

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

CRIMINAL APPLICATION NO.3007 OF 2016

The State of Maharashtra,
Through the Police Station Officer,
M.I.D.C. Police Station, Latur.

.. Applicant

VERSUS

1. Padmabhushan s/o Manohar Gaikwad
Aged : 26 years, Occu : Private Service,
R/o. Prakash Nagar, Latur

2. Saroja W/o. Manohar Gaikwad
Aged : 45 years, Occu : Labourer,
R/o. Shirur Anantpal,
Tq. Shirur Anantpal, Dist. Latur

3. Annarao S/o Yeshwant Lawate
Aged : 42 years, Occu : Agriculture,
R/o. Talegaon, Tq. Shirur Anantpal,
Dist. Latur.

.. Respondents

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APP for the applicant - State : Shri. S.W. Mundhe
Advocate for Respondents No.1 to 3 : Shri. N.D. Kendre

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CORAM : PR. BORA, J.

DATE : SEPTEMBER 1, 2017

PER COURT :

1. Heard the learned APP and the learned Counsel appearing for respondents i.e. original accused. Respondents were prosecuted for the offences punishable under Sections 498-A, 306 & 504 r.w. 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.'). It was the case of the prosecution that, one Roshni set herself

on fire on 31st October, 2012 and succumbed to the burn injuries on the same day in the hospital. Marriage of said Roshni was performed with respondent no.1 Padmabhushan Gaikwad on 27.01.2012. On 8th November, 2012 the mother of said Roshni lodged a report against respondents that, deceased Roshni was being harassed and ill-treated by the respondents on demand of dowry and fed up with the cruel treatment so given to her by the respondents, she ultimately committed suicide. On such report being lodged, the offences under sections 498-A, 306 & 504 r.w. 34 of I.P.C. were registered against the respondents and they were tried by Additional Sessions Judge – 2, at Latur. The learned Sessions Court after having considered the evidence on record acquitted all the accused of all the offences charged against them vide Judgment delivered by it on 24.02.2016. The present application is filed by the State seeking leave to appeal against the said judgment.

2. Shri Mundhe, learned APP appearing for the State submits that, the learned Sessions Judge has failed in appreciating the evidence on record and has also failed in properly appreciating the provisions as regards to the presumption to be raised in such cases under Section 113-A of the Evidence Act. Learned APP further submits that, only on one circumstance that, the concerned Medical Officer did not certify deceased Roshni to be in a position to give her

statement, the facts stated by the prosecution witnesses that deceased Roshni disclosed to them in the hospital that, she was being ill-treated by the respondents and was harassed on account of non – fulfillment of the monitory demands are disbelieved by the Sessions Court. The learned APP submits that, the learned Sessions Court has failed in appreciating that, some earlier instances have also been narrated by the prosecution witnesses as about the ill-treatment given to deceased Roshni by the respondents and the facts so stated have been duly corroborated by their statements. The learned APP further submitted that, the presumption as was raised under section 113-A of the Evidence Act has not been rebutted by the accused persons and as such, the order of acquittal recorded by the trial Court is apparently unsustainable. The learned APP, has therefore, prayed for leave to file appeal against the said Judgment.

3. Shri Kendre, the learned Counsel appearing for the respondents opposed the submissions made on behalf of the learned APP. The learned Counsel referring to the statements of the prosecution witnesses and the observations made in that regard by the Sessions Court submitted that, the learned Sessions Court has rightly declined to depend upon such evidence to convict the accused. The learned Counsel submitted that, admittedly marriage of deceased Roshni with respondent no.1 Padmabhushan Gaikwad was a love

marriage and as such, the possibility of making any demand of dowry was apparently non - existent.

4. The learned Counsel further submitted that, even otherwise the evidence which has come on record is wholly insufficient to reach to any conclusion that, there was any ill-treatment to deceased Roshni on account of demand of dowry by the respondents. The learned Counsel further submitted that, the medical evidence on record clearly suggests that, when deceased Roshni was admitted in the hospital, she was unconscious and was not in a position to speak and was also mentally not in a position to give any statement. The learned Counsel submitted that, Sessions Court has rightly held that, the prosecution has not brought on record any evidence to suggest that, after such opinion was recorded by the Medical Officer, deceased Roshni had regained consciousness and had come in a position to give her statement or to speak with anybody.

5. The learned Counsel further submitted that, unless the preliminary burden is discharged by the prosecution to show that, there was some ill-treatment to deceased, no presumption was liable to be held under Section 113-A of the Evidence Act against the accused. The learned Counsel relied upon the Judgment of the Hon'ble Apex Court in case of **Mangat Ram Vs. State of Haryana**,

AIR 2014 Supreme Court 1782. The learned Counsel submitted that, the Judgment on which the reliance has been placed by the learned APP in the case of **Bhim Singh & Anr Vs. State of Uttarakhand 2015 ALL MR (Cri) 1270 (S.C.)**, the facts were totally different and cannot be made applicable to the facts of the present case. The learned Counsel invited my attention to the discussion made by the Hon'ble Apex Court in the aforesaid judgment in paras.26 & 27 and submitted that, in view of the law laid down by the Hon'ble Apex Court, no fault can be found in the Judgment of acquittal recorded by the Sessions Court.

6. I have carefully considered the submissions advanced by the learned APP for the State as well as the learned Counsel appearing for the respondents. I have also perused the impugned Judgment and the entire evidence on record.

7. It is not in dispute that, no dying declaration was recorded of deceased Roshni either by the police or by the Executive Magistrate or by any other person. The medical evidence on record shows that, deceased Roshni when was brought in the hospital, was not in a conscious state. It has also come on record that, she was brought to the hospital immediately after occurrence of the incident. The medical evidence on record further shows that, deceased Roshni

did never regain consciousness and succumbed to the burn injuries, percentage of which was more than 90%, on the same day in the hospital itself.

8. In light of the medical evidence, if the evidence of the prosecution witnesses is perused, all these witnesses have put forth the case of oral dying declaration by deceased Roshni. The FIR lodged by the mother of deceased Roshni is also based on the facts disclosed to her by deceased Roshni while in the hospital. The other prosecution witnesses who happened to be near relatives of deceased Roshni also have reiterated the same facts in their testimonies and have specifically deposed that, deceased Roshni while in hospital disclosed to them about the ill-treatment to her by the respondents because of which she took the extreme step of ending her life. After having considered the aforesaid evidence, the reasonable doubts are certainly created about the facts stated by these witnesses revealed to them through the oral dying declaration of deceased Roshni. Nothing has come on record to doubt the medical evidence as about the non – competence of deceased Roshni to give her statement or else possibly her statement could have recorded either by the police or Executive Magistrate. The medical papers, as I stated earlier, clinchingly evince that, when deceased was brought in the hospital, was not in a

position physically or mentally to state something pertaining to her act of committing suicide.

9. Once the doubts are created about the story put forth by the prosecution witnesses about the dying declaration, all these testimonies must be looked with cautiously. Even if the evidence of the prosecution witnesses as about the dying declaration is kept aside from the other evidence also it does not reveal that, the prosecution has succeeded in proving the ill-treatment to deceased at the hands of the accused persons. The circumstances on record show that, though the incident occurred on 31st October, 2012, the mother of deceased or any other relative of deceased did not lodge the report on the same day and the report has been lodged on 08.11.2012 i.e. after about 9 days of the occurrence of the alleged incident. Had it been the fact that, in oral dying declaration deceased had disclosed these witnesses about the ill-treatment to her by the respondents and had the same be the cause for committing suicide by deceased Roshni, it appears improbable that, near relatives of deceased Roshni and more particularly her parents and her brother would wait for 8 days to file the report against the respondents. The evidence on record further shows that, all the rituals of deceased Roshni were performed at her marital house by her in - laws. The evidence on record further shows

in all these rituals the persons from the parental side of deceased Roshni had participated and had not raised any dissent or any grievance in those rituals about any ill-treatment to deceased Roshni.

10. After having considered the entire evidence on record and the discussion made by the learned Sessions Court analyzing the said evidence, it does not appear to me that, any error has been committed by the Sessions Court in acquitting the accused persons.

11. As has been held by the Hon'ble Apex Court in case of **Mangat Ram Vs. State of Haryana** (supra) the initial burden was on the prosecution to bring on record at least primary evidence showing ill-treatment to deceased Roshni so as to raise the presumption under Section 113-A of the Evidence Act. No such presumption could have been raised in absence of the said preliminary evidence. I, therefore, do not see any reason for allowing the present application filed by the State. In the result, the following order is passed.

ORDER

1. The application is rejected.

(PR. BORA, J.)