

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

917 CRIMINAL APPLICATION NO. 2935 OF 2015

The State of Maharashtra.

... Applicant.

VERSUS

Kisan @ Krishna S/o Asaram Jadhav
and others.

... Respondents.

...
Mr. S.R.Yadav Lonikar, A.P.P. for Applicant / State;
Mr. Prasad B. Kadam, Advocate h/f Mr. S.J. Salunke,
Advocate for Respondent Nos. 1 to 3.

...
CORAM : P.R. BORA, J.
Dated: December 02, 2015

...

PER COURT :-

1) The State has filed present application seeking leave to file an appeal under the provisions of section 378(3) of the Code of Criminal Procedure against judgment and order dated 09.03.2015 passed by the Additional Sessions Judge, Jalna in Sessions Case No.126/2010.

2) In the aforesaid Sessions Case, the present respondents were tried for the offences punishable under section 498-A, 306 read with 34 of Indian Penal Code and under section 3 and 4 of Dowry Prohibition Act. In order to prove the guilt of the accused persons, total eight witnesses have been examined by the prosecution. In

nutshell, it was the case of the prosecution before the trial Court that, deceased was subjected to cruelty by the accused persons for demand of Rs.50,000/-. It was also the case of prosecution that, it was disclosed by the deceased to her cousin brother before few days of the alleged occurrence that, the accused persons have demanded Rs.50,000/- for digging a well in their field.

3) Learned A.P.P. Taking me through the evidence of the witnesses examined by the prosecution submitted that, sufficient evidence has come on record proving that there was a monetary demand from the side of the accused persons, which was not fulfilled and because of non fulfillment of demand, deceased was subjected to cruelty by the accused persons, which ultimately resulted in consumption of some poisonous substance by the deceased. Learned A.P.P. further submitted that, the learned Additional Sessions Judge has failed in appreciating the evidence of the prosecution witnesses, and has also failed in properly appreciating the provisions under section 113-A of the Evidence Act as regards to the presumption as to abatement of suicide by a married woman within the period of seven years from the date of her marriage.

Learned A.P.P. submitted that, nothing has been brought on record by the accused persons to rebut the presumption that the deceased committed suicide because of the cruelty alleged on their part. The learned A.P.P. submitted that, the entire evidence requires to be re-appreciated.

4) The Learned Counsel appearing for the respondents i.e. original accused submitted that, the trial Court has not committed any error in acquitting the accused. Learned Counsel further submitted that, the trial Court has recorded an unambiguous finding that no evidence has come on record against accused persons to show that, at any point of time they have subjected the deceased to cruelty. Learned Counsel therefore submitted that, the application deserves to be dismissed.

5) I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment. It is not in dispute that the deceased committed suicide by consuming some poisonous substance and died on 19.09.2008, while undergoing the treatment in Hospital. There is further no dispute that, the deceased died within

few months of her marriage at her matrimonial house. On going through the reasons recorded by the learned Additional Sessions Judge, it is revealed that, there is a little discussion on the point of presumption under section 113-A of the Evidence Act. Arguable issues are raised by the applicant in this regard. The reasons recorded by the trial Court need to be re-considered. I am, therefore, inclined to allow the present application. Hence, following order:

ORDER

- a) The Criminal Application is allowed;
- b) Leave to appeal as prayed for is granted;
- c) The Criminal Application so filed be treated as memo of appeal;
- d) The appeal be registered in accordance with law;
- e) The appeal is admitted;
- f) Action under section 390 of Cr.P.C. be initiated against respondents / accused.

(P.R. BORA, J.)

...

...
S.P.Rane