

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 458 OF 2018

Appa Ramchandra Savkar & Anr.	...	Applicants
VS.		
The State of Maharashtra & Anr.	...	Respondents

Mr. Shekhar Jagtap i/b. Mr. Jitendra M. Pathade, Advocate for the applicants.

Mr. Ajinkya J. Jaibhave, Advocate for respondent No. 2.

Mrs. M.R. Tidke, APP for the respondent/State.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 15th April, 2019

P.C. :

The applicants/accused, who are in-laws of deceased Aarti, are prosecuted for the offences punishable under sections 304B, 306, 406, 498A, 323, 504, 506 r/w. 34 of Indian Penal Code and sections 3 and 4 of Dowry Prohibition Act.

2. It is the case of the prosecution that deceased Aarti married original accused-Gaurav on 2nd January, 2016 at Nashik. There was a demand of Rs.5,00,000/- dowry from the accused persons, who are father-in-law and mother-in-law of the deceased. Aarti was harassed and tortured by the applicants/accused and they continued their demand of money and ornaments. The married life

of Aarti and Gaurav was not smooth and there were continuous disputes between them. Finally, Aarti committed suicide on 2nd April, 2017 at her matrimonial home. Her father gave complaint to Satpur Police Station, Nashik city and the police registered offence at C.R. No. 92 of 2017 on the same day for the relevant offences against the husband Gaurav and father-in-law and mother-in-law, i.e., accused persons. The applicants/accused have filed the Application for discharge at Exhibit 23 in Sessions Case No. 237 of 2017 before the Sessions Court under section 227 of Cr. P.C. However, the learned Sessions Judge, Nashik by his order dated 23rd July, 2018 rejected the said Application. Hence, this Revision Application.

3. The learned counsel for the applicants/accused drew my attention to the suicide note and contents in the personal diary written by deceased Aarti. He submitted that in the suicide note, no allegations are made against the applicants/accused and the contents in the diary also does not disclose any incriminating material against the applicants/accused. He submitted that the father of the deceased is a practicing advocate at Kolhapur and he has made cumulating allegations against the applicants/accused.

He submitted that the quarrels were going on between Gaurav and deceased Aarti, as there was difference of attitude and expectations between the couple. He submitted that the applicants/accused, i.e., in-laws, have no role in the dispute and they are innocent. No ingredients are revealed from the material placed by the prosecution before this Court. He submitted that there was no demand of money from the applicants/accused but whatever gold was offered, it is given as a gift by the father of the deceased. He submitted that the applicants have not committed any offence under the Indian Penal Code.

4. The learned counsel for the respondent No. 2/original complainant and learned APP opposed the Application and they relied on the order of the learned Sessions Judge. Learned APP submitted that the learned Sessions Judge has rightly highlighted the incidents of demand of drowy of 25 tolas and also cash amount by the in-laws. She pointed out that the complainant has gifted 1.05 tolas to the son-in-law and therefore, it is not a case of discharge.

5. Perused FIR, suicide note, pages in the personal diary of

Aarti. *Prima facie* there is evidence to frame charge under the offence of cruelty and under the Drowy Act. However, there is no material to frame charge under section 306 of Indian Penal Code. In order to attract Section 306, there should be specific material of constituting the offence under section 107 of Indian Penal Code which constitutes the offence of abatement. In the present case, there are no such allegations stating that the applicants/accused, i.e., in-laws, treated the deceased so badly that she took decision of committing suicide. In support of this, I rely on the judgment of Hon'ble Supreme Court in the case of **Rajesh vs. State of Haryana in Criminal Appeal No. 93 of 2019 (arising out of SLP (Cri) No. 8667 of 2016) dated 18th January, 2019**. Paragraph 8 of the said judgment is reproduced below:

“8. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the

commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

6. I also rely on the the judgment of this Court in the case of **Anagha Hitesh Arya vs. State of Maharashtra in Criminal Application No,. 57 of 2018 and 435 of 2018 decided on 14th December, 2018, reported in Lex(Bom) 2018 12 67.**

7. Thus, the applicants/accused are discharged from the offence under section 306 of Indian Penal Code, however, there is material to frame charge under other sections.

8. Criminal Revision Application is partly allowed to the extent of discharge under section 306 of Indian Penal Code.

(MRIDULA BHATKAR, J.)