

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 3648 OF 2015

The State of Maharashtra,
through Investigating Officer,
PSI Anandrao Apparao Ningdale,
Police Station, Murum.
Tq.Omerga Dist.Osmanabad.

... **APPLICANT**

VERSUS

Eknath @ Amol Murlidhar Survase,
age 26 yrs., occu.labour,
r/o Kalnimbala (P), Tq.Omerga
Dist.Osmanabad.

... **RESPONDENT**

...
Shri K.S. Patil, APP for applicant.

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CORAM : INDIRA K. JAIN, J.
DATED : 23.09.2015.

ORDER :

1] This application u/s 378(1)(3) of the Code of Criminal Procedure, 1973, is filed by the State for leave to file appeal against the judgment and order of acquittal passed by the learned Additional Sessions Judge, Omerga, on 23.3.2015 in Sessions Case No.33/2009.

2] Heard learned APP. Perused the impugned judgment.

3] The offence alleged against respondent was u/s 306 of the Indian Penal Code, 1860 i.e. abetment to commit suicide. It was the case of prosecution that Sumitra, aged 20 years, was in love with respondent for about 2/3 years before the incident. Sumitra was daughter of complainant Bitu Bajirao Bhalerao. On 23.1.2009, respondent refused to marry Sumitra. Therefore, she poured kerosene on her and set her ablaze. She was admitted to the hospital. On 28.1.2009, Sumitra succumbed to burn injuries. Bitu lodged report to Murum Police Station on 3.2.2009. Investigation was set into motion. On completion of investigation, charge-sheet was filed before the learned Judicial Magistrate, First Class, Omerga, who in turn committed the case for trial to the Court of Sessions.

4] Charge was framed against accused at Exhibit 10. He pleaded not guilty and claimed to be tried.

5] Prosecution case exclusively rests on the dying declaration of Sumitra recorded by the Special Judicial Magistrate and her oral dying declaration to the mother PW4 Taramati. Learned APP submitted copies of dying declaration and depositions of

witnesses for perusal.

6] On going through the dying declaration and the oral dying declaration to the mother, it can be seen that even if the prosecution case is accepted as it is, then also abetment as required u/s 107 of the Indian Penal Code, 1860, is not at all established. Absolutely there is no iota of evidence to show that accused in any way instigated Sumitra to commit suicide. No overt-act is attributed to accused. The only allegation against him is that he refused to marry Sumitra. This itself would not amount to abetment either u/s 107 or u/s 306 of the Indian Penal Code, 1860.

7] The trial Court has recorded the convincing and satisfactory reasons and held that offence u/s 306 of the Indian Penal Code, 1860, is not proved. The view taken by the trial Court is a reasonable and possible view. Nothing can be achieved by granting leave to the State to file appeal.

8] In the result, application is rejected.

[INDIRA K. JAIN, J.]