



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

CRIMINAL REVISION APPLICATION NO.396 OF 2005

Bhagirathibai W/o Babruhan Shahane,
Age-42 years, Occu:Household,
R/o-MSEB Colony, Idga Road,
Beed, Taluka and District-Beed.

**...APPLICANT
(Original Complainant)**

VERSUS

- 1) The State of Maharashtra,
Through City Police Station,
Shrirampur, District-Ahmednagar,
- 2) Sachin Ashok Maid,
Age-26 years, Occu:nil,
R/o-Ramnagar, Ward No.1,
Shrirampur, District-Ahmednagar,
- 3) Shobhabai @ Hirabai Ashok Maid,
Age-46 years, Occu:nil,
R/o-As Above,
- 4) Kanchan Ganesh Udawant,
Age-21 years, Occu:nil,
R/o-As Above,
- 5) Vaishali Somnath Kulathe,
Age-28 years, Occu:nil,
R/o-As Above.

...RESPONDENTS

...

Ms. Gausiya N. Sayyed Advocate h/f. Mr. M.A. Tandale
Advocate for Applicant.
Ms. P.R. Bharaswadkar, A.P.P. for Respondent No.1.
Mr. V.R. Dhorde Advocate for Respondent Nos.2 to 5.

...

CORAM: S.G. MEHARE, J.

DATE : 30th JULY, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent Nos.2 to 5.
2. Respondents-accused, who were the mother and sisters of accused No.1/husband of the deceased, faced the trial for the offence under Section 304-B, 498-A read with Section 34 of the Indian Penal Code. The deceased married respondent No.1 on 18th May 2001 and died of burn injuries on 10th June 2004. A report was lodged against the respondents/accused that the deceased was ill-treated for the remaining balance of the dowry amount. Due to continuous harassment, she set herself on fire.
3. The full-fledged trial was conducted before the Additional Sessions Judge, Shrirampur. The Additional Sessions Judge disbelieved the prosecution story on the ground that there was a delay in lodging the First Information Report (for short, "the FIR"). There is material improvement in the prosecution story regarding the demand for dowry. There was overwriting in the FIR. Learned trial Court also considered the financial background and the conduct of the accused, who had nominated the deceased in LIC policies and fixed deposits. The learned trial court, considering the law laid down by the Court of Laws on Section 304-B of the Indian Penal Code and presumptions under the law came to the

conclusion that the prosecution failed to establish the charges against the accused beyond reasonable doubt and finally acquitted the accused.

4. This Revision was preferred in 2005. In due course, it was listed. The applicant and her lawyer were absent. Hence, the presence of the counsel for the applicant was secured by notice. Notice was also sent to the applicant. Police served it. The counsel for the applicant tried to submit that since the applicant/complainant is not in contact, it is difficult for her to advance the arguments. However, the facts have been established on record that the first informant is alive. She did not cancel the Vakalatnama of the counsel of the applicant. Unless the Vakalatnama is cancelled or the party appoints the lawyer dies, the lawyer cannot be discharged till the final adjudication under criminal law.

5. Finally, learned counsel Ms. Gausiya Sayyed, holding for learned counsel Mr. Tandale, advanced the arguments. She has vehemently argued that the improvements were not material. No satisfactory material was brought in the cross-examination of the witnesses to rebut the presumption of death within seven years of marriage. The deceased had no reason to commit suicide. Learned Additional Sessions Judge has exaggerated the finding on the delay in lodging the FIR. The explanation for the delay has

also been incorrectly appreciated. She further argued that merely nominating the deceased in fixed deposits and LIC policies is not sufficient to believe that she was not ill-treated for the demand of dowry. The evidence before the Court was specific that soon before the death, the deceased was ill-treated for the demand of dowry. The complainant had no reason to file the incorrect report. She also argued that the learned Additional Sessions Judge held that respondent Nos.3 and 4 reside at different places. Merely residing in distant places is insufficient to believe that they were not involved in the crime. She argued that the learned Additional Sessions Judge incorrectly appreciated the evidence and also relied on the case-laws, which were not relevant. The prosecution has produced sufficient evidence to prove the case beyond a reasonable doubt. However, the respondents/accused have been acquitted due to misconception of law. Hence, the Revision may be allowed.

6. Per contra, the learned counsel for the respondents/accused submits that the learned Additional Sessions Judge has correctly appreciated the evidence. He has specifically observed that there was overwriting in the FIR, which created serious doubt about the veracity of the allegations. Since respondent Nos. 3 and 4 were residing at their places with their husbands, and they had no reason to ill-treat the deceased for a demand for a dowry. A story of the balance dowry amount has

been improved. It was not mentioned in the FIR. There were material improvements in the story of the demand for a balanced dowry amount. There was no evidence that soon before the incident, the deceased was ill-treated for the demand of dowry. There was no nexus between the demand for dowry and the death. The evidence has been correctly appreciated. Hence, the impugned Judgment and order does not warrant interference.

7. Considering the scope of Section 397 of Cr.P.C. read with Section 401 of the Code of Criminal Procedure, this Court has also limitations. In revisional jurisdiction, the Court cannot re-appreciate the evidence unless the trial Court has avoided reading the evidence which was relevant and material, or the evidence has not been correctly appreciated.

8. Perused the impugned Judgment and order. Prima facie it appears that the story of demand of the balance amount of dowry was improved. The prosecution evidence was not consistent regarding the demand of the a balance amount of dowry. There was no whisper in the FIR that some portion of dowry remained to be paid. The witnesses are deposing contrary to what allegations were levelled against the accused. The trial Court has observed that the suicide note was not referred. The learned trial Court was right in believing that there was no nexus between the demand of dowry and the death. Therefore, Section

304-B of the Indian Penal Code does not attract. Overwriting in the FIR was another circumstance before the trial court that raised doubt about the veracity of the witnesses. The cause for the demand for dowry was also at variance. Though the accused Nos. 3 and 4, married sisters of husband, the ground that they were residing separately, and it was not grounds to disbelieve the allegations of treating the married woman with cruelty for the demand of dowry, and the Court has correctly appreciated the facts. The learned trial Court has correctly appreciated the evidence and recorded the findings that the prosecution failed to establish the charges beyond reasonable doubt. There was nothing on record to point out that the learned trial Court incorrectly appreciated the evidence or did not consider the relevant and material evidence. The entire evidence has been appreciated in the context of the allegations levelled against the accused.

9. On examining the impugned Judgment and order, the Court is not convinced that there are reasons to interfere with the impugned Judgment and orders of the acquittal. The Revision is devoid of merit. Hence, the Revision stands dismissed.

10. No order as to costs.

11. Rule stands discharged.

12. Record and Proceedings be returned to the learned trial Court.

[S.G. MEHARE, J.]

asb/JULY24