

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.83 OF 2005

Vimalbai w/o Sitaram Prajapati
Age 45 years, Occ. Labour
R/o. Near Sindhipura Gate,
Alamganj, Barhanpur
(Madya Pradesh)

...Applicant

versus

1. The State of Maharashtra
Through Police Inspector
Amalner Police Station,
(Copy to be served on Public
prosecutor of High Court of Bombay
Bench at Aurangabad)

2. Prakash @ Nana s/o Kashinath Kumbhar
Age 36 years, Occ. Business,
R/o. Patonda, Ta. Amalner,
District Jalgaon

3. Sundarlal s/o Kashinath Kumbhar
Age 37 years, Occ. Agriculture
R/o. As above

4. Mrs. Sayabai w/o Kashinath Kumbhar
Age 59 years, Occ. Household
R/o. As above

...Respondents

.....
Mr. Ravindra C. Misal h/ Mr. S.S. Patil, advocate for applicant
Mr. V. M. Kagne, A.P.P. for respondent No.1
Mr. A. N. Ayachit h/f Mr. K.C. Sant, advocate for respondent Nos. 2 to 4.
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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 dated 8.12.2004 passed by the learned Ad-hoc Assistant Sessions Judge, Amalner in Sessions Case No. 25 of 2003

2. Brief facts of the prosecution story are as under:-

a) On 22.12.2000 the marriage of deceased Ratnabai was solemnized with accused Prakash. After about a month of marriage, deceased Ratnabai was sent for cohabitation at the house of accused persons. At the time of Holi festival, when she was brought to the parental house, she told that she was being ill-treated by the accused persons on account of demand of golden ornament i.e. *Panchali*. She had also disclosed that she was subjected to pinching words delivered by the accused persons on account of trifling reasons. P.W.1 Vimalbai then prepared a *Panchali* for Ratnabai and sent her to matrimonial house. At the time of *Akshaya Trutiya*, deceased Ratnabai was again brought to her parental house. At that time also she narrated the instances of ill-treatment on account of demand of golden ring raised by accused Prakash. However, at that time P.W.1 Vimalbai gave understanding to deceased Ratnabai and sent her to matrimonial home for cohabitation. Prior to 15 days of death of Ratnabai, she alongwith accused No.1 Prakash had been to her parental house. At that time, her husband demanded a golden

ring to P.W.1 Vimalbai. P.W.1 Vimalbai gave promise and both of them returned to their home.

b). It further reveals that in the night of 7.7.2001, when deceased Ratnabai was at her matrimonial house, at about 1.00 hour she was found unwell and in convulsion. The froth was also found coming from her mouth. She was immediately taken to the hospital for treatment. But ultimately she died. Initially, the concerned police station has registered a case as accidental death. However, after post mortem examination, the concerned doctor has opined that deceased Ratnabai died due to poison. In the chemical analyzer's test, the poison was detected. In the evening of 7.7.2001 P.W.1 Vimalbai lodged a complaint Exh.24 with the concerned police station charging the accused that they have subjected the deceased Ratnabai with cruelty for non fulfillment of unlawful demand of golden ring. It has been alleged that due to continuous ill-treatment at their hands, deceased Ratnabai had committed suicide by consuming poison. On the basis of the said complaint, the police registered the offence against accused persons and after due investigation, the investigating officer has submitted charge sheet against the accused persons.

c) The learned Ad-hoc Assistant Sessions Judge, Amalner has

framed the charge Exh.17 against the accused persons for the offences punishable under Sections 306, 498-A r.w. 34 of I.P.C. The contents of the charges were read over and explained to each of the accused to which all of them pleaded not guilty and claimed to be tried. The prosecution has examined in all 8 witnesses to substantiate the charges levelled against them. It is the defence of the accused persons that deceased Ratnabai was not married with accused No.1 Prakash. She, with consent of her mother and relatives, started residing at the house of accused persons, in the capacity as keep of accused No.1 Prakash. They have denied to have ill-treated her on account of non fulfillment of unlawful demand etc. After recording the statements under Section 313 of Cr.P.C. and after hearing both the sides, the learned Ad-hoc Assistant Sessions Judge, Amalner, by judgment and order dated 8.12.2004 acquitted the accused Nos. 1 to 3-respondent Nos. 2 to 4 herein of the offences punishable under Sections 498-A, 306 r.w. 34 of I.P.C. Thus, P.W.1 Vimalbai has preferred this criminal revision application.

3. Learned counsel for the applicant submits that the learned Judge of the trial court has wrongly concluded and recorded the findings in negative to point No.2 to the effect that the prosecution failed to prove that accused Prakash was the husband of deceased Ratnabai. Though P.W.1, P.W.2 and P.W.4 have deposed that

deceased Ratnabai was given in marriage to accused Prakash and after marriage, deceased Ratnabai started cohabitation in her matrimonial home as wife of accused Prakash, however, the learned Judge of the trial court has ignored the said evidence. The accused have produced certified copies of the proceedings instituted by Pramilabai, the legally wedded wife of accused Prakash. The said documents came to be produced alongwith Exh.54, including the certified copy of Misc. petition filed for maintenance by Pramilabai against the accused Prakash, before the court at Nandurbar and another copy is the reply filed by accused Prakash to the said petition. Furthermore, there is copy of criminal case No. 124 of 2001 instituted by said Pramilabai against accused persons and others for having committed the offence punishable under Section 494 of I.P.C. P.W.1 has denied about the knowledge of marriage of Pramilabai with accused Prakash and further shown her ignorance about the said proceedings. The learned counsel submits that the obvious object of Section 498-A of I.P.C. is to prevent the harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim. The accused No.1 Prakash, who entered into the marital relationship with the deceased Ratnabai now cannot be allowed to take shelter to contend that since there was no valid marriage the question of dowry does not arise.

4. Learned counsel for the applicant submits that it would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under colour of such proclaimed status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions. The learned counsel in order to substantiate his contention, placed his reliance on the judgment of the Supreme Court in the case of ***Reema Aggarwal vs. Anupam and others, reported in AIR 2004 SC 1418***. Learned counsel submits that deceased Ratnabai was subjected to ill-treatment on account of non fulfillment of demand of golden ring. Deceased Ratnabai died within 6/7 months of her marriage. Thus, the presumption under Section 113-A of Evidence Act stands attracted. The prosecution has succeeded in establishing the factum of cruelty as defined under Section 498-A of I.P.C. and the learned Judge of the trial court ought to have convicted the accused by applying the presumption under Section 113-A of the Evidence Act for the offences punishable under sections 306 and 498-A r.w. 34 of I.P.C.

5. Learned counsel for the respondents-accused submits that the accused persons have placed on record various documents alongwith the list Exh.54, which unmistakably indicate that one Pramilabai was the legally wedded wife of accused Prakash. P.W.1

and P.W.4 were aware about the family of accused persons and as such, it cannot be therefore, said that it was not within the knowledge of the complainant about the marital status of accused No.1 Prakash. The documents placed alongwith list Exh.54 cannot be ignored if at all deceased Ratnabai was staying with accused Prakash as his keep, provision of Section 498-A of I.P.C. are inapplicable. Further, learned counsel submits that there is absolutely no evidence as to in which manner deceased Ratnabai was subjected to ill-treatment/coercion on account of non fulfillment of unlawful demand of golden ring. Learned counsel submits that the prosecution witnesses have also admitted that there is tradition in their community to offer golden ring on *Akshaya Trutiya*. So far as the first demand of *Panchali* is concerned, it is also a tradition in the community and P.W.1 Vimalbai has fulfilled the same. Thus, there was no occasion for giving harassment on account of non fulfillment of the said demands. So far as further demand of golden ring is concerned, there is absolutely no evidence as to how and in what manner deceased Ratnabai was subjected to ill-treatment on account of non fulfillment of said demand. Learned counsel submits that there must be a reasonable nexus between the cruelty and suicide. Mere proof of suicide is not sufficient. Learned counsel submits that on mere demand of property etc. by itself is also not cruelty as defined under Section 498-A of I.P.C. It is only where harassment is shown

to have been committed for the purpose of coercing a woman to meet the demand that is cruelty and this is made punishable under Section 498-A of I.P.C.

Learned counsel for the respondents-original accused, in order to substantiate his submissions, placed reliance on the following cases:-

- i) Ravindra Pyarelal Bidlan and others vs. State of Maharashtra, reported in 1993 CRI.L.J. 3019,
- ii) State of Maharashtra vs. Ashok Chotelal Shukla, reported in AIR 1997 SC 3111

6. I have also heard learned A.P.P. for the respondent No.1 State.

7. So far as the findings recorded by learned Judge of the trial court to point No.2 are concerned, it appears that the approach of the learned Judge is not proper, correct and legal. The accused persons have not denied specifically about solemnization of marriage of accused Prakash with deceased Ratnabai. It is also not denied that deceased Ratnabai started cohabiting with accused Prakash in his house after the said marriage. After death of Ratnabai, in order to avoid further consequences, the accused persons seems to have

raised the defence by producing various documents on record that accused Prakash was married with one Pramilabai and their marriage was still subsisting.

8. In the case of ***Reema Aggarwal vs. Anupam and others (supra)***, relied upon by learned counsel for the applicant, the Supreme Court in para 18 of the judgment has made the following observations:-

"18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry

does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions- Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature.

The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

The Supreme Court has observed that a person who enters into a marital arrangement cannot be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC. In the instant case, the accused persons have denied the status of deceased Ratnabai as wife of accused No.1 Prakash only to avoid legal consequences, likely to be faced by them on account of her untimely death. If the legal status of deceased Ratnabai as wife of accused Prakash is accepted then the prosecution evidence is to be scanned in the light of provisions of Section 498-A of I.P.C. and Section 113-A of Evidence Act.

9. The prosecution witnesses have admitted that there is tradition

in their community of offering *Panchali* immediately after the marriage and one golden ring at the time of *Akshaya Trutiya*. So far as offering of ornaments popularly known as *Panchali* in the said community is concerned, same has been provided and there are no allegations that deceased Ratnabai was subjected to any coercion or any further ill-treatment on account of said demand. So far as the demand of golden ring is concerned, it appears that the span is very little. Deceased Ratnabai died within 6/7 months of her marriage. It has come in the evidence that one and half month after the marriage deceased Ratnabai had been to parental house, where she had disclosed about demand of golden ring. Some 15 days prior to death, when she had been to her parental home, alongwith accused No.1 Prakash, at that time accused Prakash demanded a golden ring. Apart from the said demand made by accused Prakash, it is to be noted here that accused No.1 Prakash alongwith deceased Ratnabai went to her matrimonial home. In the backdrop of these facts, it is necessary to find out as to what sort of harassment or ill-treatment deceased Ratnabai was subjected on account of non fulfillment of the demand. There is no evidence at all as to in which manner deceased Ratnabai was subjected to ill-treatment on account of non fulfillment of the said demand of a golden ring.

of Maharashtra, (supra) relied upon by learned counsel for respondents-accused, in para 25 and 26, this court 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 good its case 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 this 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.”

11. In the case of ***State of Maharashtra vs. Ashok Chotelal Shukla (supra)*** relied upon by learned counsel for respondents-accused, 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 or 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.”

In the above case, the Supreme Court has observed that there is no instance of either demand of money or ill-treatment shown to have taken place. In the backdrop of the said facts, the Supreme court has observed that before a person can be convicted under Section 498A of I.P.C. the prosecution has to prove that he committed acts of harassment or cruelty as contemplated by that section and that harassment or cruelty was the reason for the suicide. In my considered opinion, the prosecution has failed to prove the cruelty as defined under Section 498-A of I.P.C.. Consequently, the presumption under Section 113-A of the Evidence Act is inapplicable. It appears that the prosecution has failed to prove beyond reasonable doubts that deceased Ratnabai has committed suicide because of cruelty and harassment by the husband. The view taken by the trial court cannot be said to be unreasonable.

12. The interference with the order of acquittal passed by the trial court is limited to some extent i.e. (i) order under revision suffers from glaring illegalities, (ii) or has caused miscarriage of justice, (iii) or where the trial court has illegally shut the evidence which otherwise ought to have been considered, (iv) or where the material evidence which clinches the issue has been

overlooked, (v) or where the admissible evidence is wrongly brushed aside as inadmissible.

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 my opinion, the learned Judge of the trial court has not committed any error of law in acquitting the accused persons. The judgment and order of acquittal does not suffer from any glaring illegalities or has caused any miscarriage of justice. I find no merit in the criminal revision application. Hence, the Criminal revision application is dismissed.

15. Rule discharged.

(V. K. JADHAV, J.)

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