

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 101 OF 2005

Prayagbai w/o Gangadhar Bodkhe
Age 42 years, Occ. Household
R/o. Nagthanan Bk. Tq. Umri
District Nanded

...Applicant
(Ori. Complainant)

versus

1. The State of Maharashtra
(Copy to be served on P.P.
of High Court of Bombay
Bench at Aurangabad)
2. Baliram Kashinath Lalwande
Age 31 years, Occ. Agriculture
R/o. Kuncheli Junegaon
Tq. Naigaon, District Nanded
3. Ananda Kashinath Lalwande
Age 39 years, Occ. Agriculture
R/o. Kuncheli Junegaon
Tq. Naigaon, District Nanded
4. Maroti Kashinath Lalwande
Age 26 yeas, Occ. Education
R/o. Kuncheli Junegaon
Tq. Naigaon, District Nanded
5. Kashinath Maroti Lalwande
Age 71 years, Occ. Agriculture
R/o. Kuncheli Junegaon
Tq. Naigaon, District Nanded
6. Sow. Laxmibai w/o Kashinath Lalwande
Age 61 years, Occ. Household
R/o. Kuncheli Junegaon
Tq. Naigaon, District Nanded

...Respondents
(R. Nos. 2 to 6 Ori. Accused)

.....
Mr. M.B. Sandanshiv, advocate for the applicant
Mr. B.V. Virdhe, A.P.P. for respondent No.1-State
Mr. U.B. Bilolikar, advocate for respondent Nos. 2 to 6
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CORAM : V. K. JADHAV, J.
DATED : 15th FEBRUARY, 2019

ORAL JUDGMENT :-

1. The applicant-original complainant has challenged the judgment and order of acquittal dated 26.11.2004 passed by the 2nd Ad-hoc Additional Sessions Judge, Biloli in Sessions Case No. 17 of 2004.

2. The prosecution story in brief is as follows:-

a) Deceased Sarita was given in marriage to respondent-original accused Baliram some six months prior to the death of Sarita. At the time of marriage, it was agreed to pay Rs.1,00,000/- and 5 tolas gold to the accused. Out of which, an amount of Rs.60,000/- and 5 tolas gold were given and remaining amount of Rs.40,000/- was agreed to be paid after harvesting of Udid crop. Deceased Sarita was subjected to physical and mental harassment on account of non payment of said dowry amount and also the accused have further demanded Rs.1,00,000/- for purchase of motor cycle as well as for the shop and deceased Sarita was subjected to ill-treatment on that count also. Deceased Sarita had disclosed about ill-treatment being extended to her on account of said non payment of the amount of dowry to P.W. 6 Prayagbai and P.W. 5 Laxman, when she came for

Panchami festival and also at the time of Dipawali festival.

b) On 9.11.2003 at about 8.00 a.m. the respondent Baliram on telephone intimated P.W. 6 Prayagbai (mother of deceased) that Sarita sustained shock and for treatment she was brought to the hospital at Naigaon. On reaching there, mother and the other relatives from parental side of deceased Sarita noted the marks of assault on the dead body i.e. on stomach, back, neck, both legs and private part. On the same day at about 8.45 p.m. P.W. 6 Prayagbai had filed a complaint with Ramtirth police station. On the basis of the complaint a crime came to be registered for the offences punishable under Sections 304-B, 498-A, 306, 324 r.w. 34 of I.P.C. After due investigation, the concerned investigating officer has submitted charge sheet. The learned Magistrate has committed the case to the Court of Sessions, since the offences alleged to have been committed by the accused were exclusively triable by the Court of Sessions. Learned Additional Sessions Judge has framed the charge against the accused for the offences punishable under Sections 498-A, 306 and 304-B r.w. 34 of I.P.C. All accused persons pleaded not guilty to the charges and claimed to be tried.

c) The prosecution has examined in all 9 witnesses to substantiate the charges levelled against the accused. It is defence

of the accused that they never ill-treated deceased Sarita on any count. On each monthly menstruation period, Sarita was suffering from severe stomach pains and she was being provided treatment about it. On the day of incident, deceased Sarita feel giddiness and she had fallen near cattle shed. Accused Baliram and Gangadhar brought her on motor cycle to the hospital at Naigaon. She was being taken on cot up to motor-cycle and ultimately thereafter brought to the hospital. Deceased Sarita sustained scratches and injuries on her leg and other parts of the body. After completion of prosecution evidence, the statements of the accused under Section 313 of Cr.P.C. came to be recorded. After hearing both sides, the learned 2nd Ad-hoc Additional Sessions Judge, Biloli, by judgment and order dated 26.11.2004 in Sessions Case No. 17 of 2004 acquitted all accused of the offences punishable under Sections 304-B, 306, 498-A r.w. 34 of I.P.C. Hence, this criminal revision application.

3. Learned counsel for the applicant submits that the evidence of P.W. 4 to 7 is consistent, reliable and trustworthy. All these witnesses have consistently deposed about the demand of unpaid dowry and also about further demand of Rs.1,00,000/- for purchase of motor cycle and for shop. They have also deposed consistently about ill-treatment being extended to deceased Sarita on account of

non-fulfillment of said demand as disclosed to them by deceased Sarita at the time of *Panchami* festival and also Dipawali festival. After Dipawali festival, deceased Sarita left her parents' house. She died within 12 days. Deceased Sarita died within 6 months of her marriage. The prosecution has proved demand and the ill-treatment. In terms of provisions of Section 113-B of the Evidence Act the presumption about dowry death was necessary to be drawn. However, the learned Judge of the trial court has acquitted the accused. Learned counsel submits that the prosecution witnesses have deposed about injuries on the person of deceased Sarita and the same has been duly corroborated by post mortem notes and the evidence of Medical Officer. Deceased Sarita had sustained injuries on account of assault. The prosecution has proved the case beyond all reasonable doubts. However, the trial court has acquitted the accused erroneously. Thus, the judgment and order of acquittal is required to be quashed and set aside and the matter may be remanded to the court below to consider the evidence in its proper perspectives.

4. Learned counsel for the respondents-original accused submits that the evidence of P.W. 4 to 7 is not consistent, reliable and trustworthy. They have contradicted to each other on material aspects. There is no convincing evidence about dowry demand. In

fact, the marriage of deceased Sarita was performed at the house of the respondents accused. P.W. 6 Prayagbai, mother of deceased, has also admitted that there was demand of marriage expenses incurred by the accused persons for performing the marriage at their village and it was also agreed to be paid by them. There is no evidence at all about the coercion on account of non-fulfillment of the said demand. The trial court has rightly acquitted the accused. There is no substance in the criminal revision application. Criminal revision application is liable to be dismissed.

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

6. I have carefully gone through the evidence of P.W. 4 to 7. P.W.4 is brother, P.W.5 is maternal uncle, P.W. 6 is mother and P.W.7 is minor brother of deceased Sarita. Though the prosecution witnesses have deposed about unpaid dowry of Rs.40,000/- consistently, P.W. 6 Prayagbai has admitted in her cross examination that Rs.50,000/- was paid towards marriage expenses and they have voluntarily offered 5 tolas gold to deceased Sarita. There was no dispute about it. She was also ready to pay Rs.40,000/-. P.W.7 Pralhad, who is real brother of deceased Sarita, had admitted in para 3 of his cross examination that it was agreed and settled that at village Kuncheli, accused themselves should perform the marriage.

The learned Judge of the trial court has therefore, rightly observed that if the said amount was to be paid towards marriage expenses, as agreed between the parties, by any stretch of imagination, the said amount of marriage expenses cannot be treated as dowry. So far as the another demand of Rs.1,00,000/- for purchase of motor cycle and shop is concerned, there is no satisfactory evidence about it. The prosecution witnesses have not given any details as to when the demand was made. Deceased Sarita was treated well for initial period of two months, as deposed by the prosecution witnesses. In the remaining period of four months, it is not clear as to when the said demand of Rs.1,00,000/- was made. Furthermore, there are no details at all as to when and in what manner deceased Sarita was subjected to ill-treatment. P.W. 6 Prayagbai on the other hand has stated in her cross examination that the said demand has been made six months after the marriage. Deceased Sarita died 12 days after Dipawali festival.

7. In the instant case, there is short span of cohabitation of six months. It is not proper to convict the accused persons merely on the basis of certain vague allegations about ill-treatment being extended to deceased Sarita on account of non-fulfillment of certain demands. It is also to be noted that mother and other relatives of deceased Sarita never refused to pay the amount. It has also come

in the evidence of accused No.1 Baliram (husband of deceased Sarita) that he brought deceased Sarita twice to her parents' house. P.W. 6 Prayagbai mother has also corroborated her version. She has altogether brought new story about beating extended to Sarita and Sarita also told her the same at the time of Dipawali festival on account of non-fulfillment of the said demand. However, none of the prosecution witnesses have deposed about it.

8. So far as the injuries on the person of deceased Sarita are concerned, those are anti-mortem in nature. The defence has suggested that deceased Sarita was brought to the hospital on motor cycle and she was taken towards the motor cycle on a cot. It is thus specific defence that she might have sustained injuries to the legs and lower limbs as her legs exposed to earth when she was taken to the hospital on motor cycle. All these injuries are simple in nature, hardly suggests about any violence. Medical Officer has also accepted the possibility about sustaining all those injuries accidentally. Furthermore, the conduct of the respondents accused No.1 Baliram after the incident is also being natural. He had informed about the incident immediately to the mother of deceased and also promptly taken deceased Sarita to the hospital. Even the respondent accused Baliram has given intimation to the police after the death of Sarita in the hospital.

9. In the case of ***Indrajeet Supreshprasad Bind and others vs. State of Gujarat, reported in (2013) 14 SCC 678***, the Apex Court in para 9 of the judgment has made the following observations:-

“9. To establish the offence of dowry death under Section 304-B, IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under Section 498A, IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in Clauses (a) and (b) of the Explanation to Section 498A, IPC.

In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed from Ext. 31 written by PW 3 to the deceased on 25-04-2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to commit suicide, it is difficult for the Court to hold that the appellants had in any way abetted the suicide by the deceased on 18-05-2004.”

10. In the case of ***Ramu Shankar Wagh vs. State of***

Maharashtra, reported in 2014 ALL MR (Cri.) 1792, this court in the given set of facts, which are almost identical to the present case, held that the cruelty aspect having not been proved, no question of raising presumption under Section 113-A of the Evidence Act and in such a case, it is for the prosecution to establish on the basis of other evidence that accused had intentionally aided or abetted commission of suicide.

11. The interference in the order of acquittal passed by the trial court, is limited only to the following exceptional cases:-

- i) order under revision suffers from glaring illegalities,
- ii) or has caused miscarriage of justice,
- iii) or when it is found that the trial court has no jurisdiction to try the case,
- iv) or where the trial court has illegally shut the evidence which otherwise ought to have been considered,
- v) or Where the material evidence which clinches the issue has been overlooked and
- vi) where the admissible evidence is wrongly brushed aside as inadmissible.

12. In the case of ***Vimal Singh vs. Khuman Singh and another,*** reported in ***AIR 1998 SC 3380,*** in para 7 of the judgment while coming to the ambit of power of the High Court under Section 401 of

Cr.P.C., the Supreme Court has made the following observations:-

“7. 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 judgments 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.”

13. In view of the above discussion and considering the ratio laid down by the Apex Court in the aforesaid cases, I find it difficult to take other view in this matter. I do not find that the order of acquittal is suffering from glaring illegalities or has caused miscarriage of justice. It is well settled that if two views are possible and if the trial court has taken possible view, there is no reason to replace his view by the higher court while exercising the revisional jurisdiction. Thus, considering entire aspects of the case, I proceed to pass the following order:-

O R D E R

Criminal Revision application No. 101 of 2005 is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

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