

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

CRIMINAL APPLICATION NO. 1459 OF 2016

1. State of Maharashtra,
through :
Sou. Reena w/o Agarchand Thengil,
Age : 25 years, R/o Govardhanwadi No. 1, ... **Applicant**
Tq. and Dist. Osmanabad. **(Ori. Complainant)**

VERSUS

1. Agarchand Maruti Thengil,
Age : 28 years, R/o Govardhanwadi No. 1,
Tq. and Dist. Osmanabad.
2. Maruti Rajaram Thengil,
Age : 54 years R/o as above
3. Sau. Shalu Maruti Thengil,
Age : 46 years R/o as above
4. Sangeeta Sudhakar Shendge,
Age : 35 years R/o as above.
5. Surekha @ Sunita w/o Mahadeo @
Madhav Dhaigude, Age : 38 years,
R/o as above.
6. Shamal Bandu @ Ramraje Deokate,
Age:42 years, R/o Deokate Galli,
Osmanabad Tq. & Dist. Osmanabad .
7. Gandharbai Abarao Lawate
Age 75 years, R/o Govardhanwadi No. 1
Tq. & Dist. Osmanabad. ... **Respondents**
(Ori. Accused No.1 to 7)

Mr. R. V. Dasalkar, APP for the State.

**CORAM : T. V. NALAWADE AND
K. L. WADANE, JJ.**

DATE: : 24th July, 2018

JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties, the application is taken up for final disposal at admission stage.

2. This is an application by the State Government under Section 378 Sub-section (1) (3) of Code of Criminal Procedure, 1973 challenging the judgment of acquittal passed by the learned Additional Sessions Judge, Osmanabad in Sessions Case No.7/2014 for the offence punishable under Section 498-A, 302 read with Section 34 of the Indian Penal Code.

Brief facts of the case may be stated as follows:

- i) Deceased Reena married with accused No.1 in the year 2007. Prior to 1 and half year to the incident, the accused Nos. 1 to 4 were insisting Reena to bring an amount of Rs.1,50,000/- for purchasing Indica Car and were assaulting, abusing and ill-treating her and also not providing food to her. Reena disclosed these facts to her parents. Her parents were unable to pay such huge amount. It is further alleged that on 04.10.2012 her husband and in-laws sent her to Osmanabad to bring an amount of Rs.1,50,000/-. On 06.10.2012 her husband telephoned her and called at Goverdhanwadi.

ii) Her mother in law, maternal mother-in-law - Surekha quarreled with her. On 07.10.2012 at about 2.00 p.m. when Reena was in the house all the accused Nos. 1 to 6 assaulted her by fists and kick blows and her husband told the other accused persons to kill her and went away out side the house. Then maternal mother-in-law namely Surekha set her on fire and other accused persons instigated her. After receiving the burn injuries, the injured Reena was taken to the hospital immediately at Osmanabad. On the statement of Reena, Crime No. 148/2012 was registered against all the accused persons. They were tried and acquitted by the Additional Sessions Judge, Osmanabad.

3. We have heard learned APP Mr. Dasalkar and gone through the entire evidence on record. In order to establish the charges leveled against the respondents, the prosecution has examined in all 10 witnesses out of which the PW-1 Vinod Kisan Thodsare, PW-2 Ashok Ganpat Solankar PW-5 Dnyandeo Biraji Kamble and PW-8 Vinod Marutirao Kamble are the witnesses regarding formal proof of the facts. PW - 1 Vinod Kisan Thodsare is a Panch witness. At the time of panchanama one Stove, pot of Milk, biscuit packet, kerosene can and burn pieces of saree were lying on the spot. Besides the oral evidence of these witnesses, material witnesses examined by the prosecution are PW-6 Hanumant Ramrao Kolangade a Police Head

Constable, Police Chowki at Osmanabad who was on duty at Hospital, who recorded first dying declaration on 07.10.2012 at about 3:30 p.m. Her second dying declaration was recorded by PW-7 Mr. Nandkumar Ramrao Dande, police head constable P. S. Dhoki on 09.10.2012 at about 8:15 p.m. The first dying declaration was proved by the oral evidence of PW-6 Hanumant Ramrao Kolangade and Second dying declaration was proved by the oral evidence of PW-7 Nandkumar Ramrao Dande. Both the witnesses have stated that they verified whether at the time of recording her dying declaration Reena was in conscious or not and for that purpose they obtained the endorsement of the treating doctors PW-9 Mr. Dabke and PW-10 Mr. Sarde, on the respective dying declarations. Two dying declarations are at Exh. 55 and Exh.58. The endorsement of the doctors are at Exh. 72 and Exh. 75. Entire case of the prosecution rest upon the two dying declaration. It is stated in the first dying declaration that there was ill-treatment from Accused No. 4 to 7 i.e. Sangita, Surekha, Shamal, Gandhari and accused No. 5 Surekha set her on fire by pouring kerosene on her person, when her husband was not in the house. Looking to the second dying declaration it appears that, it was recorded after two days i.e. on 09.10.2012 at about 8:30 a.m., in which it is stated that the accused Nos. 1 to 6 abused and beaten on the ground that the deceased had not brought the amount, at the relevant time accused No. 1 went out side the house by saying “finish her once for all” accused No. 6 Shamal also said the same thing. Accused No. 4 Sangita said “will kill”.

Accused No. 3 - Shalu said “pour kerosene on her person”. Accused No. 2 Maruti said “do whatever, I am behind them”. Accused No. 5 Surekha poured kerosene on her and set her on fire. This is the improved version by the declarant. It is every surprising to note that in the first dying declaration the act of accused persons except Surekha have not been mentioned. Subsequent addition/improvement may be due to the prompting or tutoring by the relatives of Reena, otherwise, there was no reason for the declarant Reena to state the same thing at the time of recording of her first dying declaration but that improved version is conspicuously absent in the 1st dying declaration.

4. Apart from the above aspect, it is very surprising to note that at the time of admission of Reena in the hospital, the concern medical has recorded history of the injuries in the medical case record which is collectively exhibited at Exh. 82. This is the record maintained by the concerned medical officer who was on duty at the relevant time and had given medical treatment. From the endorsement, it appears that Reena was admitted in the Government Hospital at Osmanabad on 7.10.2012 at about 3.20 p.m. and on her admission history was noted as follows:

“History of burn due to explosion of stove 20 minutes back. The provisional diagnoses was an accidental burn, superficial to deep to the extend of 58 percent.”

5. This is verymuch important document. Immediately on the admission, the history of the burn injuries were given as an accidental due to

the explosion of the stove and this fact supported by the contents of the spot panchnama and the panch witness from which, it appears that the stove was lying in the house and there was pot of milk and tea powder was mixed in it. So basically from the record, it appears that immediate and early version as to the cause of injury recorded by doctor appears to be an accidental burn. Subsequently, it appears that the incident is being colored from time to time and resulted in alleging the offence of murder against all the accused persons. On perusal of the reasons recorded by the learned Additional Session Judge, and considering the evidence on record and the reasons recorded by the learned Additional Sessions Judge, we find that the view taken by the learned Trial Judge is reasonable and probable. Therefore, no interference is called for. Hence application is rejected. Leave refused. Petition is disposed of.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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