

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.348 OF 2005

Marotirao s/o Vishwanth Lase,
Age-61 years, Occu:Nil,
R/o-Chikalwadi, Nanded.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
- 2) Shriram s/o Munja Dawalbaje,
Age-28 years, Occu:Business,
R/o-Gangakhed, Tq-Gangakhed,
Dist-Parbhani,
- 3) Kusum w/o Munja Dawalbaje,
Age-58 years, Occu:Household,
R/o-Gangakhed, Tq-Gangakhed,
Dist-Parbhani.

...RESPONDENTS

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Mr.K.M. Nagarkar Advocate for Applicant.
Mr.S.Y. Mahajan, A.P.P. for Respondent No.1.
Mr.Swapnil S. Rathi Advocate for Respondent
Nos.2 and 3.

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CORAM: V.M. DESHPANDE, J.

DATE : 9TH APRIL, 2019

ORAL JUDGMENT :

1. Heard Shri K.M. Nagarkar, the learned counsel for the Applicant, Shri S.Y. Mahajan, the learned Additional Public Prosecutor for the State and Shri S.S. Rathi, the learned counsel for Respondent Nos.2 and 3. I have also perused the Record and Proceedings which was called at the time of admission of the Revision.

2. The present Revision is directed against the Judgment and order of acquittal passed by the learned 3rd Additional Sessions Judge, Parbhani, dated 9th March, 2004 in Sessions Trial No.17 of 2001, whereby the Court below acquitted Respondent Nos.2 and 3 for the offence punishable under Section 306, 498-A read with Section 34 of the Indian Penal Code. The present Revision is filed by Marotirao, the father of deceased Anita. According to the submission of learned counsel for

the Applicant, the dying declaration recorded by PW-4 Narayan Baladkar, which is at Exhibit-39, is sufficient to record the finding of guilt against Respondent Nos.2 and 3. He therefore, submitted that the Revision be allowed and Respondent Nos.2 and 3 be convicted for the offence punishable under Section 306, 498-A of the Indian Penal Code.

3. After the Judgment and order of acquittal, the State on whose behest the prosecution was launched, did not prefer any appeal against the acquittal. The father of deceased Anita has lodged the present Revision.

4. Before the trial Court, charge was framed against Respondent Nos.2 and 3 for the offence punishable under Section 306, 498-A, read with Section 34 of the Indian Penal Code.

5. Respondent No.2 is the husband of

deceased Anita, whereas Respondent No.3 is her mother-in-law. After framing of the charge in Sessions Trial No.17 of 2001, Respondent Nos.2 and 3 abjured their guilt and claimed for their trial. In order to bring home the guilt of the accused persons, the prosecution examined in all seven witnesses and also relied upon various documents duly proved during the course of the trial.

6. PW-2 is Dr. Rajendra Kagne. He has conducted the autopsy over the dead body of Anita. He has proved post-mortem notes. Post-mortem notes are available on record at Exhibit-34. As per the evidence of Dr. Rajendra Kagne and post-mortem notes, deceased suffered 81% burn injuries and those were ante-mortem injuries and cause of death was "shock due to burn injuries". In view of the said evidence there cannot be any doubt in any one's mind that Anita's death was unnatural one.

According to the learned counsel for the Applicant, Anita committed suicide due to ill-treatment at the hands of Respondent Nos.2 and 3, whereas before the Court below, it was the defence of Respondent Nos.2 and 3 that the deceased received burn injuries in an accident.

7. The date of incident, suffering the burn injuries by Anita, is 22nd November, 1999.

8. Learned counsel for the Applicant heavily relied on the evidence of PW-4 Narayan Baladkar. This prosecution witness, after receiving the letter from police station, Wajirabad and after getting himself satisfied about the mental condition from Dr. Balaji Chilkewar (PW-6), he proceeded to record with the statement of deceased Anita. The statement of Anita so recorded by PW-4 Narayan is at Exhibit-39. It shows that on 22nd November, 1999, at 9.00 O'clock, due to anger, she

set her ablaze. She stated that she was having ill-treatment from her husband and mother-in-law.

9. Exhibit-39 was recorded on 24th November, 1999. Prior to that Anita was admitted in the hospital, her statement was recorded by police. It is at Exhibit-45. Perusal of the said shows that due to accident while preparing tea, due to explosion of stove, she suffered burn injuries and Respondent No.3 has extinguished the fire. Similarly, when Anita was admitted as in-door patient, Exhibit-41 was recorded by PW-5 Pandurang Kelkar, a police constable. It also shows that she came in contact with fire accidentally and that time her brother Chandrakant Lase (PW-3) and her husband extinguished the fire.

10. The law in respect of appreciation of multiple dying declarations is already settled by this Court on numerous occasions. There cannot be

a rule of "pick and choose" as enunciated by this Court. The dying declarations i.e. Exhibit-41 and 45 clearly shows that Anita received burn injuries due to accident, whereas, in dying declaration Exhibit-39, she states that she committed suicide. On closer scrutiny of said dying declaration, it would be clear that she has stated that, she has committed suicide due to anger. In view of the law laid down by this Court in the case of Sanjay s/o Radhesham Ruhatiya vs. State of Maharashtra¹, there is no hesitation in my mind that the Court below has rightly acquitted Respondent Nos.2 and 3 for the offence punishable under Section 306 of the Indian Penal Code. Further, even the evidence of PW-3 Chandrakant Lase, brother of the deceased, who was present at the spot at the time of incident, also states that his sister got in touch with fire due to accident.

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11. Insofar as offence punishable under Section 498-A of the Indian Penal Code is concerned, prior to the incident, at no point of time any complaint was lodged either by the deceased or by the present Applicant. Not only that, Maroti (PW-1) admitted during the course of his cross-examination that he did not state in his application which he made to the police that his daughter was ill-treated. In Exhibit-41 the deceased has stated that Respondent Nos.2 and 3 were stating that she has become insane. In that behalf, if the cross-examination of Maroti is seen, he stated that after giving birth to a female child, namely, Punam, the deceased was required to take treatment of Dr. Mulmule, psychiatrist. The other allegations are most general in nature and in my view, those were also properly considered by the Court below.

12. The scope of the Revision is very

limited. Unless a perversity is shown, the Revisional Court normally does not step in. The impugned Judgment shows that the Court below has properly appreciated the evidence brought on record and has correctly evaluated the three dying declarations. Resultantly, it cannot be said that the Judgment of acquittal is outcome of any perversity on the part of the learned Judge of the Court below. If that be so, this Court will refrain itself again re-evaluating the entire evidence and in its limited jurisdiction, will not upset the finding, recording the acquittal. Hence the Revision fails. Revision Application is dismissed, accordingly. Rule is discharged.

[V.M. DESHPANDE, J.]