This revision coming on for hearing this day, the court passed the following:

ORDER

The petitioner has filed the present petition being aggrieved by judgment dated 16.01.2019 passed in CRA No.82/2018 by Second Additional Sessions Judge, District Khargone whereby the learned appellate Court has affirmed the judgment and order dated 04.01.2018 passed in Criminal Case No.01/2013 by JMFC, Khargone acquitting respondent from the charges under Sections 498-A, 294, 323 and 506 of IPC, 1860. Hence, the present petition before this Court.

02. Brief facts of the case are that marriage of the petitioner/complainant and respondent no.1 was solemnized on 14.02.2009. Prior to marriage the petitioner was working as Supervisor in Mahila Bal Vikas Department, District Khargone and the respondent no.1 was working in railway department at Dahod (Gujrat). Petitioner took transfer to Meghnagar, District Jhabua, which is very near to Dahod where the respondent reside. After marriage the respondents started harassing the petitioner mentally and physically on her domestic working style and also insisted her to leave her service. It is further alleged that they also demanded dowry of Rs.20.00 lakhs and also caused injury for not fulfilling their demand of dowry. Hence, the police has lodged the FIR against the petitioner at Police Station Gogava, District Khargone for offence under sections 498-A, 323, 506 and 34 of IPC, 1860.

03. Thereafter, after following the due procedure of law and due investigation, the charge-sheet has been filed.

04. The learned trial Court, after appreciation of the evidence available on record, acquitted the respondents from the offence under Sections 498-A, 323,

506 and 34 of IPC vide order dated 04.01.2018.

05. Being aggrieved by the aforesaid order of acquittal dated 04.0102018 passed by the learned trial Court, the petitioner has filed an appeal before the Second Additional Sessions Judge, District Khargone and vide the impugned judgement dated 16.01.2019, the learned appellate Court dismissed the appeal filed by the petitioner and affirmed the order of acquittal passed by learned trial Court. Hence, the present revision has been filed by the petitioner before this Court.

06. Learned counsel for the petitioner submitted that the impugned judgment passed by learned court below is contrary to law and facts on record. The learned trial Court has erred in acquitting the respondents whereas the specific role has been attributed to the respondents. It is further submitted that the learned trial Court has erred in not appreciating the fact that Court below has erred in not considering the fact that the petitioner by her statement and other witnesses statements has proved the cruelty metted by her physically and mentally, despite which the learned trial Court acquitted the respondents when the charges are proved. It is further submitted that the learned Courts below have not appreciated the evidence and acquitted the respondent nos.1 to 3 even after specific allegations and material against them on record. Hence, prays for setting aside the impugned order and prays for conviction of the respondent nos.1 to 3.

07. On the other hand, learned counsel for the respondent nos.1 to 3 has opposed the prayer made by counsel for the petitioner and submits that the learned trial Court as well as learned first appellate Court have well appreciated the evidence available on record and acquitted respondent nos.1 to 3 after considering each and every aspect of the case. It is also remonstrated that

provisions of Section 401(3) of Cr.P.C., this Court cannot convert the finding of acquittal into one of conviction. Hence, no interference is required and prays for dismissal of the petition.

08. I have heard the learned counsel for the parties and perused the record.

09. Having heard the learned counsel for the parties, the question for determination is as to whether this Court in exercise of revisional jurisdiction can set aside the order of acquittal and convert the same into findings of conviction?

10. From the face of record, it is an admitted position that respondent nos.1to 3 have been acquitted by the learned trial Court and the order of acquittal has been affirmed by the learned appellate Court. Being crestfallen by that order, this criminal revision has been filed before this Court under Section 397 r/w 401 of Cr.P.C.

11. Before dwelling on the point, it would be appropriate to quote the respective provision prescribed under Section 401(3) of Cr.P.C. as under:

The provisions of Section 401 (3) of Cr.P.C. provides as under:

> **"(1)....**
>
> **(2).....**
>
> **(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction."**

12. Nevertheless, the provision predicated under 401(5) of Cr.P.C. mandates that if High court is satisfied that the revision petition was made under

erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice to do so, the High Court may treat the application for revision as an appeal and deal with the same accordingly. In the case at hand, since an appeal has already been filed by the petitioner against the order of acquittal passed by the learned trial Court, the remedy of appeal is not available for the petitioner against the order of learned appellate Court affirming the finding of learned trial Court.

13. Now, the scope of revisional jurisdiction is also required to be ruminated. On this aspect, In Kaptan Singh and others vs. State of M.P. and another, **AIR 1997 SC 2485, (1997) CCR 109 (SC)**, the Hon'ble Supreme Court considered a large number of its earlier judgments, particularly Chinnaswami vs. State of Andhra Pradesh, AIR 1962 SC 1788 ; Mahendra Pratap vs. Sarju Singh, AIR 1968, SC 707; P.N. G. Raju vs. B.P. Appadu, AIR 1975, SC 1854 and Ayodhya vs. Ram **Sumer Singh, AIR 1981 SC 1415** and held that revisional power can be exercised only when "there exists a manifest illegality in the order or there is a grave miscarriage of justice".

14. In **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452,** the Hon'ble Apex Court held as under:

> "In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

15. In State of **A.P. vs. Rajagopala Rao (2000) 10 SCC 338**, the Hon'ble Apex Court held as under:

> "The High Court in exercise of its revisional power has upset the concurrent findings of the Courts below without in any way considering the evidence on the record and without indicating as to in what manner the courts below had erred in coming to the conclusion which they had arrived at. The judgment of the High Court contains no reasons whatsoever which would indicate as to why the revision filed by the respondent was allowed. In a sense, it is a non-speaking judgment."

16. In upshot of the aforesaid prepositions, this Court while using its revisional jurisdiction, has to examine that whether there is a manifest illegality in the judgment of the learned Courts below or there is miscarriage of justice.

17. At the outset, it would be noticed that there is no substratum whatsoever laid down by the petitioner in order to establish the prosecution case against the respondent nos.1 to 3. Petitioner/complainant has filed a report at Police Station Gogoan, District Khargone on 05.09.2012 on the basis of which FIR was filed, however, the reason for not filing the report at Police Station Dahod is mentioned as she has been threatened by the respondents in front of the Police Station, whereas there is not written proof with regard to the same. There is no proper explanation for omissions and contraditions in the statement of the witnesses so also the delay in lodging the FIR has also not been properly explained.

18. So far as the injury caused on the person of the complainant is concerned, as per the FIR the said incident was happened on 30.08.2012 and FIR was lodged on 05.09.2012 and MLC was also prepared on 05.09.2012. In this regard statement of Dr. Vimal Kumar (P.W.5) is required to be examined. Dr. Vimal Kumar has stated that he has written that the period of injury was four days but it was written only on the basis of statement of complainant and

doctor himself has not opined regarding the exact period of the injury. Be that as it may the injuries said to be caused on complainant are also simple in nature. Since the period of injury has not been properly explained on the basis of the statement of doctor, it cannot be assumed that these injuries were caused by respondent. That apart there are certain omissions and contradictions in the statement of the prosecution witnesses and therefore, they have not been found trust worthy by learned trial Court as well as by learned appellate Court. As such learned trial Court as well as the appellate Court have, after analysing the evidence in proper perspective acquitted the respondents.

19. In the case at hand, the findings of learned trial Court as well as learned appellate Court are based on proper appreciation of evidence. Both the courts below have assigned clear, cogent and convincing reasons for acquitting respondent nos.1 to 3, therefore, in absence of any perversity in such findings, this Court, in its limited revisional jurisdiction, cannot be interfered with the conclusions rendered by the Courts below. so far as the request for remanding back the case is concerned, this matter relates to the incident happened in the year 2012 almost more than 11 years ago, therefore, at this stage where the learned trial Court as well as the First Appellate Court have after analysing the evidence in proper perspective acquitted the respondents from the aforesaid offences, therefore, it would not be propitious to remand back the matter for further litigation. Be that as it may, the appellant is also unable to point out any such infirmity or irregularity or illegality in the judgment of both the Courts below by which the matter needs to be remanded back. Hence, the request of remanding back the matter for further litigation being sans of merit deserves to be rejected.

20. Accordingly, Criminal Revision No.1274/2020 stands dismissed and

the order of acquittal passed by learned trial Court as well as learned appellate Court is hereby affirmed.

21. Pending I.As, if any stands disposed of.

(PREM NARAYAN SINGH)
JUDGE

sumathi