

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 CRIMINAL APPLICATION NO. 3390 OF 2017

THE STATE OF MAHARASHTRA
VERSUS
VISHNU SOPAN CHAPKE AND OTHERS

...
A.P.P. for Applicant/State : Mr. S.D. Ghayal
Advocate for Respondent Nos.1 to 4 : Mr. A.P. Bhandari
...

CORAM : T.V. NALAWADE, J.

DATE : 21st DECEMBER, 2017

PER COURT :

The application is filed by the State for grant of leave to file Appeal against Judgment and order passed in Sessions Trial No.98 of 2014 pending in the Court of Adhoc Additional Sessions Judge-1, Parbhani. The Court has acquitted all the respondents for the offence punishable under Sections 498-A, 306, 323, 504, 506 read with Section 34 of the Indian Penal Code. Heard the learned A.P.P.

2. The record of evidence including the copy of

First Information Report was made available to this Court during argument. The submissions made and the record shows that respondent No.1 is the husband of deceased. Respondent Nos.2 and 3 are the parents of respondent No.1 Vishnu and respondent No.4 is married sister of respondent No.1 Vishnu. Married sister of Vishnu is resident of other place, but she is made accused for all the offences.

3. The submissions made on record show that there is nothing with the prosecution to show that marriage had taken place in the year 2008. The defence has contended that the marriage taken place in the year 2007. The deceased has left behind two daughters and out of them one aged about five years at the relevant time. In view of these circumstances and if the prosecution wanted to use the provisions of Section 113-A of the Evidence Act, it was necessary for the prosecution to specifically prove that the incident in question had taken place within seven years of the marriage, and so, the Court may not be in a position to use the provisions of Section 113-A of

the Evidence Act.

4. The evidence given on record shows that the demands of amount was made by the accused after six months of marriage and thereafter the ill-treatment was started to the deceased on the ground that the dowry amount of Rs.2,00,000/- which had remained to be paid at the time of marriage was not paid by the parents of the deceased. This allegation is very vague as the evidence on record does not show that the demand was repeated. On the other hand, there are other allegations that after birth of two daughters, the ill-treatment was started the ground that she had not delivered male child. The evidence is also given to the effect that deceased used to disclose the illicit relations of husband with woman of hervillage and those reasons were given for her ill-treatment.

5. The evidence of the father of deceased i.e. PW 1 shows that for about two years, the deceased was living with him and occasionally she used to visit the matrimonial house. Last time when the deceased was

sent to the house of her husband, the evidence of PW 1 shows that deceased Sangita was reluctant to return to matrimonial house as her husband was giving ill-treatment to her. But, this evidence also creates other probability that she was reluctant to return to her matrimonial house. The evidence of her father shows that he was trying to convince the deceased not to commit suicide.

6. The evidence given by her father PW 1 shows that the information of death of Sangita was immediately given by her husband to them from where she was admitted. She had consumed poison and no any injury was found on her person. No evidence of the person like neighbour of the accused was given to show that any incident had taken place on 4th or 5th which was the reason for the deceased to consume poison. There can be many reasons for lady to commit suicide. It needs to keep in mind that she had no son and that can be one reason.

7. When the prosecution has no evidence to show that the incident took place within seven years of the marriage, the prosecution is required to prove that there was abetment as defined in Section 107 of the Indian Penal Code. The evidence should be in the nature that there was no alternative to the deceased than too commit suicide and, in that case also, the Court can draw inference of abetment. There is no such evidence on record. This Court holds that there is no arguable case for the State in Appeal and nothing can be achieved by grant of leave to file Appeal. In the result, application stands rejected.

(**T.V. NALAWADE, J.**)