
(2011) 03 BOM CK 0226

In the Bombay High Court

Case No : Criminal Revision Application No. 270 of 2007

Yashwant Vaidya

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 302, 304B, 306, 34, 498A

Citation : (2012) BomCR(Cri) 283 : (2011) 2 DMC 663

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : S.M. Ghodeswar, for the Appellant; C.N. Adgokar, APP for Respondent No. 1 and M.B. Naidu, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Respondents No. 2 to 6 were tried for the offences punishable under Sections 498A, 306, 304B read with Section 34 and alternatively, u/s 302 read with Section 34 of the Indian Penal Code. Applicant is brother of deceased Anjali who has filed present revision application. Learned Additional Public Prosecutor makes a statement that the State of Maharashtra has not filed appeal against the impugned judgment and order of acquittal.

2. Heard learned Counsel for applicant and learned Counsel for Respondents No. 2 to 6. Learned Counsel for the applicant contends that deceased Anjali suffered cruelty at the hands of her in-laws which led to her death. According to learned Counsel, close relatives of the victim on parental side did not take recourse to police machinery because of their hope of reconciliation between deceased Anjali and her husband. It is further submitted that the evidence in the form of postmortem notes was not properly appreciated by the learned trial Judge as the cause of death was mentioned as hanging which may be suicidal or homicidal. He contends that despite adequate evidence on record, learned trial Judge acquitted the accused for serious offences. Learned Counsel for the applicant took me

through evidence on record and contended that the impugned judgment and order suffers from infirmity and the prosecution ought to have resulted into conviction of the accused.

3. Learned Counsel for accused/Respondents No. 2 to 6 has supported the impugned judgment and order and he contends that in the medical evidence of doctor who conducted postmortem examination, there was no suggestion regarding any alternate possibility for cause of death although hanging may be homicidal or suicidal. It is contended that normally when the cause of death is mentioned as hanging, it is suicidal.

4. Dr Shailendra Dhawane was examined by the prosecution as P. W. 4 with reference to postmortem notes who described the nature of injuries of ligature marks around neck above level of thyroid cartilage which was ante mortem and during internal examination, signs of asphyxial death were found. Cause of death was mentioned as hanging and except ligature marks on the neck, no other internal injuries were found. It was suggested to P.W. 4 Dr Dhawane that strangulation is normally homicidal. Dr Dhawane also admitted that it was not a case of strangulation. Regarding allegation of cruelty, there was no documentary evidence in the nature of postal correspondence nor any details of telephonic communication so as to arrive at an inference against the accused. Learned Counsel for Respondents No. 2 to 6 took me through the evidence of P. Ws. 1 to 3 who are close relatives of the victim, viz. Mother, father and brother and contended that possibility of ill-treatment was overruled in this case. In fact, when it is the case of prosecution that the victim was making telephone calls to her close relatives, it does indicate that she was never prohibited by her husband and in-laws from talking to her parents or her relatives. According to them, Anjali wanted to make new purchases for new year prior to her death. If that is so, it is difficult to infer that she was treated with cruelty by the accused for demand of dowry or for any other reason. The evidence of P. Ws. 1 to 3 is also criticised on the ground that it was contradictory as well as contained material omissions. The investigating officer during the course of his cross-examination, admitted that there was no evidence of any ill-treatment despite enquiry with the neighbours of the accused. It is also contended that victim suffered from ailment of headache and was under medical treatment, but statements of doctors treating her were not recorded by the Investigating Officer. Under these circumstances, it is submitted that the impugned judgment and order of acquittal ought not be disturbed. Learned Counsel for Respondents No. 2 to 6 relied on Johar and Others Vs. Mangal Prasad and Another, and submitted that revision deserves to be dismissed.

5. Learned trial Judge has observed number of lacunae in the course of investigation which turned out to be fatal to prosecution case. Learned trial Judge has discussed evidence of Dr Dhawane and principles laid down in Medical Jurisprudence in thorough detail. Number of contradictions from the evidence of P. Ws. 1 to 3 have been observed by the learned trial Judge and it was found

from the facts and circumstances gathered from record that none of the accused was present on the spot at the time of alleged incident.

6. This Court is not oblivious of the fact that the High Court has to keep in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. The revisional jurisdiction has to be exercised only in exceptional cases where the interests of justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. Taking into consideration the principles of exercise of jurisdiction to entertain a revision application which is restricted particularly when it arises from a judgment of acquittal coupled with the fact that there is no manifest illegality committed by the trial Court and furthermore, judgment of acquittal is well reasoned, no ground is made out for interference.

7. In the result, criminal revision application is dismissed.