

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 222 OF 2005

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RANGNATH NAMDEO SATDIVE
age 68 years, Occ. Pensioner,
R/o Laxmi Colony, Block No.4,
Cantonment Road, Aurangabad.
Tq. & Dist. Aurangabad.

Applicant/
Orig.complainant

VERSUS

1. KIRAN TUKARAM AMBHORE
age 35 years, Occ. Nil,
R/o House of Yelikar, Vikram Nagar,
Latur, at present residing at
Ghati Hospital area, Gautam Nagar,
Aurangabad, [..Orig accused.]
Tq. & Dist. Aurangabad.
2. The State of Maharashtra. ..Respondents..

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Advocate for Applicant : Mr S S Pawar
Advocate for Respondent1: Mr S A Patil h/f V D Salunke
APP for Respondent No.2 : Mr B V Virdhe

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CORAM : V.K. JADHAV, J.

Dated: February 01, 2019

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ORAL JUDGMENT :-

1. The applicant/original complainant has preferred this Criminal Revision Application against the judgment and order of acquittal passed by the Ad-hoc

Additional Sessions Judge, Latur by order dated 26.4.2005 in Sessions case No.9/2005 under section 498-A, 306 of Indian Penal Code.

2. Prosecution story, in brief, is as under :-

a] In the year 1997 marriage of deceased Surekha was solemnized with the respondent no.1/accused. Subsequently, deceased Surekha got job of Assistant Project officer (Child Welfare), Latur. As per the prosecution story, accused was not doing any job. He was in habit of consuming liquor. He used to ill-treat deceased Surekha under the influence of liquor. Deceased Surekha used to inform about the same to her parents by making phone calls. On 4.11.2004 at about 02.30 p.m. P.W. 2 Rangnath Satdive, (father of deceased Surekha) received a phone call from the land-lord of the room where the deceased Surekha was residing that Surekha had committed suicide by hanging herself. On the basis of the complaint lodged by PW 2 Rangnath Satdive, crime bearing No.125/2004 came to be registered in the concerned police station. After due

investigation, I.O. has submitted charge sheet against the accused for having committed an offence punishable under sections 498-A, 306 of IPC. The learned Adhoc Additional Sessions Judge, Latur has framed charge against the accused for the said offences. Accused pleaded not guilty to the charge and claimed to be tried. Prosecution has examined in all six witnesses to substantiate the charges levelled against the accused. After recording the statement of the accused under section 313 of Cr.P.C. and after hearing both the sides, learned Adhoc Additional Sessions Judge, Latur by judgment and order dated 26.4.2005 acquitted the accused of the offence punishable under sections 498-A, 306 of IPC. Hence, this Criminal Revision Application.

3. The learned counsel for the applicant/complainant submits that, evidence of PW 2 Rangnath the father and PW 3 Dwarkabai the mother is consistent, reliable and trust worthy. They have consistently deposed before the Court that deceased Surekha was subjected to mental and physical

harassment by the applicant no.1/accused by consuming liquor. He was jobless. Learned counsel submits that, the prosecution has proved the charge under section 498-A, 306 of IPC, however, the learned Judge of the trial court has erroneously acquitted the accused.

4. Learned counsel for respondent no.1/accused submits that, there is no evidence about the cruelty as defined under section 498-A of IPC. There are vague allegations against the respondent/accused about ill-treatment being extended to the deceased Surekha by consuming liquor without quoting any specific instances. There is absolutely no evidence about abetment of commission of suicide. Learned counsel submits that, it has come by way of admission in the cross-examination by the parents that deceased Surekha was all the while trying her best to get her transfer from Latur to Aurangabad so that she would stay with her husband alongwith her minor daughter. Even, PW 2 Rangnath when approached to

the police station, he was informed by the concerned P.S.I. that there is a quarrel between the husband and wife in usual terms and there is nothing serious. The learned Judge of the Trial Court has, therefore, rightly acquitted the respondent/accused. 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 APP for the respondent/State.

6. On careful perusal of the evidence of PW 2 Rangnath and PW 3 Dwarkabai parents of deceased Surekha, I find that there are vague allegations without quoting any particular incident that respondent/accused by consuming liquor used to assault deceased Surekha and thereby physically and mentally harassed her. According to them, their daughter Surekha used to inform them about the incident by making phone call. Said period of informing

them about the alleged ill-treatment is not a short period but it is a long period of two years. PW 3 Dwarkabai has stated in her cross-examination that accused and deceased Surekha jointly completed B.P.Ed at Aurangabad. She has also admitted that deceased Surekha was continuously pursuing about her transfer to Aurangabad when she was appointed at Latur as an Assistant Project Officer (Child Health Care). Even in the year 1998-1999 deceased Surekha had filed an application for her transfer to Aurangabad on the ground that her husband (present accused) is serving at Aurangabad and her daughter is ten months old. She has also not quoted any specific incident about the ill-treatment. It is also not clear as to what sort of ill-treatment deceased Surekha was subjected.

7. In terms of the provisions of Section 498-A Part I, ill-treatment must of such a nature so as to drive the wife to commit suicide.

8. In the instant case, unfortunately no

evidence is forth coming as to the nature of the ill treatment with a specific incident so as to conclude that ill-treatment was of such a nature as contemplated u/s 498-A of IPC. On the other hand, in the backdrop of the admissions given by PW 3 Dwarkabai, it appears that, deceased Surekha was eager to come at Aurangabad to stay with her husband alongwith her minor daughter. Furthermore, if at all there is quarrel between the husband and wife on one occasion and in the hit of anger if deceased Surekha had committed suicide on account of the same, the learned Judge of the trial court has rightly said that offence under section 498-A is not attracted.

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. In the light of the discussion above and in terms of the ratio laid down by the Supreme Court in the aforesaid case, I do not find that judgment and

order of acquittal under revision suffers from any glaring illegality or has caused miscarriage of justice. It is also well settled that, if two views are possible and if the learned Judge of the trial court has taken a probable reasonable view, the High Court while exercising the revisional jurisdiction should not replace the view taken by the trial court if the same does not suffer from any perversity.

11. In view of the same, I do not find any substance in this Criminal Revision Application. Hence, following order.

ORDER

1. Criminal Revision Application is hereby dismissed. Rule discharged.
2. Criminal Revision Application is disposed off.

(V.K. JADHAV, J.)

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