

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 CRIMINAL REVISION APPLICATION NO. 115 OF 2005

Gafur s/o Sapol Birajdar

Age : 45 years, Occ : Labourer,

R/o: At post Khairat, Taluka Akkalkot,

District Solapur

... Applicant

versus

1. The State of Maharashtra
Through Police Station, Murum,
Dist. Osmanabad.
2. Hawabee w/o Mahaboobsab Shilar
Age: 67 years, Occu: Household,
R/o: Dalimb, Tq. Omerga,
Dist. Osmanabad.
3. Mehaboob s/o Ansarsab Shilar
Age : 76 years, Occu: Agril,
R/o: As above.
4. Mastan s/o Mehaboobsab Shilar
Age : 33 years, Occ: Agri,
R/o : As above
5. Fataru s/o Mehaboobsab Shilar
Age : 35 years, Occ : Agri,
R/o : As above

... Respondents

.....

Advocate for Applicant : Mr. S. M. Vibhute
APP for Respondent No.1-State : Mr. P. K. Lakhotia

.....

CORAM : V. K. JADHAV, J.
DATED : 31st JANUARY, 2019

ORAL JUDGMENT :-

1. The applicant/original complainant has preferred this criminal revision application against the judgment and order of acquittal passed by the Additional Sessions Judge, Omerga in Session Case No. 28 of 2004 of the offence punishable under Sections 498-A, 306 r/w 34 of IPC.

2. Learned counsel for the applicant/original complainant submits that the prosecution has examined in all six witnesses. Deceased Nazma was married with accused no.4/respondent no.5 herein in the year 1998. She died within two and half years of marriage. She was subjected to cruelty on account of non-fulfillment of demand of Rs.5,000/- for repairing of truck and also for non- fulfillment of demand of gold. Learned counsel submits that the evidence of the parents i.e. PW 1-Niyamatbee and PW 3-Gafoor is consistent, trustworthy and reliable. They have deposed before the Court that the accused used to abuse and beat the deceased by making demand of clothes and gold from the parents. Learned counsel submits that learned Judge of the trial court has acquitted the accused mainly on the ground that the quantity of

gold is not stated by these witnesses. Learned counsel submits that there was a demand of gold and cash amount of Rs.5,000/- for repair of truck. However, the trial court has not considered the same. Learned counsel submits that the judgment and order of acquittal passed by the Additional Sessions Judge is thus liable to be quashed and set aside.

3. None present for the respondents/original accused.

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

5. PW 1- Niyamatbee and PW 3- Gafoor, the parents of deceased, have deposed that the marriage of deceased Nazma was solemnized with accused no.4 Fatru Mahebubsab Shilar in the year 1998 and after marriage, Nazma was treated well for seven months. According to them, thereafter, as disclosed to them by their daughter deceased Nazma, she was subjected to beating and abuse on account of non-fulfillment of the said demand. It further appears that no specific instances about beating and abuse have been quoted. Furthermore, as rightly observed by the learned Judge of the trial court, if the parents have given the gold time to

time as per the demand made by the accused, then there is no question of giving ill-treatment to deceased Nazma on account of the said demand pertaining to gold. It further appears that the allegations pertaining to the demand of gold are vague in nature since the quantity of gold is not stated by the witnesses. It is not possible that there was a random demand of gold. There must be a specific demand about the quantity of gold. Furthermore, there are general allegations about the beating and abuse extended to deceased Nazma. However, the nature of coercion on account of non-fulfillment of said demand of gold or cash amount of Rs.5,000/- for repair of truck has not been deposed by the parents. On the other hand, PW 1- Niyamatbee and PW 3- Gafoor, the parents of deceased have deposed that the accused used to address deceased Nazma as bad woman and they also used to blame her for non-conceiving child and for non-performance of household duties properly. However, learned Judge of the trial court has rightly discarded the said evidence as there are no allegations made with regard to the same in the FIR Exhibit 52. Thus, the parents have exaggerated the allegations and brought new material on record.

6. It is well settled that the revisional powers of the High Court under Section 401 of the Criminal Procedure Code, 1973 are required to be exercised in the exceptional cases and those are (a) if there is any glaring defect in the procedure, (b) if there is manifest error on the point of law, (c) if the trial court has totally misread the evidence and has also failed to apply the well settled principles of law, (d) where the trial court has illegally shut the evidence which otherwise ought to have been considered, (e) where the material evidence which clinches the issue has been overlooked and (f) where the admissible evidence is wrongly brushed aside as inadmissible.

7. In the case of *Vimal Singh vs. Khuman Singh*, reported in **AIR 1998 SC 3380** 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."

8. In view of the above discussion and in the light of the ratio laid down by the Supreme Court, I do not find any error of law, impropriety of trial or non-application of mind by the trial court. The learned Judge of the trial court has taken a most reasonable and possible view in the facts and circumstances of the case. I do not find any miscarriage of justice or the order of acquittal suffers from any glaring illegality. In the facts of the case, the presumption under Section 113-A of the Evidence Act, 1872 is also not attracted since the prosecution has failed to prove beyond doubt the cruelty as defined under clause (b) of Section 498-A of IPC. In view of the same, I proceed to pass the following order:

ORDER

The Criminal Revision Application No. 115 of 2005 is hereby dismissed. Rule stands discharged.

(V. K. JADHAV, J.)

vre/