

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1128 OF 2017

The State of Maharashtra,
Through Police Station,
Ambad, Dist.Jalna ..Applicant

Vs.

Balu s/o. Bhagaji Rithe,
Age : 25 years,
Occ. Agri., Labour,
r/o. Golatgaon,
Tq. and Dist. Aurangabad
At present Sarangpur,
Tq. Ambad, Dist.Jalna ..Respondent

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Mr.B.A.Shinde, APP for applicant – State
Mr.N.K.Choudhari, APP for respondent
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**CORAM : SANGITRAO S. PATIL, J.
DATE : AUGUST 28, 2017**

ORAL ORDER :

The State/prosecution has sought leave to file appeal against the judgment and order dated 23.11.2016 passed in Sessions Case No.175 of 2015 by the learned Additional Sessions Judge, Jalna, whereby the respondent came to be acquitted of the offences punishable under Sections 306, 498-A, 323 and 504 of the Indian Penal Code ("I.P.C.", for short).

2. The learned APP submits that the case of the prosecution is depending on two dying declarations of the deceased Anita, who was the wife of the respondent. The said dying declarations are quite consistent in respect of the events those took place on the day of the incident i.e. 27.07.2014 at about 9.00 a.m. in the house of the respondent. He submits that the deceased Anita specifically alleged that the respondent always used to beat and illtreat her. On the day of the incident, he throw away the food prepared by the deceased Anitabai and further asked her to quit his house. The respondent beat her with stick. Therefore, she got annoyed and under the heat of anger, she poured kerosene on her person and set herself ablaze. The learned APP submits that Dwarkabai (PW 2), who is neighbour of the respondent, also states that the respondent was in the habit of consuming liquor and beating the the deceased Anita after quarreling with her. According to him, the consistent dying declarations which were given by the

deceased Anita under a fit condition to give the statement, sufficiently disclose that the respondent created such circumstances that the deceased Anita had no option but to commit suicide. According to him, the learned trial Judge did not appreciate the evidence on record properly and wrongly acquitted the respondent.

3. On the other hand, the learned Counsel for the respondent submits that the dying declarations of the deceased Anita themselves would show that she committed suicide because she was in the heat of anger. The respondent did not abet her to commit suicide. According to him, Dwarkabai (PW 2) did not actually witness the incident. She states that the deceased Anita was a hot-tempered person. The learned Counsel submits that the post-mortem report does not disclose any external injury on the person of the deceased Anita, except the burns sustained by her. He states that there is no evidence to show that the deceased Anita was actually beaten by the respondent

on the day of the incident. He submits that the learned trial Judge has rightly appreciated the evidence and has rightly acquitted the respondent.

4. As per the case of the State/prosecution, the deceased Anita got married prior to two years of the date of the incident. Though Dwarkabai (PW 2) did not actually see the incident in question, she being neighbour, was the best witness at least to hear the quarrels between the respondent and the deceased Anita. She specifically states that the respondent was in the habit of consuming liquor and quarrelling with the deceased Anita. In the dying declaration (Exh.41), the deceased Anita states that the respondent always used to beat and illtreat her. She states that on the day of the incident, the respondent throw away the food prepared by her on the say that it was not of a good quality. He further asked her to quit his house on the say that he did not need her. He further beat hear with stick. Therefore, she poured kerosene on her person and set

herself on fire. Her dying declaration (Exh.19) is consistent with the dying declaration (Exh.41).

5. It is true that the respondent did not ask the deceased Anita to commit suicide. However, from the contents of the dying declarations (Exh.19 and Exh.41) as well as the evidence of the neighbour about the quarrelling nature of the respondent and his habit of consuming liquor, *prima facie*, it can be said that the respondent created such circumstances that the deceased Anita was left with no option but to end her life by setting herself ablaze. This *prima facie* amounts to abetting a person to commit suicide.

6. There is consistent version of the deceased Anita that the respondent beat her with stick. The evidence on record and, particularly, the contents of the dying declarations show that because of the illtreatment given by the respondent to the deceased Anita, she was driven to commit suicide.

7. In the above circumstances, I am of the view that arguable case has been made out by the prosecution. There is scope for reappreciation of evidence. The view taken by the learned trial Judge, at this stage, cannot be said to be the only plausible view. The appeal against the judgment of acquittal will have to be allowed to be filed. For the above-mentioned reasons, it will have to be admitted.

8. The observations made above shall not have any influence on the merits of the matter at the time of final hearing of the appeal and shall have limited force for deciding the question about grant of leave to file appeal and admission of the appeal.

9. In the above circumstances, I pass the following order :-

- (i) The application is allowed.
- (ii) Leave to file appeal is granted.

(iii) The appeal is admitted.

(iv) Mr.Choudhary, the learned Counsel for the respondent waives service of notice upon admission of the appeal.

(v) The respondent shall furnish bail bonds in the sum of Rs.10,000/- with a surety in the like amount before the trial Court on or before 27.09.2017 ensuring his presence as and when called by this Court during pendency of the appeal.

(vi) Call Record and Proceedings.

(vii) Stand over to 27.09.2017.

[SANGITRAO S. PATIL, J.]

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