonable.”

10. In view of the discussion in the foregoing paragraphs and the ratio laid down by the Supreme Court and also by this Court, I find that the prosecution has failed to establish beyond reasonable doubt that deceased Kalpana was subjected to ill-treatment or cruelty by the respondents. The view taken by the learned Judge of the trial court cannot be regarded as unreasonable.

11. In the case of ***Kali Ram vs. State Of H.P.***, reported in ***AIR 1973 SC 2773***, the Supreme Court observed that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which

is favorable to the accused should be adopted.

12. In the case of *Subramaniam vs State Of Tamil Nadu & Another*, reported in *AIR 2009 SC (Suppl) 1493*, while dealing with the appeal against acquittal, the Supreme Court held that the appellate court not to interfere when two views are possible and when the view taken by the trial court not wholly unreasonable or otherwise perverse. In the instant case, I do not find that the view taken by the learned Judge of the trial court is unreasonable or otherwise perverse.

13. 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."

14. In the instant case, I do not find that the judgment and order of acquittal suffers from any glaring illegality or has caused miscarriage of justice. In view of the same, no interference is required. The learned Judge of the trial court has rightly acquitted the accused of the offence punishable under Section 498-A r/w 34 along with other penal sections. Hence, the following order:

ORDER

I. The Criminal Revision Application is hereby dismissed.
No costs.

II. Rule stands discharged.

(V. K. JADHAV, J.)