

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

15. CRI. APPLN/5340/2014

THE STATE OF MAHARASHTRA
V/S
BABARAO S/O BALIRAM LODE AND OTHERS

Mr. P.N. Mule, APP for State/applicant.

Mr. B. S. Kudale, Advocate for respondent Nos. 1 to 4.

CORAM : T.V. NALWADE, J.

DATED : 3rd August, 2015.

ORDER :

1. The application is filed for leave to file appeal against the judgment and order of Sessions Case No. 15/2011 which was pending in the Court of Additional Sessions Judge-1, Hingoli. The accused are acquitted of the offences punishable under sections 498-A, 306 r/w. 34 of Indian Penal Code. Heard the learned APP. Some hearing was given to learned counsel for respondents.

2. The deceased was given in marriage to respondent No. 1 - Babarao about 15 years prior to date of incident. At the relevant time, she was cohabiting with the husband. She has left behind one son aged about 15 years.

3. Since 30.11.2010 deceased was missing. Intimation of it was given to complainant, brother of deceased and others. Search was made and then the dead body of deceased was

found in a well situated in the land which is adjacent to the land of accused on 1.12.2012. The F.I.R. came to be given on 2.12.2012 by the brother of the deceased. The death took place due to drowning.

4. The brother, cousin brother of the the deceased have given evidence that after few years of the marriage, the accused had started making demand of Rs. 60,000/- as he wanted to purchased she buffalo. As the demand was not met with, illtreatment was given to the deceased. One more allegation is that accused No. 1 is addicted to liquor and after consuming liquor, he used to make hue and cry and that way he used to harass the deceased. The son of the deceased has turned hostile. He has simply said that his father is addicted to liquor and he used to make hue and cry after taking the liquor.

5. The evidence of the witnesses is very vague on the so called demand of Rs. 60,000/- made by Babarao or the relatives i.e. other respondents. There was cohabitation of 15 years. It is not stated as to when first time demand was made. The evidence on the record shows that Babarao owns 12 acres agricultural land and his financial condition was sound. Though it is tried to make out that Babarao is addicted to liquor, the evidence shows that he never sold any portion of the land and

he was holding the same portion till the date of incident.

6. As the son has turned hostile, there is nothing on the record to show as to what happened on the day of incident. There can be many reasons for committing the suicide. Further, the suicide itself is required to be proved. As the death took place after 15 years of marriage, it was necessary for prosecution to prove the 'abetment' as defined under section 107 of I.P.C. There is no evidence on intention from any of the witnesses. Even if it is believed that Babarao is addicted to liquor and due to that, the deceased was feeling fed up, such evidence will not be sufficient to prove the offence punishable under section 306 of I.P.C. There is no evidence on record which is required for proving of offence punishable under section 498-A of I.P.C. All the allegations of aforesaid nature are mainly against Babarao. This Court holds that nothing can be achieved by granting leave to file appeal to the State.

7. In the result, the application is rejected. Leave is refused.

[T.V. NALAWADE, J.]

ssc/