

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4914 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
BHIMRAO LAHU SHITOLE AND OTHERS

...
APP for Applicant : Mrs. S.A. Dhumal
Advocate for Respondents 1 to 4: Mr. N.K. Choudhari
.....

CORAM : V. K. JADHAV, J.

DATED : 7th SEPTEMBER, 2015

P.C. :-

1. Heard learned A.P.P. for the applicant-State and learned counsel for respondent Nos. 1 to 4.
2. This application is preferred by the applicant-State seeking leave to file appeal against the judgment and order of acquittal dated 11.4.2014, passed by the learned Assistant Session Judge, Beed in Session Case No. 3 of 2012 for the offences punishable under Sections 498-A, 306, 323 r.w. 34 of I.P.C.
3. Brief facts, giving rise to the present application, are as under:-

Deceased Savita was given in marriage to accused No.1 prior to 2/3 years of the incident. After the marriage, deceased Savita had

started living with the accused and she was treated nicely for certain period. It is the case of prosecution that deceased Savita was thereafter subjected to cruelty on account of non fulfillment of demand of Rs.1.00 lac required for construction of house. The father of deceased Savita paid the said amount to accused No.1, however, the accused No.1 thereafter started demanding additional amount and for that purpose she was again subjected to ill-treatment. On account of said ill-treatment extended to deceased Savita, she had consumed some medicinal substance and died in the hospital. On the basis of complaint lodged by father of deceased Savita, crime No. 60 of 2011 came to be registered against the respondents for the offences punishable under Sections 498-A, 306, 323 r.w.34 of I.P.C.

4. I have perused the record and proceeding and heard the submissions of learned A.P.P. for the applicant-State and the learned counsel for respondent Nos 1 to 4.

5. Learned A.P.P. submits that the evidence of important prosecution witnesses is consistent on the point of illegal demand and ill-treatment extended to deceased Savita on that count. The learned A.P.P. further submits that the prosecution has proved the guilt of the respondent accused beyond reasonable doubt. The learned Judge of the Trial Court has not considered the presumption

under Section 113-A of Evidence Act and therefore, the learned A.P.P. submits that this is a fit case to grant leave to prefer appeal against the judgment and order of acquittal.

6. The learned counsel for the respondent-accused submits that there are material omissions and contradictions in the evidence of important prosecution witnesses and that goes to the root of the matter. The learned counsel further submits that there are vague allegations about fulfillment of illegal demand of Rs.1.00 lac for construction of so called house and important prosecution witness who happened to be the mother of deceased Savita has not deposed about so called additional demand made by the accused. Even she has not stated anything about fulfillment of first demand by inviting accused No.1-husband in their house. The learned counsel thus submits that the learned Judge of trial court has rightly acquitted the accused and no case is made out to grant leave to prefer appeal against the said judgment of acquittal.

7. It appears that there are certain vague allegations as to when the demand of Rs.1.00 lac, required for construction of house, was made by the accused No.1. It is alleged that on the eve of *Nagpanchami* festival, said demand was made by accused No.1. However, the prosecution witnesses have admitted that for the first

six months to one year deceased Savita was treated well and under these circumstances, it is not clear as to when the first demand was made for construction of house. The father and brother of deceased Savita have deposed that an amount of Rs.1.00 lacs was paid to accused No.1 by inviting him in their house. However, no details of fulfilling the said demand are stated by them.

8. From prosecution evidence, it appears that after fulfilling the said demand deceased Savita was subjected to ill-treatment on account of additional demand. However, the prosecution evidence is not consistent on this aspect and more specifically in respect of the demand of additional amount by the accused persons. Furthermore, there are material omissions in the evidence of important prosecution witnesses. There are omissions in respect of visit of deceased at the time of *Nagpanchami* festival and disclosure of harassment at the hands of the accused. There is also material omission of assurance of payment of Rs.1.00 lac within one month and further omissions in respect of telephonic talk in earlier night of the incident.

9. So far as the additional demand made by the accused is concerned, the mother of deceased has not stated anything about it. She has only deposed that her deceased daughter was subjected to ill-treatment only on account of non fulfillment of demand of Rs.1.00

lac. Even she has not stated anything about fulfillment of demand of accused persons and payment of Rs.1.00 lac to him by inviting him in their house.

10. After perusing the evidence on record, it appears that the view adopted by the learned Judge of the Trial Court is possible view to be adopted and the impugned judgment and order of acquittal does not suffer from any perversity as such. The impugned judgment and order cannot be faulted.

11. In the result, present application being sans merit, stands dismissed. Leave to file appeal stands rejected. Record and proceeding be sent back to the concerned Court. Application is disposed of.

(V. K. JADHAV, J.)

rlj/