

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 2678 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
MADHAV NAGAPPA HANNAMSHETTY

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APP for Applicant : Mrs. R. K. Ladda.

Advocate for Respondent : Mr. Darshan D. Pokharkar.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 29th March, 2016.

P.C.:

. Here is an application under Section 378 (1) (b) of the Code of Criminal Procedure for grant of leave to file appeal against the judgment and order dated 4th February, 2015 passed by the learned Additional Sessions Judge, Omerga, District Osmanabad in Sessions Case No.9 of 2012. By the said judgment and order learned Additional Sessions Judge acquitted the Accused of the offences punishable under Sections 306 and 354 of the Indian Penal Code.

2 Heard the learned counsel for parties.

3 Prosecution case in brief is as under:

Complainant Dilip Mashalkar is the husband of deceased Ragini. Ragini was serving as teacher in Lohara High School.

Accused was serving as clerk in said school. Father of Accused at the relevant time was the President of Lohara High School.

4 According to prosecution Accused assured Ragini that proposal for her promotion to the post of headmaster of the school could be sent and for that purpose he used to call her in his room in the office and sexually abuse her. Accused was also visiting the house of Ragini on the pretext of official work and trying to outrage her modesty.

5 On 11th May, 2011 informant lodged FIR alleging therein that on 30th March, 2011 at around 01:00 pm Accused entered his house. Ragini was alone in the house. Accused attempted to outrage her modesty. The act of Accused was resisted by Ragini. Incident was witnessed by Sourabh son of Complainant and Mahadevi sister-in-law of Ragini. Sourabh intervened and tried to rescue his mother. Accused drew Sourabh out of the house and shut the door from inside. Thereafter Ragini poured kerosene on her person and set her on fire. Accused opened the door and fled away. Since Ragini sustained severe burns she was admitted to various hospitals at different places. She succumbed to burn injuries on 30th April, 2011 and died. On the basis of report crime was registered against the Accused.

Investigation was conducted. On completion of investigation charge-sheet was submitted to the Court of Judicial Magistrate First Class who in turn committed the case for trial to the Court of Sessions.

6 Charge came to be framed against Accused by learned Additional Sessions Judge. Accused pleaded not guilty and claimed to be tried. According to Accused due to political rivalry he was falsely implicated.

7 Prosecution examined in all 7 witnesses. Considering the evidence brought on record by the prosecution and the defence raised by Accused Trial Court came to the conclusion that prosecution has miserably failed to bring home the guilt of Accused beyond reasonable doubt. In consequence thereof Accused was acquitted. Hence the present application.

8 This Court has gone through the evidence of prosecution witnesses with the assistance of learned APP and learned counsel for sole Respondent. Cause of death opined by medical officer is septicemia. It was due to 98% burns. Accused has not seriously disputed cause of death. In respect of mode of death it is the contention of Accused that victim died of accidental death and this fact was suppressed by the investigating agency. In view of defence

raised by Accused, it was incumbent on prosecution to prove mode of death.

9 It is pertinent to note that investigating officer PW-7 P.I. A. B. Salunke has admitted in unequivocal terms in cross-examination that before registering FIR on 11th May, 2011 he received death report. He also admitted that statement of Ragini was recorded on the same day in which she stated that she received burn injuries due to accidental fire. Investigating Officer had gone to the extent of admitting that he did not make enquiry about accidental death as stated by victim in her statement recorded by Police. In the absence of such enquiry in fact mode of death remained a mystery and till end prosecution could not resolve this mystery.

10 Needless to state that investigating officer was not supposed to withhold the statement of victim recorded by police officer. He was duty bound to produce the statement before the Court. Said statement was not part of charge-sheet. It was brought on record at the instance of Accused during trial. Suppression of material fact was taken as a serious infirmity by the Trial Court.

11 Another drawback in the prosecution case was inordinate delay in lodging FIR. Incident occurred on 30th March, 2011. Victim

died on 30th April, 2011. FIR was lodged on 11th May, 2011. PW-1 Complainant Dilip tried to explain delay in FIR and also in evidence by saying that he was mentally upset and could not inform police in time. Except a bald statement no evidence is brought forth to show that Complainant was upset. He admitted in the cross-examination that after few days of death of his wife, he performed second marriage (remarriage). This creates doubt about the reason given for delay in lodging FIR.

12 Learned APP vehemently placed reliance on the evidence of PW-2 Sourabh and PW-6 Mahadevi. According to her these two witnesses have supported the prosecution case. They have seen the scuffle between deceased and Accused. Victim also disclosed to them that due to harassment at the hands of Accused she attempted to commit suicide.

13 So far as PW-2 Sourabh is concerned, he fairly stated that in his initial statement before Police he narrated that his mother disclosed to him that she was caught by fire accidentally. After 1 month and 11 days when FIR was lodged by PW-1 Dilip, Sourabh narrated to Police that his mother disclosed to him about suicidal attempt. So is the case with PW-6 Mahadevi.

14 This Court has perused Exhibit 45 dying declaration of victim Ragini. This dying declaration was not the part of charge-sheet. In this dying declaration recorded by Police Head Constable, Ragini had stated in detail how accidentally she was caught by fire and sustained burns. Exhibit 45 being dying declaration is the important piece of evidence. The investigating officer not only suppressed this dying declaration but also failed to inquire into the same.

15 Considering the important admissions elicited in the cross-examination of investigating officer, inordinate delay in lodging FIR and afterthought statements of PW-2 Sourabh and PW-6 Mahadevi this Court finds that there is no case on merits for the prosecution. No purpose would be served even if leave is granted. Application thus deserves to be dismissed. Hence the following order –

ORDER

Criminal Application No.2678 of 2015 stands dismissed.

[INDIRA K. JAIN, J.]

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