

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

CRIMINAL APPLICATION (APPA) NO.574/2015 IN
CRIMINAL APPEAL NO. ____/2017

Suman Narayan Jadhav..vs..State of Maharashtra thr. PSO Buldhana & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. M. V. Bute, Advocate for applicant.
Mr. N. B. Jawade, A.P.P. for non applicant no.1.
Mr. A. I. Shaikh, Advocate for non applicant nos. 2 and 3.

CORAM : V.M. DESHPANDE, J.
DATED : JULY 12, 2017

This is an application under Section 378 (4) of the Code of Criminal Procedure seeking leave to file appeal. Leave is sought against the judgment and order of acquittal passed by the learned Assistant Sessions Judge, Buldhana dated 31.01.2017 in Sessions Trial No.119/2014 by which the learned Judge of the Court below acquitted the non applicant nos.2 and 3 of the offence punishable under section 306 read with Section 34 of the Indian Penal Code.

I have heard Mr. M.V. Bute, Advocate for applicant, Mr. N.B.Jawade, A.P.P. for non applicant no.1 and Mr. A. I. Shaikh, Advocate for non applicant nos. 2 and 3.

. The present applicant is the mother of the deceased Vijay. Non applicant no.2 is the widow of the deceased Vijay. Their marriage was performed prior to 13 years of the incident. Vijay died during the intervening

night of 16.06.2011 and 17.06.2011. Initially Police Station, Buldhana registered AD No.20/2011. On 17.06.2011, spot panchanamas were prepared. Even the post mortem was conducted on 17.05.2011.

The present applicant on 18.06.2011 lodged an oral report that Vijay committed suicide by consuming poison since the non applicant no.2 has developed illicit relations with the non applicant no.3. Her complaint was registered as Crime No.144/2011 for the offence punishable under Section 306 read with 34 of the IPC.

After full dress trial, the court below acquitted non applicant nos. 2 and 3 from the charge for the offence punishable under Section 306 read with 34 of the IPC. The spot panchanama is at Exh.-18. The learned Judge noticed that while preparing spot panchanama, the investigating officer found that there was smell of alcohol where the deceased was found dead. Though the post mortem report Exh.-24 states that there is an unknown poison in the body and though viscera was prepared till the conclusion of trial, the chemical analyzer's report was not filed on record. No empty bottle of poison was found in the house.

The learned Judge further found that there is no positive evidence that is brought on record in support of the illicit relations between non applicant nos. 2 and 3 though the prosecution has examined Sau. Sunita (PW2) and Sk. Samad Sk. Habib (PW3). Both these witnesses have turned hostile. No evidence was found to be brought

on record by the prosecution to show that there was any abetment at the hands of non applicant nos. 2 and 3. Therefore, the Court below acquitted the non applicant nos. 2 and 3.

When a specific query was made to Mr. Bute, learned counsel for the applicant as to what is the material on record to show that there was any abetment at the hands of the present non applicant nos.2 and 3, his reply was in the negative. Further, he could not point out anything from the record to show that there were illicit relations between the non applicant nos. 2 and 3.

In that view of the matter, I am of the view that on the available evidence, the view taken by the Court below is a possible view and as such no interference is required in the impugned order. The application is therefore rejected. Leave to file the appeal is refused. Consequently, the appeal is also dismissed.

JUDGE