

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.264 of 2013

(for Leave to Appeal)

The State of Maharashtra .. Applicant
Versus
Murlidhar Bhagwan Solase & Ors .. Respondents

Mrs.S.V.Gajare, Advocate for the applicant State.

Mr.Makarand Bakore, Advocate for respondent nos.1 to 4.

CORAM : ABHAY M. THIPSAY, J.

DATED : 19th JANUARY 2015.

P.C. :

1 The respondents were prosecuted on the allegation of having committed offences punishable under section 498A of the IPC, and 306 II read with section 34 of the IPC. The trial resulted in their acquittal. The State of Maharashtra is aggrieved by said order of acquittal, and is by the present application, seeking leave to file an appeal therefrom.

2 I have heard Mrs.S.V.Gajare, the learned APP in support of the application. I have heard Mr.Makarand Bakore, learned counsel for the respondents. With their assistance, I have gone through the application, the impugned judgment and more particularly, the notes of the evidence that was adduced during the trial.

3 Lalita, daughter of the First Informant – Sitaram Kadlak – and wife of the respondent no.1 herein died an unnatural death by drowning in the well water. After her death, Sitaram Kadlak alleged that Lalita was being treated with cruelty by the respondent no.1 and the other respondents who are the relatives of the respondent no.1, and that, she had therefore, committed suicide. It was alleged that the respondents had abetted commission of suicide by the said Lalita.

4 According to the case of the prosecution, Lalita had jumped into the well along with her eight year old daughter – Siddhi.

5 The prosecution examined eight witnesses during the trial.

6 The defence of the respondents was that they had never treated Lalita with cruelty, and that Lalita had not committed suicide.

7 The learned Judge observed that the allegation of cruelty was based on the claim that the respondents had been demanding money from Sitaram Kadlak who claimed that he had been paying said money to the respondents from time to time. This aspect was doubted by the learned trial Judge. He observed that the version of Sitaram Kadlak was not corroborated by the version of Sunil Kadlak from whom Sitaram Kadlak had, as claimed by him, taken some amounts for paying it to the respondents. Moreover, the learned Judge observed that the

evidence indicated that these amounts were demanded from Sitaram Kadlak for the hotel business of the respondents. The learned Judge observed – rightly in my opinion – that this would not amount to a demand of dowry, and would, at the most, amount to a request for financial help in times of difficulties.

8 The learned Judge also observed that, that Lalita had committed suicide, had not been established. He also observed that in the background of the allegations that Lalita was being ill-treated, the fact that the First Information Report was not lodged immediately after her death, was suspicious. He also observed that the sister of Lalita was working in police department, and that the delay in lodging the FIR was in spite of that.

9 It does appear that some complaint had been made by Lalita to the *Savitribai Phule Mahila Vikas Sanstha*, which appears to be an institution providing help to women. It appears that in that complaint, Lalita had alleged that her husband and in-laws were ill-treating her, and that her husband used to beat her after consuming liquor. This complaint appears to have been made on 23rd February 2011. Lalita died about an year thereafter i.e. on 6th February 2012. As regards this circumstance, the learned Judge observed that the person to whom the complaint had been made, was not examined during trial.

10 The learned Judge observed that the presumption under section 113-A of the IPC was not available to the prosecution; as the death of Lalita had not occurred within seven years from the date of her marriage with the respondent no.1.

11 The view of the matter as taken by the learned Judge cannot be said to be suffering from any error or illegality. It may be observed that the fact that Lalita had committed suicide, was not at all satisfactorily established. It may also be observed that while committing suicide, Lalita would make her 8 year old daughter jump in the well, and thus, commit her murder, is *prima facie*, not believable.

12 There could have been some case in respect of the alleged cruelty, but in the absence of the examination of the person from *Savitribai Phule Mahila Vikas Sanstha* to whom the complaint was made, not much importance to that aspect could be given, particularly when the suicide itself had not been satisfactorily established.

13 It is well settled that while considering the question of grant of leave, the principles governing the appreciation of evidence in Appeals against acquittals, need to be kept in mind. Since in this case, the view of the matter as taken by the learned trial Judge is a possible view, grant of leave would be futile.

14 Leave refused.

15 Application is rejected.

(ABHAY M.THIPSAY, J)