

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 172 OF 2004

The State of Maharashtra,
Through Police Station, Mantha,
Tq. Hadgaon, District Nanded

APPELLANT

V E R S U S

Syed Sattar S/o. Syed Mahmood,
Age 25 Years, Occupation Labour,
R/o. Manatha, Tq. Hadgaon,
District Nanded

RESPONDENT

Mr. R.V. Dasalkar, A.P.P. for the Appellant-State
Mr. R.R. Shaikh, Advocate for the Respondent

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**CORAM : T.V. NALAWADE AND
SMT.VIBHA KANKANWADI, JJ.**

DATE : 10th SEPTEMBER, 2018

ORAL JUDGMENT [PER: T.V. NALAWADE, J.] :

The appeal is filed by State to challenge the Judgment and order of Sessions Case No. 161/2002, which was pending in the Court of learned Ad-hoc Additional Sessions Judge, Nanded. The trial Court has acquitted the respondent-husband for the offences punishable under Sections 498-A, 304-B, 302 read with Section 34 of the Indian Penal Code. Heard both the sides.

2. The deceased Raziya was the wife of present respondent Syed Sattar. Original accused Nos. 2 and 3 were real brothers of Syed Sattar and accused No.4 Mumtajbee was mother of Syed Sattar. They are also acquitted, but the appeal is preferred only as against husband.

3. The marriage had taken place about 13 months prior to the date of incident. The incident in question took place on 24.02.2002. In the past, the husband had asked the deceased to bring Rs.30,000/- from her parents as he wanted to purchase Hero Honda motorcycle and as the demand was not met with, there was harassment from her husband and other accused. On the day of incident, first the husband of the deceased asked the deceased to give him water and when the deceased brought a glass of water and kept it on the refrigerator of the house, her husband poured kerosene on her person and set fire to her. The deceased started shouting and due to that neighbours and relatives of the husband gathered there. They extinguished the fire and she was shifted to Government Hospital, Nanded. The Dying Declaration of the deceased was recorded by A.S.I. Mirza Baig, who was attached to outpost of Civil Hospital on 25.02.2002. Prior to that, Judicial Magistrate had also recorded Dying Declaration of the deceased. Raziya succumb to injuries on 03.03.2002. After the

death of Raziya, her father gave report to Police and the crime came to be registered against the husband and other relatives.

4. Before trial Court, prosecution examined in all seven witnesses including the first informant. It is not disputed that death took place due to burn injuries. Though record was created that on 25.02.2002 Dying Declaration was recorded by the Police Officer in Civil Hospital, no crime was registered on the basis of that Dying Declaration. The record of the Dying Declaration recorded by Judicial Magistrate was withheld by prosecution and that circumstance is considered by the trial Court. The evidence is given by the father of the deceased that on 24.02.2002 itself when he met the deceased in Civil Hospital, she disclosed that her husband had set fire to her. Even when this disclosure was allegedly made by the deceased, the father [PW-1] did not approach police and he first approached police on 03.03.2002.

5. The aforesaid circumstances show that the delay was caused in registering crime even when there was an opportunity to register the crime. The material evidence was withheld and prosecution was not fair. The bed head ticket of the deceased was not produced and it can be said that the material in which Doctor must have recorded the history of the patient was

withheld. The evidence of ill-treatment given by the relatives of the deceased on parents side, like mother and father, is vague in nature. It does not show as to when the first demand was made and the disclosure was made.

6. When in the Dying Declaration the deceased disclosed that neighbours had rushed to the house first and had extinguished the fire, the evidence of such neighbours is not given and the evidence of only relatives on her parent's side is given. All these circumstances are considered by the trial Court. There can be many reasons for sustaining burn injuries. Even if it is presumed that it is a case of suicide, there can be many reasons for the same. Aforesaid circumstances cannot be ignored in the present matter. Due to vagueness of the evidence, it is difficult to believe that there was demand of Rs.30,000/- from the husband.

7. Due to all these circumstances, this Court holds that the view taken by the trial court is a possible view and the interference in the decision is not warranted. In the result, Appeal stands dismissed. Rule is discharged.

[SMT.VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]