

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION [APPA] NO.778 OF 2015

IN

CRIMINAL APPEAL NO.346 OF 2015

(Ashabai Gulabrao Onkar and another

vs.

Smt. Jyoti wd/o Vijay Onkar and another)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

Shri P.K. Mishra, Advocate for the applicants.
Shri M.K. Pathan, A.P.P. for respondent No.2/State.

CORAM : B.R. GAVAI & A.S. CHANDURKAR, JJ.

DATE : 16th MARCH, 2016.

The mother as well as the brother of one Vijay Gulabrao Onkar, who was done to death on 02/04/2013, have preferred the present application seeking leave to challenge the acquittal of the respondent No.1 in Sessions Trial No.88/2013 decided on 26/08/2014.

02] The case of the prosecution is that said Vijay was residing at Dorlipura, Yavatmal along with his wife-respondent No.1, their two sons and one daughter. On 01/04/2013, the elder son Akash and daughter Naina went to reside at the house of their uncle. Only said Vijay, his wife Jyoti and their son Rambhau were present at home. While said Vijay was sleeping in a room on the back side of the house, the respondent No.1 and their son were sleeping in the front room. At about 00:45

hours on 02/04/2013, the said son heard the noise of the door opening. He also heard the talk of some persons. After sometime, he heard the shouts of his father, who was being beaten. He, however, did not give a call to his mother but instead, called his elder brother. When his elder brother arrived, they found their father lying in injured condition. According to the prosecution, said Vijay used to borrow money from one Ankush Ramteke and it was suspected that his nephew Akash Ramteke and his companions might have killed Vijay on account of some money transactions. On that basis, an offence came to be registered.

03] After completion of the investigation, the charge-sheet came to be filed against the respondent No.1 who was the wife of deceased. At the conclusion of the trial, the learned Sessions Judge acquitted the respondent No.1 of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Hence, the present application by the victims has been filed.

04] Shri P.K. Mishra, the learned Counsel for the applicants submitted that the Sessions Court erred in acquitting respondent No.1. He submitted that the respondent No.1 was present in the house when the incident occurred but her conduct was unnatural considering the fact that her husband had been

assaulted and despite his shouts, she had not taken any steps to save him and on the contrary pretended that she was asleep. It was submitted that the respondent No.1 had a motive to do away with said Vijay and the incriminating weapons had also been duly seized which completed the chain of the crime. It was, therefore, submitted that the judgment of acquittal rendered by the Sessions Court was liable to be set aside.

05] Shri M.K. Pathan, the learned Additional Public Prosecutor for the respondent No.2 submitted that the prosecution had taken all steps to ensure that the accused would be convicted on the basis of the evidence available on record.

06] The judgment under challenge acquits the respondent No.1 of the offence punishable under Section 302 read with Section 34 of the Penal Code. It is only if the view as taken by the Sessions Court is found to be perverse or is found to be an impossible view, that there would be any scope for interference against such judgment. Merely because another view is possible on the basis of the same material, the same would not be a ground to interfere with the judgment of acquittal.

07] With the assistance of the learned Counsel for the parties, we have perused the material on record. In the present case, there is no direct evidence on record and the prosecution

case is based on the circumstantial evidence. From the spot-panchnama, it was revealed that in the house of the deceased, there were about four rooms and each room was having a separate door internally. In these four rooms, there was one grocery shop, one flour mill and two other rooms. There was a common entrance through the flour mill of said house. In the deposition of PW-1 Akash and PW-3 Naina, it has been stated that when they reached their residence, they had found the door of the flour mill to be open. On the basis of this material on record, the learned Judge of the Sessions Court has found that as the flour mill and grocery shop were having a different entrance internally and as the respondent No.1 was found to be sleeping in a separate room away from the deceased, the respondent No.1 was entitled for the benefit of doubt.

08] Insofar as PW-6 Akshay Ramteke is concerned, though he had stated that there was a talk on the mobile with the other juvenile accused Rohit, the prosecution has not led any credible evidence in that regard. The evidence on record is insufficient to hold the respondent No.1 guilty. Considering the aforesaid nature of evidence, it cannot be said that the learned Judge of the Sessions Court committed an error in acquitting the respondent No.1 on the ground that the prosecution had filed to establish the guilt of the respondent No.1 beyond reasonable doubt. The view as taken, therefore, does not appear to be

either perverse or an impossible view. The case of the prosecution being based on circumstantial evidence, each circumstance was required to be independently proved leading to the only conclusion pointing out towards the guilt of the respondent No.1 alone and none other. However, same has not been done by the prosecution.

09] In view of aforesaid, the impugned judgment does not call for any interference. Accordingly, the application and consequently the appeal is liable to be dismissed and the same are accordingly dismissed. There would be no order as to costs.

**sdw*

JUDGE

JUDGE