

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 88 OF 2005

Vasant s/o Zabarmal Soni,
Age 57 years, Occ. Service
R/o. Deshpande Galli,
Malkapur, Tq. Malkapur
District Buldhana

...Applicant
(Ori. Complainant).

Versus

1. The State of Maharashtra
Copy to be served through
Assistant Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad
2. Ramesh s/o Satyanarayan Varma
Age 24 years, Occ. Business
R/o. Nilkantha Housing Society,
Behind Market Yard, Ahmednagar
Tq. And District Ahmednagar
3. Satyanarayan @ Satish s/o Madhavlal
Varma, Age 55 years,
Occ. Business, R/o. As above
4. Shardabai w/o Satyanarayan Varma
Age 48 years, Occ. Household
R/o. As above
5. Bharti d/o Satyanarayan Varma,
Age 20 years, Occ. Education
R/o. As above
6. Santosh s/o Vinodlal Mutha
Age 30 years, Occ. Business
R/o. Barde Galli, Bhingar
Tq. And District Ahmednagar

...Respondents
(Ori. Accused)

.....
Mrs. Renuka V. Ghule, advocate for the applicant-complainant
Mr. P.K. Lakhotiya, A.P.P. for respondent No.1
Mr. S.S. Jadhavar, advocate for respondents-accused.
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CORAM : V. K. JADHAV, J.
DATED : 6th FEBRUARY, 2019

ORAL JUDGMENT:-

1. The applicant-original complainant has preferred this criminal revision application against the judgment and order of acquittal passed by learned 4th Ad-hoc Assistant Sessions Judge, Ahmednagar by order dated 20.10.2004 in Sessions Case No. 119 of 2004.

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

a) Deceased Shital was given in marriage to accused No.1 on 15.2.2002. The said marriage was solemnized in the engagement ceremony itself. After the marriage, deceased Shital had started cohabiting with accused No.1 alongwith other accused persons, who were residing jointly in the rental premises. After the marriage, accused No.1 had hired one room for himself and deceased Shital. Deceased Shital was treated well for about one year after the marriage. Thereafter, accused Nos. 1 to 4 started taunting by saying that she could not perform the domestic work properly and also by taxing her to discharge entire domestic work. Accused Nos. 1 to 4 had no phone facility. P.W.2 Mangal, mother of deceased Shital, used to make phone calls from Malkapur at the home of neighbours

of accused persons, viz. Dr. Katariya and Zaware. P.W.1 had undergone heart operation in the year 1999 and thus deceased Shital was not informing him about the ill-treatment. The incident in question had taken place on 22.4.2004 at about 11.00 p.m. However, prior to 15 days of the said incident, accused No.3 met with some accident and she had sustained fracture injury to her hand and hence she was hospitalized. Therefore, accused No.1 used to stay with accused No.3 in the hospital. Accused No.3 has ill-advised to accused No.1 to torture Shital and accordingly accused No.1 tortured her by taunting, abusing and sometimes by assaulting. Deceased Shital had informed about said ill-treatment and torture to her mother and brother (P.W.2 and 4 respectively) over phone. On 22.4.2004 deceased Shital had committed suicide by hanging herself to the fan. On the basis of the complaint lodged by P.W.1-father of deceased Shital on 23.4.2004, crime No. 72 of 2004 came to be registered for the offences punishable under Sections 498-A, 306 r.w. 34 of I.P.C. in the concerned police station. Even accused No.1 had also given occurrence report Exh 50 to the concerned police station about commission of suicide by Shital in the dwelling house. Hence, A.D. No. 24 of 2004 came to be registered on the basis of the said report Exh.50. After registration of crime, investigating officer has carried out investigation and on conclusion of the same, submitted charge sheet against the accused persons for the offences punishable under

Sections 498-A, 306 r.w. 34 of I.P.C. During the course of investigation, the investigating officer collected chit, found on the spot, purported to have been written by deceased Shital. The investigating Officer has collected admitted handwriting in the form of two notebooks and loose papers and sent it to the hand writing expert.

b) The learned 4th Ad-hoc Assistant Sessions Judge, Ahmednagar has framed charge against all accused for the offences punishable under Sections 498-A, 306 r.w. 34 of I.P.C. All accused persons pleaded not guilty to the said charge and claimed to be tried. The prosecution has examined in all 7 witnesses to substantiate the charges levelled against the accused. The defence of the accused No.5 is that he has only business relations with accused No.1. He is of Jain Marwadi community and accused Nos. 1 to 4 are of Kshetriya Sonar community. He has been falsely involved in the case. Accused Nos. 1 to 4 in their separate defence statement have furnished documents with a list at Exh.58 viz. medical prescription and hand writing of Shital and more particularly her signature in English so as to compare the same with the chit found at the spot while preparing spot panchanama. It is the defence of the accused persons that deceased Shital was in nervous state of mind as she could not conceive a child even though she was taking treatment for the same.

There was no ill-treatment of any sort to deceased Shital and because of nervous state of mind, Shital might have committed suicide.

c) After recording the statements of accused persons under section 313 of Cr.P.C. and after hearing both sides, the learned 4th Ad-hoc Assistant Sessions Judge, Ahmednagar, by judgment and order dated 20.10.2004 in Sessions Case No. 119 of 2004 had acquitted accused Nos. 1 to 5 of the offences punishable under sections 498-A, 306 r.w. 34 of I.P.C. Hence, this criminal revision application.

3. Learned counsel for the applicant-original complainant submits that the evidence of P.W.2 Mangal (mother of the deceased Shital), P.W.3 Suresh (maternal uncle of deceased) and P.W.4 Kalpesh (brother of deceased) is consistent, reliable and trustworthy. They have consistently deposed before the court that deceased Shital had disclosed to them about ill-treatment being extended to her on account of domestic work and also she was subjected to taunting which has caused mental harassment to her. Learned counsel submits that deceased Shital died within 7 years of her marriage and the prosecution has succeeded in proving the cruelty as defined under Section 498-A of I.P.C. Thus, the presumption

under Section 113-A of the Evidence Act is attracted in the facts and circumstances of the present case. The prosecution has thus proved that the accused persons have abetted commission of suicide of deceased Shital. The accused are thus liable to be convicted for the offences punishable under Section 498-A, 306 r.w. 34 of I.P.C.

4. Learned counsel for the respondents-original accused submits that P.W. 2 to 4 are highly interested witnesses. P.W.4 Kalpesh has exaggerated the prosecution story by deposing that accused No.1 was addicted to liquor and under the influence of liquor, used to assault deceased Shital. Even he has brought a new story that the accused had demanded cash from Shital and from him and accordingly, Shital had insisted upon him to pay the amount. However, the prosecution story on the other hand, does not rest upon any of such demand and assault on deceased Shital on account of non-fulfillment of demand or that the deceased Shital was subjected to beating by the accused No.1 under the influence of liquor. Learned counsel submits that there is no evidence at all about the manner of ill-treatment being extended to deceased Shital. Though there are general allegations about taunting, however, the specific words have not been re-produced before the Court. Consequently, there is no evidence as to whether the said taunting has resulted into causing mental harassment to deceased. Learned counsel submits that so far

as the allegations about ill-treatment being extended to deceased Shital on the ground that she was not performing domestic work properly, the learned Judge of the trial court has observed that it was a small family consisting of four members and further there was a maid servant in the house. P.W.2 Mangal has not denied that deceased Shital was undergoing the treatment for non-conceiving child and she was nervous on account of non-conceiving of child. Learned counsel submits that the trial court has rightly acquitted the accused. No interference is required. There is no substance in this criminal revision application. Criminal revision application is thus liable to be dismissed.

5. I have also heard the learned A.P.P for the respondent-State.

6. On careful perusal of prosecution evidence, it appears that the prosecution case mainly rests upon the evidence of P.W. 2 to 4. It is to be noted here that there was no demand of any household articles or any cash amount from deceased Shital and her parents. On careful perusal of the evidence, it appears that they have not deposed as to in which manner deceased Shital was subjected to ill-treatment. Though they have deposed about taunting by the accused persons on some small issues with regard to domestic work to deceased Shital, however, exact words have not been reproduced

by deceased Shital to them. Consequently, it is difficult to infer that deceased Shital was subjected to mental harassment caused by such taunting. Furthermore, P.W.2 to 4 have deposed that deceased Shital was subjected to ill-treatment on the count that she was not doing the domestic work properly. Admittedly, there was maid servant in the house of accused for doing the domestic work and an electric motor was also installed for lifting the water. It was small family consisting of four persons. The learned Judge of the trial court has therefore, rightly observed that there was no question of taxing deceased Shital to discharge entire domestic work and she was subjected to ill-treatment for not doing the domestic work properly.

7. Furthermore, P.W.2 Mangal has admitted that during the course of phone talks, deceased Shital informed her that she could not bear child after one year of marriage though she had taken medical treatment from Dr. Hoshing of Ahmednagar and Dr. Sangamnerkar of Pune. On the basis of the admission given by P.W.2 Mangal, an inference could be drawn that deceased Shital could not bear child even after one year of the marriage. Deceased Shital was treated well for near about one year of the marriage. So there appears some substance in the defence raised by accused Nos. 1 to 4 that deceased Shital was in nervous state of mind on account of non-conceiving the child. Though P.W.2 Mangal has not

admitted, however, inference could be drawn that deceased Shital was nervous on that count. Furthermore, deceased Shital got annoyed since her parents did not visit her matrimonial home even though accused No.3 came to be admitted in the hospital when she sustained fracture injury. The learned Judge of the trial court has thus rightly observed that there is no satisfactory evidence about cruelty as defined under Section 498-A of I.P.C.. Though deceased Shital died within 7 years of the marriage, however, the prosecution has miserably failed to prove the charge under Section 498-A of I.P.C. and as such presumption under Section 113-A of the Evidence Act is inapplicable to the facts and circumstances of the present case. Otherwise also, the said presumption under Section 113-A of Evidence Act is inapplicable owing to some other facts as deceased Shital was not subjected to ill-treatment on account of non-fulfillment of any unlawful demand. The prosecution witnesses had not deposed about the severity of ill-treatment being extended to the deceased. The prosecution evidence is silent as to the manner in which deceased Shital was subjected to ill-treatment. It is difficult to accept the prosecution story that deceased Shital had committed suicide because of taunting and taxing of domestic work.

8. Interference with the order of acquittal passed by the trial court is limited to exceptional cases such as, order under revision

suffers from glaring illegalities, or has caused miscarriage of justice, or the trial court has illegally shut the evidence which otherwise ought to have been considered, or where the material evidence which clinches the issue has been overlooked or where the admissible evidence is wrongly brushed aside as inadmissible.

9. 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. On going through the judgment and order of acquittal, I do not find any glaring illegalities or miscarriage of justice. The learned A.P.P. has placed before this court the judgments of the Supreme Court in following two cases :-

- I) Kali Ram vs. State of H.P. reported in AIR 1973 SC 2773
- ii) Subramaniam vs. State of T.N. reported in AIR 2009 SC (Supp) 1493

11. In the aforesaid two cases, the Supreme Court has observed

that in the appeal against acquittal, the appellate court should not interfere when two views are possible and if the view taken by the trial court not wholly unreasonable or otherwise perverse. In the instant case, on the basis of the prosecution evidence, the view taken by the trial court does not appears to be unreasonable. I do not find any perversity in the order of acquittal passed by the trial court. In view of the same, I find no substance in this criminal revision application. Hence, the following order:-

O R D E R

Criminal revision application is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

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