

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 13 OF 2006

1. Shri Keshav s/o Maroti Sonwane,
Age : 23 years, Occ. Labour,
R/o Ranjala, Tq. Aundha (Nagnath)
Dist. Hingoli.
2. Smt. Ahilyabai w/o Maroti Sonwane
Age – 50 years, Occ. Household,
R/o. Aundha (Nagnath), Tq. Aundha,
Dist. Hingoli.

..Petitioners

VERSUS

1. The State of Maharashtra
Through Police Station, Hatta,
(Copy to be served on P.P.
High Court Bench at Aurangabad)

..Respondent

Advocate for Petitioners : Mr. S.J. Salunke h/f Mr. Sudhir K. Chavan
APP for Respondent/State : Ms. Vaishali S. Choudhari

...
CORAM : S.G. MEHARE, J.

RESERVED ON : SEPTEMBER 12, 2024

PRONOUNCED ON : OCTOBER 09, 2024

JUDGMENT :-

1. The husband and mother-in-law of the deceased have preferred this revision against the judgment and order of conviction and its confirmation by the learned 2nd Adhoc Assistant Sessions Judge, Parbhani in Sessions Trial No.69 of 2003 dated 29.11.2003 and learned Additional Sessions Judge, Basmath in Criminal Appeal No.83 of 2003 (Old), Criminal Appeal No.15 of 2004 (New) dated 08.12.2005.

2. The facts of the case in brief could be summarized, the deceased married the applicant in June 2002. She was cohabiting with the applicant at Village Ranjala. A month after the marriage, the applicant and her younger brother-in-law started ill-treating the deceased for an unlawful demand of Rs.25,000/-. They harassed and ill-treated the deceased. They were also putting her to starvation. The mother-in-law was instigating her husband to beat her. After the marriage, she went to her parents for the Nagpanchmi festival. About two and a half months thereafter, she complained to her parents about her harassment and ill-treatment. Then she returned to them. In September, her brother received a message. Hence, he went to meet her. He noticed swelling in her eye. He also noticed that no treatment was provided to her. Hence, he took her to the eye specialist at Parbhani. The husband slapped and beat her withby fist and blows at the instigation of his mother. She committed suicide on 31.01.2003 by jumping into the well in the village of the applicants. Her funeral was performed at her parents' village. Initially, the accidental case was registered. Then on the report of her brother, the FIR was registered. The Medical Officer opined that the cause of death of the deceased was drowning. Both Courts appreciating the evidence held the applicants guilty of the offence punishable under Sections 498-A, 306 r/w 34 of the Indian Penal Code. The defence of the applicants/accused was as appears from their statement under

Section 313 of the Criminal Procedure Code that a false report was lodged. The deceased did not like her marriage with her husband as he was illiterate.

3. The learned counsel for the applicants vehemently argued that both Courts erred in law in appreciating the evidence and recording the incorrect findings that the deceased was treated with cruelty and harassed for unlawful demand of Rs.25,000/-. The findings as regards the cruelty are hypothetical and not in consonance with the evidence led before the Court. The evidence does not prove either of the charges. There was absolutely no evidence that the applicants were coercing the deceased to fulfil their demand for dowry. Both Courts erroneously recorded the findings that since she was instigated, she committed suicide. However, they did not consider the proximity of the incident and ill-treatment. During her stay with the applicants, she had no complaints at least for ill-treatment for unlawful demand of Rs.25,000/-. Both Courts have mechanically applied the presumption under Section 113A of the Indian Evidence Act. Barely the death of a married woman within seven years of marriage, the presumption under Section 113A of the Indian Evidence Act does not apply. The test to apply this presumption set out by the Hon'ble Supreme Court and High Courts in various judicial pronouncements was ignored. There were no circumstances as required under Section 113A of the Indian Evidence

Act to attract the presumption. In the absence of other circumstances, that prove the nexus of the acts of the applicants, the applicants have been erroneously convicted of the offence punishable under Section 306 of the Indian Penal Code. The cruelty as defined under Section 498-A was also not proved. Both Courts hypothetically took notice of the day-to-day life and relation between daughter-in-law and mother-in-law. No woman could be branded as a bad mother-in-law. However, the findings of the Trial Court were like branding the mother-in-law as not a good woman. To bolster his arguments, he relied on the case of Rajbabu Vs. State of M.P., AIR 2008 SC 3212, Mangat Ram Vs. State of Haryana, AIR 2014 SC 1782, State of Maharashtra Vs. Rajendra Kashirao Bhujade, 2017 All M.R. (Cri.) 2256, Dinesh Ganpat Bondre Vs. State of Maharashtra, 2017 (2) ABR (Cri.) 524 and Kunjabai Vs. State of M.P., 2016 All M.R. (Cri.) 410 (S.C.).

4. Per contra, learned APP supporting the impugned judgments and orders argued that prima facie there were no errors on the face of the record to interfere with the impugned judgment and order. The scope of revision is very limited. The High Court cannot re-appreciate the evidence unless the glaring features have been apparently noticed. The specific incidents were narrated. The silence of the applicant on beating as alleged by her brother is a circumstance to establish the nexus with ill-treatment. All the witnesses were

consistent. There were no material contradictions and omissions to disbelieve the witnesses. The circumstances established by the prosecution were sufficient to apply the presumption under Section 113A of the Indian Evidence Act. Her immediate disclosure of the ill-treatment also inspires the confidence that the witnesses are deposing truth. Since both impugned judgments and orders are free from illegalities, the revision deserves to be dismissed.

5. Both the learned Trial Court as well as the First Appellate Court relied on the depositions of the relatives of the deceased and held the accused guilty. The Courts did not believe the defence of the applicants/accused that the deceased was more educated than the husband. Therefore, she was not willing to cohabit with him. Both Courts also did not consider the material brought in the cross-examination by the accused for the reason that their evidence was not impeached.

6. The prosecution case was based upon two incidents, one was beating her. Therefore, she was not willing to go to her husband even then the parents convinced her and the last was the incident of the injury to the eyes of the deceased five months before the incident.

7. The primary burden is on the prosecution to establish the case beyond all the reasonable doubt. The specific allegations against the applicants were that the husband beat the deceased and caused injury to her eyes at the instigation of his mother. Her brother took

her to the hospital and brought her back. The grievance of the parents of the deceased was that her husband did not treat her well. However, her brother was silent about why the deceased was beaten. The primary rule of appreciating the evidence is to read the evidence as a whole and cannot be picked and chosen. It was also the prosecution case that the applicants were starving the deceased. Both Courts appear to have not read the evidence in toto. The material admission is that when she went to her home for the first time after marriage for Nagpanchmi, she did not complain about starvation or ill-treatment. The fact that from the day of treating the deceased at Parbhani for eye treatment till her death, there were no complaints of ill-treatment, also appears to have been ignored by both Courts. It was also the fact that soon after the death, no report was lodged. On the contrary, the star witness, the brother of the deceased admitted in his cross-examination that he allowed the applicant No.1/husband to lodge the accidental death case. The material fact as regards the nature of the injury to her eyes also appears not established. The defence of the accused that he had never been to school and illiterate person and the deceased was educated up to 7th std, were also the facts before the Court. Both Courts also did not consider the evidence of the Medical Officer who performed the post-mortem report that there were no external injuries on the dead body, which raises doubt

about the allegations of beating the deceased before the incident. He admitted that it was the body of a well-nourished person.

8. The learned counsel for the applicants has vehemently argued that both Courts failed to appreciate the evidence properly, therefore, their decisions are incorrect. The above-mentioned material evidence is reproduced to examine the legality and propriety of the impugned judgments and orders. The Court is not oblivious to its revisional jurisdiction. The settled law on reappreciation of evidence under revisional jurisdiction is that in a revision under section 401 of Cr.P.C. , the High Court does not normally re-appreciate the evidence by itself and go into the question of credibility of the witness and the assessment of the evidence by the Courts below is accepted as final unless the appreciation of evidence is vitiated by procedural law misreading of the evidence, or where the conclusions the Courts below are manifestly perverse and unsupportable from the evidence on record. This Court is also aware that when the view of the Trial Court and the First Appellate Court is possible view, the High Court should avoid interference.

9. The report of the incident was lodged after lodging the A.D. When the dead body was taken to the hospital, the relatives who were the witnesses before the Court were also present. They did not raise a dispute or make any allegations of unlawful demand of Rs.25,000/- and for that, they were beating her.

10. The question is whether the material before the Court was sufficient to believe that the deceased was caused cruelty for the unlawful demand of dowry that forced her to commit suicide.

11. The first test to apply Section 498-A of the Indian Penal Code is whether the cruelty, as explained in Section 498-A of the Indian Penal Code, was caused to the deceased either by willful conduct which is of such a nature that it is likely to drive a woman to commit suicide or harassment of the woman with a view to coercing her or any of her relatives to meet any unlawful demand for any property or valuable security or on account of failure by her or any person related to her to meet such demand.

12. To attract Section 306 of the Indian Penal Code, the burden is on the prosecution that the accused abetted the deceased to commit suicide.

13. The abetment has been defined in Section 107 of the Indian Penal Code. In order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime. He has to do things which instigates any person to do that thing. He should intentionally aid, by any act or illegal omission, the doing of that thing. To aid doing of that thing has been defined in Explanation (2) of Section 107 of the Indian Penal Code. The said explanation provides that whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that

act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

14. Presumption under Section 113-A of the Indian Evidence Act speaks of the presumption as to abetment of suicide by a married woman. It provides for the presumption of abetment of a husband or any relatives of the husband if the married woman commits suicide within seven years of the date of her marriage. For applying such presumption, the prosecution has to prove that the husband or the relatives of the husband had subjected the deceased wife to cruelty. If such cruelty is not proved, it leads to the inference that the presumption under Section 113A of the Indian Evidence Act cannot be raised. When there is no evidence of cruelty by the husband or his relatives for the demand of dowry, the presumption under Section 113A would not arise. The burden is on the prosecution to prove the serious charges of causing cruelty and harassment to the wife beyond reasonable doubt. The law is well settled that the presumption of suicide or abetment by the husband can be drawn only when the prosecution has discharged the initial onus of proving cruelty. The precondition to applying the presumption under Section 113A of the Indian Evidence Act is that the suicide should be within seven years of her marriage due to subjecting her to cruelty as explained in Section 498-A of the Indian Penal Code. It is clear that both sections should be read together. Unless the cruelty as defined under Section 498-A is

proved, the Court cannot mechanically draw the presumption of suicide under Section 113A of the Indian Evidence Act.

15. The Hon'ble Supreme Court in the case of *Mahabir Prasad Vs. State of Madhya Pradesh, 1991 SC 2296* held that a wrong appreciation of facts, even if it results in concurrent findings of fact is liable to be set aside. The law is also well settled that the evidence of the relatives of the wife could not be brushed aside. However, the rule is that it must inspire confidence and it should be of such a nature that a prudent man could believe such facts. The second rule is that the evidence of the relatives should be tested cautiously.

16. In the case of *Rajbabu (supra)*, the Hon'ble Supreme Court laid down the law that mere facts of suicide by women within seven years and cruelty by husband does not automatically give rise to presumption. The Court is required to look into all other circumstances of the case. In the case of *Mangat Ram (supra)*, the Hon'ble Supreme Court held that the mere fact that if a married woman commits suicide within a period of seven years of marriage, the presumption under Section 113-A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 113-A of the Indian Evidence Act, may attract, having regard to all other circumstances of

the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary.

17. In the case of Rajendra (supra), it has been observed in para 11 that ‘in order to constitute an offence of cruelty, there has to be some willful conduct of such a nature as is likely to drive a woman to suicide or to cause injury or danger to life, limb or health. It can also be of the kind which is performed with a view to coercing the woman or any person related to her to meet any unlawful demand of any property or valuable security. Willful conduct and / or coercing a woman for achieving a particular purpose as covered under the explanations (A) and (B) to section 498(A) I.P.C. is necessary and for that purpose, it is also necessary for the witness to state the period of the harassment, may be by some approximation, and its frequency or consistency. In the absence of these details, it would be risky for the Court to make any conclusion regarding willful conduct and / or coercion of a woman for meeting an unlawful demand. These facts have not clearly come on record in the instant case.’

18. In the case of Dinesh (supra), the Hon’ble Bombay High Court held that it was necessary to bring on record what were instances of physical and mental harassment to the deceased.

19. The Trial Court as well as the First Appellate Court were supposed to test the evidence of the witness on the anvil of the ingredients of Section 498-A first and then draw the presumption under Section 113A of the Indian Evidence Act. Barely the relatives stating about the ill-treatment of the deceased cannot be accepted blindly. Such allegations must be read with other circumstances of the case in the context of suicide of a woman, or by abetment by her husband or his relatives. The other circumstances, like the immediate conduct of the parents and brother of the deceased, keeping silent and allowing the applicant no.1/husband to lodge the accidental death case, were the relevant circumstances available on the record. The post-incident conduct does not only apply to the accused but it is equally applied to the first informant or the witnesses also. Therefore, we have a law to doubt the witnesses if they come forward belatedly without a satisfactory explanation. Non-establishing the injuries to the eye of the deceased that those were caused due to human acts was also the another circumstance to be considered to prove the harassment and cruelty to the deceased for unlawful demand. Another circumstance available on record which was material to apply the presumption under Section 113A of the Indian Evidence Act, was that no ill-treatment or complaints of ill-treatment by the deceased for the last five months from the date of her treatment for eyes and no visits of the parents and relatives.

However, it prima facie appears that both Courts lost the sight of the law as regards the proof of cruelty under Section 498-A of the Indian Penal Code and presumption under Section 113A of the Indian Evidence Act while recording the findings that the prosecution has proved the case beyond the reasonable doubt. The material placed on record if read with the rule of appreciation of evidence, reading the evidence as a whole it would be difficult to accept that the prosecution had proved the offence under Section 498-A of the Indian Penal Code. Since the cruelty as defined in the explanation to Section 498-A is not established, the prosecution case for abetment to commit suicide automatically fails. Barely a suicide by the wife in the absence of any circumstances to prove the nexus of the applicants, they could not be sentenced to imprisonment.

20. For the reasons above, the Court is of the view both Courts have erred in law in appreciating the evidence pursuant to the rule of appreciation of evidence and it has not properly appreciated and both Courts have erroneously arrived at the conclusion of conviction. Hence, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) The criminal revision application is allowed.
- (ii) The impugned judgment and order of conviction of the learned 2nd Adhoc Assistant Sessions Judge, Parbhani dated 29.11.2003

passed in Sessions Trial No.69 of 2003 and Additional Sessions Judge, Basmath in Criminal Appeal No.83 of 2003 (Old) Criminal Appeal No.15 of 2004 (New) dated 08.12.2005, stands quashed and set aside.

(iii) Both applicants/accused are acquitted of the offences punishable under Sections 498-A and 306 r/w 34 of the Indian Penal Code.

(iv) The fine amount deposited, if any, be returned to the applicants.

(v) Bail bonds stand cancelled and surety stands discharged.

(vi) Record and proceedings be returned to the learned 2nd Adhoc Assistant Sessions Judge, Parbhani.

(vii) Rule is made absolute in the above terms.

(S.G. MEHARE, J.)