

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1 CRIMINAL APPLICATION NO.1836 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
SHANKAR VILAS BIRAJDAR AND OTHERS

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Advocate for Applicant : Mr. RB Bagul, APP
Adv S.S.Manale For Resp.Nos.1 & 8;
Adv A.A. Yadkikar For Resp. Nos. 2 To 6.

CORAM : P.R.BORA, J.

DATE : 23rd November, 2017.

PER COURT :

1) Heard learned APP appearing for State and Learned Counsel appearing for the respective respondents.

2) The State has preferred the present application seeking leave to file an appeal against the judgment and order passed by learned Ad hoc Additional Sessions Judge, Latur in Sessions Case No.48/2012 decided on 30th October, 2013.

3) The respondents were prosecuted in the

aforesaid Sessions Case for the offences punishable under Sections 498A; 306; 323; 504 read with 34 of Indian Penal Code.

4) It was the case of the prosecution that being fed-up with the physical and mental torture at the hands of the accused persons, deceased Bhagyashri ultimately ended her life by herself pouring kerosene on her person at her matrimonial house. It was the further case of the prosecution that the deceased was married with Respondent No.1 - Shankar, who is deaf and dumb person and is also crippled. It was the further case of the prosecution that since even after two years of her marriage with Respondent No.1- Shankar, the deceased could not conceive, she was being ill treated on that count by all the respondents. It was also the case of the prosecution that for certain other petty reasons also, ill treatment was being consistently caused to the deceased by all the accused persons and that ultimately led deceased Bhagyashri to commit

suicide.

5) The learned Additional Sessions Judge, after having assessed the evidence brought on record before him, has acquitted the respondents from the charges levelled against them.

6) Shri Bagul, learned APP appearing for the State, submitted that the learned Trial Court has failed in appreciating that two dying declarations recorded of the deceased, one by A.S.I. and another by the Tahsildar, are consistent in so far as the core facts stated by the deceased that she was being consistently ill treated by all the respondents. The learned APP further submitted that the mother of the deceased Bhagyashri also has provided sufficient particulars and the maternal uncle of the deceased has corroborated the said facts. The learned APP further submitted that the evidence on record sufficiently show the cruel treatment meted out to deceased Bhagyashri by the accused persons. The learned APP submitted that the

Trial Court has thus recorded the unreasonable conclusion without considering the evidence on record. The learned APP submitted that in the circumstances, the State deserves to be granted leave to file an appeal so that all these issues can be validly agitated in the appeal before this court.

7) Shri Manale, learned Counsel appearing for Respondent Nos. 1 and 8, submitted that the evidence, which has come on record, is improbable and the facts, as are stated by mother of the deceased, are not supported by the cogent evidence. The learned Counsel submitted that Respondent No.8 is maternal grandfather-in-law of deceased Bhagyashri and there was no possibility of giving any harassment by him to deceased Bhagyashri. The learned Counsel further submitted that it was the frustration of deceased Bhagyashri herself, which led her to commit suicide. The learned Counsel submitted that the Trial Court has rightly analyzed the evidence on

record and recorded sound conclusion, which do not require any interference and no leave deserves to be granted in such circumstances.

8) Shri Yadkikar, learned Counsel appearing for Respondent Nos. 2 to 6, submitted that, admittedly, all these respondents were separately residing. The learned Counsel submitted that the averments in both the dying declarations are too vague and do not provide the required particulars as about the ill-treatment allegedly given by these respondents to the deceased. The learned Counsel further submitted that the dying declarations are also not consistent with each other. The learned Counsel submitted that in the dying declaration which is recorded earlier, there is nothing mentioned as about the ill treatment and the same seems to have been subsequently revised and some additions are made in the subsequent dying declaration recorded by the Tahsildar. The learned Counsel submitted that the evidence on record is thus not free from

doubt. The learned Counsel further submitted that there are genuine doubts about the physical and mental condition of the deceased Bhagyashri at the time of recording of her aforesaid two dying declarations. The learned Counsel further submitted that from the evidence on record, probable view has been taken by the learned Sessions Judge and in such circumstances, it may not be permissible to have another view and in such circumstances, no leave can be granted to the State.

9) After having considered the submissions advanced by learned APP and learned Counsel appearing for the respective respondents and on perusal of the impugned judgment as well as the evidence on record, it is prima facie revealed that the conclusions, which are recorded by the learned Additional Sessions Judge, cannot be in any way said to be unreasonable or contrary to the evidence on record. The conclusions which have been recorded by the learned Additional

Sessions Judge after having assessed the evidence on record, cannot be said to be palpably wrong or illogical.

10) After having perused the dying declarations on record, there appears substance in the argument made by learned Counsel appearing for the respondents that in the dying declarations, the allegations are too vague to prove the complicity of the accused in abetting the commission of suicide by the deceased. Further, from the evidence on record, no such inference can be drawn that the respondents were in any way intending that the deceased should commit suicide. As has been rightly observed by the learned Sessions Judge, the circumstances, which have come on record, sufficiently lead to an inference that the deceased was having some frustration because of her marriage with deaf, dumb and crippled person. The evidence on record, is not free from doubt. Admittedly, the respondents were not residing with the deceased. On the contrary, the evidence on record shows

that even her husband was not residing with her, as has been stated by her in one of the dying declarations. In such circumstances, the conclusions, which have been drawn by the learned Additional Sessions Judge, are the possible conclusions. In the circumstances, I am not inclined to allow the present application. Hence, the following order, -

ORDER

. The Criminal Application is rejected.

(P . R . B O R A , J .)

bdv/