

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5657 OF 2016

State of Maharashtra,
Through, Police Station,
Pathardi, Dist. Ahmednagar.

...Applicant.

Versus

1] Ramkisan Shridhar Kakade,
Age : 50 years,

2] Sakharbai Shridhar Kakade,
Age : 80 years,

3] Rukhmini Ashok Kakade,
Age : 42 years,
All R/o Somthane,
Tq. Pathardi, Dist. Ahmednagar.

...Respondents

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Mr. R. V. Dasalkar, A. P. P. for Applicant-State.

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

DATE : 28-11-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Present application has been filed by the prosecution under Section 378(1)(b) of Code of Criminal Procedure seeking leave to file appeal to challenge the Judgment and Order of acquittal passed by the learned

Additional Sessions Judge, Ahmednagar in Sessions Case No. 140 of 2015 dated 16.7.2016 for the offences punishable under Sections 498A, 302 read with Section 34 of I. P. C.

02. The original accused No. 1 is the husband of the deceased, accused No. 2 is the mother-in-law and accused No. 3 is the sister-in-law. The deceased Padmabai Kakade was admitted in Hospital on 17.2.2015 who had suffered burn injuries. Her dying declaration was recorded by PW-6 Kakasaheb Rakh. Endorsement was given by PW-7 Dr. Smt. Ashwini Ashok Sonawane. It was disclosed in dying declaration that the deceased Padmabai was the second wife. The name of first wife of accused No. 1 was also Padma. After death of first wife, accused No. 1 married to deceased about 15 to 16 years ago. Accused No. 1 was having 2 sons and a daughter from first wife. Out of that daughter was already married. She contended that she was treated properly by the husband for about some days after marriage. Her father-in-law expired 5 years prior to 17.2.2015 and thereafter, dispute started between her and her mother-in-law i.e. accused No. 2. Accused Nos. 2 and 3 used to say ill things about her to accused No. 1. As a result of which accused No. 1 used to assault her. Thereafter, deceased and accused No. 1 started residing separately alongwith their children. Deceased was having

one daughter and one son from accused No. 1. Thereafter, after few days accused No. 1 went back to reside with his mother. About one and half years prior to the F. I. R., accused No. 1 had transferred about one and half acres of land in the name of son of deceased when they started residing separately. The said action was on the basis of the say of father of deceased as well as some elder persons from their village. It is stated that on that count also her husband used to assault her. He was instigated by accused No. 2 and 3. They were also saying that she should bring bullocks and money from her parents. On the day of incident i.e. 16.2.2015 her children had gone to school. She was alone in the house around 11 AM. She was about to leave for labour work, at that time, her husband came alongwith accused No. 2 and 3. They all assaulted her by kicks and fist blows and thereafter, kerosene from the can in the house was poured on her. On the instigation of accused No. 2 and 3, accused No. 1 put burning match stick on her, thereby ablazing her. When she caught fire, she started shouting. At that time the neighbouring persons extinguished fire and then she was admitted to Hospital. It is her say that when it was noticed that she is receiving burn injuries all the accused persons ran away.

03. After considering the evidence on record and hearing both the sides, the learned Trial Court has acquitted all the accused and the said acquittal is under challenge in this application for leave to appeal.

04. Heard learned A. P. P. Mr. R. V. Dasalkar for State and perused the record and proceeding. It has been submitted on behalf of the applicant-State that the learned Trial Court has not appreciated the evidence properly. The dying declaration ought to have been believed for convicting the accused. The F. I. R. which is in the form of dying declaration has been discarded on technical ground as well as the fact that the father of the deceased had turned hostile and has not corroborated, supported the contents of the dying declaration. Apart from the hostility in fact, the conviction could have been based on the sole ground of dying declaration. There was no reason for deceased to implicate the accused persons. The contents of the PM report would show that she had died due to the accidental burns. Accused persons therefore ought to have been convicted.

05. We have gone through the record and the Judgment of the Trial Court. The prosecution has mainly relied on the dying declaration which has been got proved through

PW-6 Head Constable MR. Rakh. Even if for the sake of arguments we do not go into technicalities and accept that the said dying declaration is proved, yet, it can be seen from the contents of the dying declaration Exh. 47 that deceased had reason to implicate the accused persons. As per her own story she resided with husband and mother-in-law as well as the sister-in-law after the marriage. For about 10 to 11 years there was no complaint by her. She had begotten son and daughter during that period. But, then says that when her father-in-law expired about 5 years prior to the F. I. R. accused persons started ill-treating her on trifle grounds. Those trifle grounds have not been disclosed by her. But, then she says that accused No. 2 and 3 used to instigate accused No. 1 and then he used to assault her. She has not lodged any complaint about that. Then she has stated that thereafter she started residing separately alongwith her husband and children. But, thereafter, accused No. 1 went back to his mother i.e. accused No. 2 to reside and on the say of her father and other persons, the accused had transferred agricultural land in the name of her son. In spite of that she says that on the say of accused Nos. 2 and 3 accused No. 1 used to assault her. How much and when amount was demanded for purchasing bullock cart and

agricultural land etc. details have not been given by her.

06. It is further to be noted from the dying declaration that as regards the incident dated 16.2.2015 is concerned, she has not stated that there was any kind of dispute immediately in the prior period of the said date between the accused persons and herself. But, then she says that at about 11 AM when she was about to go for labour work all the accused persons came and assaulted her and then poured kerosene upon her person and ablazed. She also says that after hearing her shouts neighbours came and extinguished the fire. Thereafter the accused persons had ran away. None of the neighbouring persons were examined by the prosecution to support her contention. That means except the sole dying declaration there was nothing with the prosecution to prove the guilt of the accused. Important point to be noted is that though she does not claim that daughter had come yet, daughter has been examined as PW-3. She does not say that she had seen father or grant-mother in the house. On the contrary, she says that they were required to be called by making phone call. Father of the deceased PW-5 Mr. Abasaheb has turned hostile. One of the neighbours PW-4 Mr. Santosh has also turned hostile. Therefore, there was no corroborative evidence to the contents of the dying declaration. Since

the husband was residing with his mother may be on account of dispute she had reason to implicate him as well as accused No. 2. There was in fact absolutely no allegations about dispute or quarrels with accused No. 3 with her. Another dying declaration appears to have been taken by PW-9 MR. Bhaskar Bose, the Special Judicial Magistrate. Even if for the sake of arguments we accept that such kind of dying declaration was given, yet, it can be seen that she had then made improvements and tried to implicate accused No. 3. She has stated that there used to be quarrels between her and accused No. 3 who was residing in the neighbourhood on domestic reasons. She used to instigate accused No. 1 and therefore, she decided to reside separately. But, then she says that she was residing in the neighbourhood of accused with her two sons only. She has not stated that husband was residing with her. She has thereafter stated that accused No. 1 was thereafter insisting that she should re-transfer the agricultural land which was given in the name of Sachin in the name of accused No. 3. Thus, it can be seen that there is inconsistency in the two dying declarations and even if we consider each of them separately, yet, it is not corroborated by any other piece of evidence and also that she had reason to implicate the accused persons.

07. Thus, taking into consideration the fact that though deceased expired due to burn injuries, the prosecution had failed to prove that the accused persons are the authors of the crime. The learned Trial Court has appreciated the evidence properly. That was the possible view which was taken by the Trial Court. No arguable case is made out for admitting the appeal.

08. Hence, following order;

ORDER

Application is dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALWADE]

JUDGE

Dahibhate/-