
(2003) 03 BOM CK 0004

In the Bombay High Court

Case No : Criminal Revision Application No. 86 of 1999

Chintaman Prasad Dhanushadhari Dubey

APPELLANT

Vs

Kunjbihari Babulal Tiwari and Others

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Evidence Act, 1872 — Section 113(B)

Citation : (2003) 03 BOM CK 0004

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : S.B. Wahane, for the Appellant; R.M. Daga, for the Respondent Nos. 1 to 5, Mr. Thakare, Assistant Public Prosecutor, for the Respondent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Batta, J.—The applicant, who is father of the deceased Anita, has come in revision challenging an order dated 2.1.1999 passed by the Additional Sessions Judge, Nagpur, whereby respondent Nos. 1 to 5 have been ordered to be acquitted of all charges. The said respondents were tried for the offences under Sections 498-A, 304-B, 302 and 201 r/w 34 of the Indian Penal Code. The prosecution had in all examined 13 witnesses in support of charges. The trial Court, after assessing of evidence came to the conclusion that the prosecution had failed to prove that the death was homicidal or that the respondent Nos. 1 to 5 were in any manner responsible for the death of deceased Anita.

2. Learned Advocate for the applicant urged before me that the deceased Anita was married to respondent No.2 Anil on 6.5.1994 and the said Anita died pursuant to an incident which took place in the house of the respondents in the early hours of 8.12.1994. Therefore, according to him, since the death had taken place within six months from the marriage presumption of u/s 113(B) of the Indian Evidence Act has to be drawn. Learned Advocates for the applicant further pointed out that the trial Court had erred in not accepting cogent and reliable

evidence of the applicant/complainant, as also two of brothers of deceased Anita, who were examined as P.W.4 and P.W.5, inasmuch as all of them had in their deposition categorically stated that the deceased Anita was being ill-treated on account of repeated dowry demands which to a large extent had been met by the applicant/complainant and his sons. According to him, there is absolutely no reason to discard the evidence of the said witnesses. He also relied on the C.A. report and has urged that the C.A. report which showed presence of kerosene on the clothes of the deceased Anita has been discarded by the trial Court on account of reasons which are not germane. He, therefore, contends that there was no reason whatsoever to discard the oral dying declarations made by the deceased Anita to her brothers P.W.4 and P.W.5. According to him, in the light of the evidence on record, the conclusions arrived at by the trial Court cannot be sustained and that the matter be remanded for de novo trial.

3. Learned A.P.P. supports the contentions advanced by learned Advocate for the applicant. Learned Advocate Shri R.M. Daga, appearing on behalf of respondent Nos. 1 to 5, has submitted before me that the evidence on record has been properly scrutinized by the trial Court keeping in view the principles of assessment of evidence and that the evidence of applicant/complainant and his son has rightly been discarded for the reasons disclosed in the judgment. He also urged that the trial Court has rightly disbelieved the incriminating circumstance relating to presence of kerosene on the clothes of the deceased Anita since possibility of tampering with the same could not be ruled out inasmuch as the clothes remained in unsealed condition in the Police Station for about four days. According to him, findings of the trial Court which are otherwise well founded cannot be interfered with in the exercise of revisional jurisdiction of this Court.

4. The principles on which revisional jurisdiction has to be exercised, in a case of acquittal, at the instant of private complainant are now well-settled. In Akalu Ahir and Others Vs. Ramdeo Ram, following earlier judgments principles were reiterated and by way of illustration, the Apex Court has indicated categories of cases in which the High Court would be justified in interfering the finding of acquittal in revision, which read as under:-

- (i) Where the trial Court has no jurisdiction to try the cases, but has still acquitted the accused;
- (ii) Where the trial Court has wrongly shut out evidence which the prosecution wished to produce;
- (iii) Where the Appellate Court has wrongly held the evidence which was admitted by the trial Court to be inadmissible;
- (iv) Where the material evidence has been overlooked either by the trial Court or by the Appellate Court; and
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law."

It is further pointed therein that the above categories are merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal.

5. The Apex Court in *Pakalpatti Narayana & others v. Bonipalli Peda Appadu and another*, AIR 1975 S.C.1851 has also pointed that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, ought not to be exercised lightly and that it can be exercised only in exceptional cases where the interests of public justice require interference for the correct of a manifest illegality or the prevention of a gross miscarriage of justice. In *T.N. Dhakkal v. James Basnett* reported as, (2001) 10 SCC 419 . It has been pointed out by the Apex Court that exercise of revisional jurisdiction would depend upon facts and circumstances of each particular case. In *Thankappan Nadar and Others Vs. Gopala Krishnan and Another*, the Apex Court has reiterated law laid down in *Akalu Ahir & others v. Ramdeo Ram* (supra).

6. In the light of the principles referred to above for the exercise of revisional jurisdiction, I would like to examine whether any interference is called for. The evidence in this case consists of:

(a) two written dying declarations Exhibits 36 and 37, one of which was recorded by Police Officer immediately after the deceased was brought to the hospital and the other dying declaration which was recorded by the Executive Magistrate at about 9.00 p.m. on 8.12.1994.

(b) two oral dying declarations made by the deceased Anita to her brother P. W.4 and P.W.5 at 3.00 and 4.00 a.m. respectively on 9.12.1994.

(c) presence of kerosene on the clothes of the deceased Anita.

(d) evidence relating to ill-treatment and dowry demand.

7. So far as written dying declaration Exhibits 36 and 37 are concerned, in those dying declarations the deceased Anita had stated that she was preparing tea when her saree suddenly caught fire and she sustained burn injuries. Though these written dying declarations were placed on record and were admitted by the respondent Nos. 1 to 5, the prosecution had submitted before the trial Court that the same are not relied upon by the prosecution.

8. Be that as it may, I shall now deal with the two dying declarations which are said to have been made by the deceased Anita before her brothers P.W.4 and P.W.5. According to P.W.4 Anil Dubey, the deceased Anita had disclosed to him at about 3.00 a.m. that accused Nos. 1 to 4 had tied her with nylon rope and had burnt her and after the dying declaration she became unconscious. P. W.5 Ashok, other brother of the deceased Anita, states that similar dying declarations were made by the deceased Anita before him at 4.00 a.m. and immediately after that deceased Anita became unconscious. The trial Court noticed that according to P.W.4 Anil Dubey, deceased Anita had made oral dying declaration before him at

3.00 a.m. and after that she became unconscious and as such the dying declaration again made before P.W.5 Ashok at 4 a.m. could not be explained.

The trial Court also found that there was no evidence on record to suggest that when the alleged dying declaration was made before Anil (P.W.4) Anita was conscious. P.Ws.4 and 5 did not disclose the fact of oral dying declaration to anyone till 11.12.1994 which fact was also taken into consideration by the trial Court. The reasoning given by the trial Court to disbelieve P.W.4 and P.W.5 can, by no stretch of imagination be said to be perverse and the conclusion arrived at by the trial Court was plausible and a possible view. The trial Court also disbelieved the applicant/complainant in relation in the dowry demand since even though applicant/ complainant had lodged a complaint with the police on 8.12.1994 itself but there was no reference whatsoever to any demand for dowry in the said complaint. The trial Court found that the allegations for demand of dowry came to the forefront after death of the deceased Anita. The trial Court, therefore, taking a plausible view disbelieved the allegations relating to dowry demand made by applicant/complainant as also P.W.4 and P.W.5. The other witnesses namely P.W.7 Fakirchand, P. W.8 Suryakant Sharma and P. W. 11 Ramesh Kharwade were disbelieved on the ground that their statements were recorded after 1-1/2 months of the incident, as also on account of the fact that they had no first hand information about it. It was also found that the version of P.W.1 1 Ramesh that the husband used to consume liquor was not supported by any other witness. The trial Court also took note of the fact that one Jagjit Singh Thakur with whose intervention the marriage of deceased Anita with Anil had been performed had not been examined, who could throw light on the demand of dowry, if any. The only other circumstances which was left to be examined was presence of kerosene on the clothes of deceased. The trial Court found that the clothes of the deceased remained in unsealed condition in the Police Station for about four days and the possibility of tampering with it could not be ruled out. Taking an overall view of the matter, the trial Court came to the conclusion that the prosecution had failed to bring home the guilt of the accused and the trial Court, therefore, ordered the acquittal of respondent Nos. 1 to 5 on the basis of evidence on record and keeping in view the principles of assessment of evidence, the view taken by the trial Court is a plausible view and while exercising revisional jurisdiction it is not possible to substitute the view taken by the trial Court, who had the benefit of observing the demean our of the witness examined in this case.

9. For the aforesaid reasons, I do not find any merit in this revision and the revision is hereby dismissed.