

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

CRIMINAL REVISION APPLICATION NO. 350 OF 2004

Shankar s/o Ashok Gatkal
Age 28 years, Occu. Agri.,
R/o Karhetakli, Tq. Shevgaon,
Dist. Ahmednagar

...Applicant

VERSUS

The State of Maharashtra
(Copy to be served on the
Public Prosecutor, High Court of
Bombay Bench at Aurangabad).

...Respondent

...

Mr. V.D. Hon, Senior Counsel i/b Mr. A.D. Sonkawade, Advocate for
the applicant.

Mr. S.P. Deshmukh, APP for the respondent-State.

...

CORAM : S.G. MEHARE, J.

RESERVED ON : JUNE 21, 2023

PRONOUNCED ON : JULY 13, 2023

JUDGMENT:-

1. Heard learned senior counsel for the applicant and learned APP for the State.
2. Being dissatisfied with the Judgment and order of conviction of the learned 4th Ad-hoc Assistant Sessions Judge, Ahmednagar, passed in Sessions Case No. 52 of 2012 dated 27.07.2002 and confirmed by the learned Additional Sessions Judge, Ahmednagar, by his Judgment and order in Criminal Appeal No.30 of

2002 dated 28.07.2004, the petitioner/accused has preferred the present revision under Section 397 r/w 401 of Cr.PC.

3. The appellant shall be referred to as “the accused” hereafter.

4. The brief facts of the prosecution case were that the accused married the deceased on 20.05.2001, and she went to cohabit with him. She was treated well for about two months only. Thereafter, the accused and his family started subjecting her to cruelty for Rs.1 lac for purchasing the land. They were also taunting her that her parents did not perform the marriage as per their wish and also beating, abusing and starving her. The deceased was complaining about her ill-treatment to her parents and brother when she was going to their home. Her parents told the accused not to harass and ill-treat her, but they did not listen. She was ill-treated for the demand of a dowry for Rs.1 lac continuously. Lastly, she jumped into the Well and finished her life.

5. Learned senior counsel for the accused has vehemently argued that the prosecution has no evidence to prove the ill-treatment and harassment caused to the deceased for the demand of dowry. Till the incident happened, there were no complaints against the accused. They consummated their marriage peacefully for about seven years; however, she died accidentally. The spot panchnama is self-speaking. The learned trial Court and the first appellate Court did not consider

the law that unless the prosecution discharges the burden to prove the cruelty, the presumption under Section 113-A of the Indian Evidence Act would not apply. The accused has satisfactorily explained the burden on him under Section 106 of the Indian Evidence Act by bringing the probabilities. The conduct of the complainant keeping mum till the incident has also been completely ignored. The natural conduct of the accused informing the parents has also not been properly weighed. The findings have been recorded on whims and surmises. There was no evidence of which land the accused wanted to purchase. Hence, the prosecution case is unbelievable. The material contradictions and omissions have also not been considered. He relied on the case of Girdhar Shankar Tawade Vs. State of Maharashtra, (2002) 5 SCC 177, Kuppili Surya Rao Vs. State of A.P., rep. by the Public Prosecutor, Hyderabad, 2004 SCC Online AP 1368 and The State of Maharashtra Vs. Santosh Chandrakant Khair and Others, 2015 SCC Online Bom 6921. Referring to the law on Sections 106 and 109 of the Indian Evidence Act, he has vehemently argued that both Courts have erred in believing the witnesses and illegally held the accused guilty. Therefore, the revision may be allowed, and both judgments be quashed and set aside.

6. Per contra, learned APP for the State would submit that the accused did not have the probable defence. He had suppressed the fact of lodging the accidental death report from the Court. Since the

deceased died within seven years of marriage, the accused did not rebut the presumption under Section 113-A of the Indian Evidence Act. Lastly, the deceased was in the custody of the applicant; therefore, he was bound to explain how her company was detached. In the ordinary course, the victim had no reason to go to fetch the water at such a long distance Well. The immediate conduct of the applicant after the incident is doubtful. There is limited scope in the revision to warrant the interference. The evidence has been correctly appreciated. There are no errors on the face of the record. The case laws relied upon by the applicant do not apply to the present case. Hence, the revision is liable to be dismissed.

7. In reply, learned senior counsel Mr. Hon would submit that the accidental death report was given in brief. Hence, the accused can not be doubted. Unless the suicide is proven, the presumption will not attract.

8. There was no dispute that the deceased was found dead in a well around 1 to 1 and ½ km from the house of the accused. The applicant did not deny that the deceased was with him on the date of the incident. It is also not in dispute that the deceased died within seven years of her marriage.

9. The arguments have been advanced that it was an accidental case. Considering the facts and circumstances of the case,

it would be essential to examine first whether it was a suicide or accidental death.

10. It's a case of drowning. The prosecution has a case, that due to ill-treatment for the demand of dowry, deceased jumped into the Well and the accused has a case that it was an accident. She went to fetch water due to the failure of the electric power. In the absence of eyewitnesses to such type of incident, to ascertain whether it was an accident or suicide by drowning, the spot panchanama is the best piece of evidence. The circumstantial evidence like the location and condition of the Well, what was recovered from the Well, the possibility of a woman going there to fetch the water, external injuries etc., are relevant factors to be considered to decide the nature of death.

11. The proven facts are that the Well was in field survey no.38, which was about 2 to 3 km away from the residence of the accused. It was not in a residential locality. The spot panchnama Exhibit-33 reveals that the said well was constructed with stone. It was used for fetching water for crops in the field. An electric motor was also installed in the Well. One iron bucket, pressed at various places and 20 feet long nylon wire was recovered from the Well. The spot panchanama does not disclose that there were pots to carry the water except a pressed bucket and a wire. The inquest panchanama Exhibit-31 indicates that she had no injuries to her head and her body.

If she had fallen into the Well, she would have been injured. There are no circumstances to believe that the deceased went to the Well situated in a lonely place to fetch water due to electric power breaks in the village. Even though it is believed that there was electric power failure, he had to fetch the water by hand from the Well. Then she did not need to go to the Well situated at such a long distance. In natural course, she must have carried the pots to bring the water. There were no pots on the spot of the incident. The said Well was not used for fetching water by the villagers. All these circumstances indicate that she did not go there to fetch water. Since she had no injuries, it is difficult to believe she fell into the Well. The material on record shows that the conduct of the applicant was suspicious.

12. There is nothing on record that there was no parapet wall to the said Well. It was not suggested to the witnesses that the deceased fell into the Well while fetching water from the Well, and she died. It was not the case of the accused that she was not lastly in his company. The burden was on him to offer a satisfactory explanation as to her cause of death. The explanation of the applicant that she went to fetch the water due to electric power failure does not inspire confidence. Since the deceased died within seven years of marriage, the presumption under Section 113-A of the Indian Evidence Act would apply, provided the prosecution has to discharge the initial burden to prove that she was ill-treated for money. The

applicant could not satisfy the Court that the evidence of ill-treating the deceased for the demand of money was unbelievable. Therefore, the presumption under Section 113-A of the Indian Evidence would apply.

13. Considering the circumstances and proven facts, there appears, no force in the arguments of the learned senior counsel for the accused that the prosecution did not discharge the burden to prove that it was a suicide. In the absence of any circumstantial evidence, it would be difficult to believe his defence which was not even suggested to the witnesses that it was an accidental death. The case laws relied upon by the applicant have been perused. However, those do not apply to this case as those were on different facts. Both Courts have correctly appreciated the facts and evidence and recorded the correct conclusion.

14. After having gone through the impugned judgments and orders, the Court is satisfied that both judgments and orders are free from infirmities and illegalities. The accused did not satisfy the Court that there were errors on the face of the record and that illegalities had been committed in convicting the applicant. Hence the order :

ORDER

- (i) The revision application stands dismissed.
- (ii) The accused shall surrender before the learned trial Judge on or before 03.08.2023.

- (iii) The bail and surety bonds stand cancelled.
- (iv) Rule stands discharged.

(S.G. MEHARE, J.)