

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.90 OF 2005

Shivaji Kadu Chinchole,
Age-53 years, Occu:Service,
R/o-Arunodaya Colony, Chopda,
Tq-Chopda, Dist-Jalgaon.

...APPLICANT
(Orig. Complainant)

VERSUS

- 1) Champalal Bhagwan Borse,
Age-26 years, Occu:Service,
- 2) Bhagwan Bhoju Borse,
Age-59 years, Occu:Agri.,
- 3) Deepak Bhagwan Borse,
Age-24 years, Occu:Agri.,
- 4) Sou. Gangubai W/o Bhagwan Borse,
Age-54 years, Occu:Agri.,

All are resident of At Post-Gorgawale,
Tq-Chopda, Dist-Jalgaon.

(Ori. Accused)

- 5) The State of Maharashtra,
Through PSI Police Station,
Adawad, Tq-Chopda,
Dist-Jalgaon.

...RESPONDENTS

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Mr. Vijay B. Patil Advocate for Applicant.

Mrs. A.S. Jadhav Advocate appointed for
Respondent Nos.1 to 4, **Absent**.

Mr. S.Y. Mahajan, A.P.P. for Respondent No.5.

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CORAM: V.M. DESHPANDE, J.

DATE : 19TH MARCH, 2019

ORAL JUDGMENT :

1. By this Revision, the complainant, Shivaji, father of deceased Rekha is challenging the Judgment and order of acquittal passed by Ad-hoc Assistant Sessions Judge, Amalner on 21st December, 2004, in Sessions Case No.35 of 2001. By the said Judgment and order of acquittal, the Court below acquitted Respondent Nos.1 to 4 for the offence punishable under Section 498-A, 304-B of the Indian Penal Code, and even alternatively under Section 306 of the Indian Penal Code.

2. Against the acquittal, Respondent No.5 – the State of Maharashtra chose not to prefer any

appeal questioning the correctness of the Judgment of acquittal.

3. I have heard Shri P.B. Patil, the learned counsel for the Applicant and Shri S.Y. Mahajan, the learned Additional Public Prosecutor for Respondent No.5 – State. The learned counsel for Respondent Nos.1 to 4 appointed by this Court vide order dated 7th February, 2019 (CORAM: V.K. JADHAV, J.), chose not to remain present before the Court. Consequently, Respondent Nos.1 to 4 are not represented before this Court during the course of hearing of this Revision.

4. By now, the law is well crystallized in respect of the powers of the appellate Court exercising the appellate powers to interfere with the Judgment and order of acquittal passed by the trial Court. Merely because the another view is possible, the appellate Court does not substitute

its own view in place of the view taken by the trial Court, unless it is observed by the appellate Court that the approach of the learned Judge of the Court below is perverse one and/or the admissible evidence is not considered by the Court below. Insofar as the powers of the revisional Court are concerned, the scope is much narrower than the appellate powers. Unless and until glaring mistakes are noticed in the impugned order and/or error apparent on the face of record is noticed, the revisional Court will not step in while upsetting the order passed by the Court below.

5. Keeping the aforesaid principles in mind, let us scrutinize the case of the prosecution, as to whether this Court can exercise revisional jurisdiction to upset the Judgment and order of acquittal passed by the Court below.

6. PW-7 Dagekha Tadavi, the ASI was attached with police station Adawad in the year 2001. He was discharging his duties at the said police station from 20.00 hours of 13th May, 2001 till 8.00 hours of 14th May, 2001. During his duty period, Shivaji Chinchole (PW-1) came to police station and lodged his oral report. PW-7 Dagekha recorded the complaint (Exhibit-46) as per the narration of Shivaji. He registered the offence vide C.R. No.22 of 2001 for the offence punishable under Section 306, 498-A, 323, 504, 506 read with 34 of the Indian Penal Code. He handed over the investigation to API Deshmukh, who conducted part of the investigation. The part of the investigation was done by PW-8 Ashok Sadare, and after the completion of the investigation, he presented final report under Section 173 of the Code of Criminal Procedure, before the learned jurisdictional Magistrate.

7. The learned jurisdictional Magistrate found that the offence is exclusively triable by the Court of Sessions, therefore, he committed the case to the Court of Sessions. After the case was committed to the Sessions Court, it was registered as Sessions Case No.35 of 2001 and it was made over to the file of Ad-hoc Assistant Sessions Judge, Amalner. The said learned Judge framed the charge against Respondent Nos.1 to 4 herein for the offence punishable under Section 498-A, 304-B of the Indian Penal Code, and in the alternative, he also framed charge under Section 306 of the Indian Penal Code. The accused persons abjured the guilt and prayed for their trial. In order to bring home the guilt of the accused persons, the prosecution examined in all eight witnesses, and also relied on various documents duly proved during the course of the trial. After the full-fledged trial, the Court below passed the impugned Judgment.

8. As observed in the opening paragraphs of this Judgment, though the accused persons were acquitted, State chose not to prefer any appeal and it is the complainant who has preferred the present Revision.

9. During the course of the trial, one of the defence of the accused persons was that deceased Rekha met with accidental death. According to them, when she was in agricultural field, and when she was spraying insecticides, she felt giddiness, therefore she was taken by accused Nos.2 to 4 to the house and thereafter she was taken to the hospital and gave some preliminary treatment, however, before she was taken to hospital at Chopda, she expired. No defence witness was examined by the accused persons.

10. The learned Judge of the Court below disbelieved the theory of accidental death and has recorded specific finding that death of Rekha, on 12th October, 2001, was suicidal in nature.

11. The learned counsel for the Applicant submits that since the defence of Respondent Nos.1 to 4 was disallowed, therefore, the Court below ought to have convicted the accused persons for abetting Rekha to commit suicide. In my view, such submission cannot be accepted. It is open for the accused persons to take as many defences as they want. However, the burden is firmly rest upon the shoulder of the prosecution to prove its case beyond reasonable doubt against the accused persons. Therefore, it will have to be seen by the Court, as to whether the prosecution has proved its case beyond reasonable doubt, that due to cruelty and/or there was any abetment on the part of the accused persons to deceased Rekha, due to

which she has taken extreme step of her life.

12. Dr. Vijay Pawar (PW-6) has conducted autopsy over the dead body of Rekha. He has proved post-mortem notes (Exhibit-54). In his opinion, death was due to "Cardio-respiratory arrest due to Organophosphorus like compound poisoning". He preserved the Viscera. The C.A. Report is at Exhibit-55. It shows that traces of Organophosphorus insecticide were found in the Visera of the deceased. In that view of the matter, there cannot be any doubt in mind that the deceased died unnatural death.

13. Though it was suggested on the part of the accused persons that death is due to accident, the said was not accepted by the trial Court, and those findings are not challenged by the accused persons. Therefore, it is clear that the findings recorded by the Court below that deceased

committed suicide, has attended its finality.

14. Now, the question is, whether the prosecution has proved that the accused have abetted the said act on the part of the deceased to commit suicide.

15. According to the prosecution case, there was ill-treatment at the hands of the accused persons on the point of demand to deceased Rekha, due to which she has committed suicide.

16. The marriage of deceased was performed with accused No.1 – Champalal on 29th January, 2001 and Rekha met with unnatural death on 12th May, 2001. The learned counsel for the Applicant would submit that there is a legal presumption against the accused persons, in view of provisions of Section 113-B of the Indian Evidence Act, in view of the fact that within a span of seven years

there occurred unnatural death of Rekha, from her marriage. The law on this issue is well crystallized. Merely because the death is caused within a period of seven years from the date of marriage, ipso facto the said statutory presumption under Section 113-B of the Indian Evidence Act does not get activated. To press into service the said presumption, it is bounden duty of the prosecution to prove that deceased was subjected to cruelty. Only on successfully showing that aspect, the prosecution can place reliance on the said statutory presumption.

17. To prove the aspect of cruelty, the prosecution has examined three witnesses, they are Shivaji Chinchore (PW-1), father of the deceased, Latabai Chinchore (PW-2), mother of the deceased and Pramilabai Patil (PW-3), neighbour of Latabai.

18. The First Information Report is not the

substantive piece of evidence. It can be used either for corroboration or contradiction of its maker.

19. Evidence of Shivaji and Latabai would show that, after marriage on 29th January, 2001, deceased started residing at her matrimonial place situated at village Gorgawale. As per the evidence of Shivaji, after her marriage on two occasions Rekha visited her parental house. Evidence of Shivaji would show that during her visit, Rekha disclosed to him that she was ill-treated physically and mentally by the accused persons on account of household work. His evidence is conspicuously silent that Rekha was ill-treated on account of any type of demand. However, Latabai, the mother of deceased Rekha gives altogether different account from the witness box. She would state that when Rekha visited her parental house, she disclosed that she is being ill-treated on the

demand of her ornaments. Thus, there is variance on the part of these two important prosecution witnesses on the point of reason for giving ill-treatment to Rekha.

20. Even according to Shivaji, though certain ornaments were offered to deceased at the time of her marriage, those ornaments were kept in her parental house only. Further, though according to his evidence, it is stated to him by deceased that accused were demanding her ornaments, he is not stating that while for such demand of those ornaments or for demanding those ornaments, she was subjected to cruelty at the hands of the accused persons. Though, it is claimed by Shivaji in his examination-in-chief that Rekha disclosed that Champalal, her husband, demanded watch and clothes and accordingly he paid Rs.1500/- cash for purchasing a watch and clothes, in his cross-examination, he was required to admit that in the

region of Khandesh, there is tradition that on the day of Akshay Tritiya, the son-in-law is offered clothes and certain gift articles, and on the day of Akshay Tritiya when Champalal was invited, an amount of Rs.1500/- was given to purchase clothes and the watch. In view of this, it does not lie in the prosecution case that, there was any demand of clothes and watch, because those were offered by way of tradition to Champalal.

21. Though Latabai has also stated that her husband has given Rs.1500/- to Champalal, in my view, for the reasons stated herein above, her evidence to that effect is of no use for the prosecution.

22. One independent witness is examined by the prosecution and she is Pramilabai Patil (PW-3). She is mother of Kavita, friend of deceased Rekha. According to said witness,

deceased Rekha and her daughter Kavita came to Chopda for preparation of second year B.A. examination. The said examination was conducted in April, 2001. According to Pramilabai's evidence, when Rekha was visiting her house, that time, on her inquiry, she disclosed that her in-laws ill-treated her. Her evidence is totally silent that on account of any demand, Rekha was subjected to cruelty at the hands of the accused persons.

23. The learned Judge of the trial Court, in my view, has correctly appreciated the evidence brought on record by the prosecution. In my view, no fault can be found with the findings recorded by the Court below on the aforesaid evaluation of the prosecution case, that the Court below has committed any mistake in law to record the finding that the prosecution has failed to prove ill-treatment at the behest of the accused persons.

24. Further, in the cross-examination, it is admitted by Shivaji that the deceased was staying with him from 30th March, 2001 to 28th April, 2001. The commission of suicide is on 12th May, 2001. The entire prosecution case is totally silent that after 28th April, 2001 till the time Rekha committed suicide, there was any type of ill-treatment on any account. Therefore, there is no live link in between the alleged ill-treatment, with the act of commission of suicide.

25. Since the prosecution has not adduced any evidence worth to say that it shows that there was any act or omission on the part of the accused persons suggestive of abetment to the deceased to commit suicide, in the limited revisional jurisdiction, it will not be open for this Court to upset the well considered view taken by the learned Judge of the trial Court on the basis of available evidence on record. Consequently, the

Revision fails and accordingly it is dismissed.

26. Since the counsel appointed to represent Respondent Nos.1 to 4 did not appear before this Court, the counsel is not entitled for any fees from the Legal Aid Committee.

[V.M. DESHPANDE, J.]

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