

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

CRIMINAL APPLICATION NO.522 OF 2018

Rajendrakumar Ramniwas Agarwal ..Applicant
Versus
Anju Pawankumar Agarwal & Anr. ..Respondents

**WITH
CRIMINAL APPLICATION NO.523 OF 2018**

Rajendrakumar Ramniwas Agarwal ..Applicant
Versus
Ghanshyam Sawarmal Agarwal & Ors. ..Respondents

Mr. Karan Bhosale a/w Rohit Jadhav, Sharayu Kate & Anuja Divadkar i/by NDB Law, for the Applicant in both Applications.
Mr. N. B. Patil, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 27th SEPTEMBER, 2022

PC.

1. Both these applications are under Section 378(4) of CrPC by the complainant. The daughter of the applicant/PW-1, Kiran @ Maya got married in 2002 with accused No.1/Ghanshyam. She started residing jointly with Ghanshyam, his brother Pawankumar and his wife Anju who are also co-accused. All these persons Ghanshyam, Pawankumar and Anju are allegedly responsible for the offence under Section 498A and 306 of IPC, as the Kiran @ Maya committed suicide on 24th December, 2009.

2. The Trial Court i.e. Adhoc. Assistant Sessions Judge, Greater Bombay ordered acquittal of the respondents/accused on 26th August, 2011 which was confirmed in appeal being Appeal No.113 of 2015 by the Judge, City Civil Court, Mumbai vide judgment dated 14th December, 2016. As such, this application.

3. Contentions of Mr. Karan Bhosale, counsel appearing for the applicant are, both the Courts below have committed an error while appreciating the evidence of PW-1 i.e. applicant herein. According to him, the evidence of PW-1 is in corroboration with the evidence of PW-3/Gokulchand Agarwal who was maternal uncle of the deceased. He would further urge that the victim suffered six *ante-mortem* injuries which were said to have been caused about 24 hours before the death of daughter of the applicant who has committed suicide by hanging. So as to substantiate his claim, he has invited attention of this Court to the testimony of PW-4/Dr. Pravin Bagul/Medical Officer, so also the testimony of PW-3/Gokulchand Agarwal and Rajendra Kumar Agarwal.

4. Mr. N. B. Patil, APP would support the case of the applicant.

5. I have appreciated the submissions.

6. The fact remains that PW-1 while examining himself was unable to explain as to why he has not stated about demand of

dowry in the complaint lodged by him particularly when there were allegations of cruelty and ill-treatment meted out to the deceased. Rather it has come on record that younger daughter of the PW-1 was staying with the deceased from ten days prior to the incident, as she has gone to said place for shopping for her marriage.

7. The fact remains that the Investigating Officer has not recorded statement of younger daughter of PW-1 nor examined her. Apart from above, it is informed that the deceased was blessed with son who was aged about five years at the relevant time, even his testimony is also not brought on record.

8. With assistance, I have also appreciated the evidence of PW-3/Gokulchand who was maternal uncle of the deceased. Upon appreciation of his evidence rightly so observed by the Courts below, the offence alleged u/s 498A cannot be inferred or/and established. The evidence of the said witness is not in tune with the evidence of PW-1 i.e. father of the deceased.

9. Rather both the Courts below were justified in ordering acquittal as the ill-treatment if any suffered by the deceased would have been narrated to her younger sister who was staying with her since last 10 days before her death.

10. Even it is also not established that PW-1 father was

not in good terms with the accused person over the issue of demand of dowry particularly in the background of fact that the younger sister of the deceased was staying with the deceased since last 10 days for completing shopping for her marriage.

11. As such, the view expressed by both the Court's below are possible views. In the aforesaid background, both the Courts below were justified in finding that necessary ingredients of offence punishable under Section 306 and 498A of IPC cannot be inferred against the non-applicants.

12. That being so, leave stands refused.

[NITIN W. SAMBRE, J.]