

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

CRIMINAL REVISION APPLICATION NO. 195 OF 2005

Sow. Kumabai w/o Indrajit Birajdar
Age : 43 yrs, Occ. Household,
R/o Gungalgaon, Tal. Umarga,
Dist. Osmanabad.

...Applicant

Versus

1. The State of Maharashtra
2. Sow. Thakabai w/o Madhukar Birajdar,
Age 46 yrs. Occ. Household,
R/o Kalnimbala, Tal. Umarga,
Dist. Osmanabad.
3. Madhukar w/o Yeshwant Birajdar
Age 53 yrs. Occ. Agril.
R/o as above.
4. Yeshwant s/o Madhukar Birajdar
Age 29 yrs, Occ. Agril.
R/o as above.

...Respondents

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Ms. Simran Bais h/f Mr. A.S. Bayas, Advocate for the Applicant.

Mr. S.B. Narwade, APP for the Respondent/State.

Mr. Shoyab Shaikh h/f Mr. A.T. Ghute, Advocate for Respondent Nos.2 to 4.

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CORAM : S.G. MEHARE, J.

DATED : MARCH 02, 2023

ORAL JUDGMENT :-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent nos.2 to 4.
2. The present is the revision against the acquittal of respondent nos.2 to 4 for the offence under Section 498-A, 306,

304-B r/w 34 of the Indian Penal Code. It is not in dispute that the deceased died within a year of her marriage. Her mother alleged that deceased was ill-treated for the demand of Rs.20,000/- by her husband and mother-in-law. The facts reveal that on the date of the incident, deceased was alone at home. She went inside the room, locked the door from inside, poured kerosene on her person and set herself on fire.

3. Learned counsel for the applicant has vehemently argued that the learned trial Court ignored the legal fiction under Section 304-B of the Indian Penal Code. Non-examination of one witness on the same fact would not make the case doubtful. On the allegations of illegal demand of dowry, the mother was examined; therefore, non-examination of the father of the deceased would not make the case fatal. Here, the learned trial Court erred in drawing an adverse inference. The learned trial Court without assigning reasons has discarded the evidence of the mother of the victim. Non-examination of the neighbouring witnesses also does not mean that the prosecution case is not believable. The evidence apparently has not been properly appreciated and the impugned judgment of acquittal was passed mechanically. Hence, it is liable to be set aside.

4. Per contra, learned counsel for respondent nos.2 to 4 has vehemently argued that there was absolutely no evidence to believe that the deceased was ill-treated for the demand of dowry or cruelty

was caused to her soon before her death for dowry. The spot panchnama itself shows that at the time of the incident, the applicant was alone at home with her sister-in-law. She went inside the room, locked it from inside, poured kerosene on her person and set herself on fire. This is purely a case of suicide. The report was also not lodged immediately. It was lodged afterthought. The learned trial Court has correctly appreciated the evidence, whatever the prosecution had produce. There is no foundational evidence to apply the rule of presumption/legal fiction. The applicant has no ground to show that the impugned judgment and order is erroneous on its face of record. Hence, the revision may be dismissed.

5. The law is well settled that the scope of the revision under Section 401 of the Criminal Procedure Code is limited. The revisional Court cannot re-appreciate the evidence. The applicant has to show the *prima facie* errors on the face of record and illegality committed by the trial Court. Ignoring the material evidence and non-appreciation of evidence in proper perspective may be a ground to interfere with the judgment of acquittal.

6. While appreciating the facts, the Court has to appreciate the evidence as a whole. The evidence led before the Court must inspire confidence. The circumstances of the case should also be considered while appreciating the evidence. The cumulative effect of

the entire evidence produced on record should be appreciated to arrive at a conclusion.

7. Herein the case, the sole evidence of the mother was available as regards the demand of Rs.20,000/- for borewell. For the first time, the victim narrated to her parents about the ill-treatment when she had been to them at the time of Diwali. Her evidence further reveals that she sold her golden ornaments and paid Rs.2,000/- to the deceased Mahananda. However to corroborate her case of selling golden ornaments, there was no corroborative piece of evidence. She remained silent on the day of incident when she went to the hospital. She had an opportunity to make the allegations forthwith against the non-applicant nos.2 and 4, but she preferred to lodge the report on the next day afternoon. There was no explanation for the delay. Be that as it may, the spot panchnama shows that the door of the room where the incident happened was locked from inside and it was broken. Appreciating the evidence which was available on record, the Court is of the view that the learned trial Court has considered the relevant aspects for appreciating the evidence. The evidence was deficit to draw the inference that the deceased committed suicide within a year of her marriage for the demand of dowry. The offence is serious. Hence, strict proof was required. No evidence as such was produced. Examining the reasons given by the learned trial Court along with the legal provisions of law, this Court is

of the view that the applicant failed to establish that the impugned judgment and order is erroneous on the face of record. There are no grounds to interfere with the impugned judgment and order of acquittal. Hence, the following order :

ORDER

- I) The revision application stands dismissed.
- II) Record and proceedings be returned to the learned trial Court.
- III) Rule is discharged.

(S.G. MEHARE, J.)