

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3204 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
MOHAMMAD NAZIR S/O MOHAMMAD YUSUF

.....
Mrs. S. A. Dhumal, APP for applicant
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CORAM : V. K. JADHAV, J.

DATED : 27th AUGUST, 2015

P.C. :-

1. Heard the learned APP for the applicant-State.
2. This is an application preferred by the State seeking leave under Section 378(1)(3) of the Criminal Procedure Code to file an appeal against the judgment and order of acquittal dated 10.03.2015 passed by the Additional Sessions Judge-2, Aurangabad in Sessions Case No. 160 of 2009 for an offence punishable under Section 498-A r/w Section 34 and Section 306 r/w Section 34 of the Indian Penal Code.
3. Perused the impugned judgment and order of acquittal dated 10.03.2015.

4. The deceased Syeda Shahana was married to respondent' son – original accused No. 1 in the year 1998. On 30.11.2008, at about 23.30 hours, deceased Syeda Shahana sustained burn injuries at her house. She was initially shifted to the Government Hospital, Aurangabad and as per advice given, thereafter shifted to a private hospital in Aurangabad itself. Her statement was recorded by the Head Constable in the said private hospital. On 12.12.2008, Syeda Shahana succumbed to the burn injuries in the said private hospital. Initially, A.D. was recorded and during the course of inquiry of the A.D., the brother of deceased Syeda Shahana had lodged a report against the accused alleging therein that after the marriage, the deceased Syeda Shahana was treated well for about two years and thereafter, subjected to cruelty on account of non fulfillment of demand of money for purchasing plot and vehicle. On the basis of these allegations, a crime was registered and after due investigation, a charge-sheet came to be filed before the Court.

5. On perusal of the judgment and order of acquittal, it appears that there is inordinate delay in filing complaint against the accused. There is a delay of near about 40 days in lodging complaint which goes un-explained, as observed by the Court below. Furthermore, the deceased Syeda Shahana was not died within seven years of her marriage and thus, as rightly observed by the Court below, the

presumption under Section 113(A) of the Evidence Act cannot be made applicable to the case. So far as the statement of the deceased Syeda Shahana, which was recorded by the Police immediately after the incident, she had stated in her statement that due to explosion of gas fire while warming up the milk, she caught fire and the original accused No. 1, who happened to be her husband, sustained burn injuries while attempting to extinguish the fire. There is no evidence to show that soon before the death of Syeda Shahana she was subjected to ill treatment and even there is no evidence on record to show that on account of so-called demand of money made earlier, deceased Syeda Shahana was subjected to cruelty as defined under Section 498-A of the Indian Penal Code. It is pertinent that even though deceased Syeda Shahana was admitted in private hospital from 01.12.2008 till 11.12.2008, her statement was not recorded by a Special Executive Magistrate. Even though deceased Syeda Shahana was attended by the informant and her relatives from her maternal side in the hospital, none of them reported the incident to the Police nor made any attempt to get her dying declaration recorded through Special Executive Magistrate.

6. After analyzing the evidence on record, the view adopted by the learned trial judge is a possible view to be adopted. The

impugned judgment and order does not suffer from any perversity. The reasoning given by the learned judge of the Trial Court appears to be proper for arriving at a conclusion that the accused is not guilty. The reasoning given by the judge of the Trial Court cannot be faulted with. Hence, the present application deserves to be rejected.

7. In the result, leave to file appeal stands refused. Application stands rejected.

(V. K. JADHAV, J.)

aaa/-