

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 7031 OF 2016

The State of Maharashtra,
Through : PSO, P. S. Kasar
Shirshi,
Tq. Nilanga, Dist. Latur. ...Applicant

Versus

- 1] Jivan Tukaram Sawant,
Age : 29 years, Occu. : Agri.,
R/o Bhutmugali, Tq. Nilanga,
Dist. Latur.
- 2] Satish Tukaram Sawant,
Age : 32 years, Occu. : Labour,
R/o Bhutmugali, Tq. Nilanga,
Dist. Latur.
- 3] Jijabai Tukaram Sawant,
Age : 63 years, Occu. : Agri.
R/o Bhutmugali, Tq. Nilanga,
Dist. Latur.
- 4] Anita Gunderao Nelwade,
Age : 43 years, Occu. : Agri.,
R/o Hasori [Bk.] At present
Bhutmugali, Tq. Nilanga,
Dist. Latur. ...Respondents

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Ms. D. S. Jape, A. P. P. for Applicant-State.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 27-11-2018.

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

01. Present application has been filed by prosecution under Section 378(1)(b) of Cr. P. C. for leave to appeal challenging the Judgment and order of acquittal dated 20.09.2016 passed by learned Additional Sessions Judge, Nilanga, Dist. Latur in Sessions Case No. 40 of 2013 from the offence punishable under Sections 302, 498A read with Section 34 of the Indian Penal Code.

02. Accused Nos. 1 and 2 are the sons of accused No. 3. Deceased Manisha @ Manjusha who was the daughter of first informant Balaji Chandar Mugave resident of Badur, Tq. Nilanga, Dist. Latur got married to accused No. 1 on 28.5.2011. Accused No. 4 is the sister of accused Nos. 1 and 2 and daughter of accused No. 3. It is stated that the marriage was performed as per Hindu rites and customs. Her father has given amount of Rs. 2,55,000/- as dowry. He had also given 2 tolas of gold and clothes as well as utensils. After marriage, deceased Manisha started residing with accused Nos. 1 to 3 at village Bhutmugali, Tq. Nilanga. She was treated properly for about a month and thereafter, the accused started ill-treating her by demanding 2 tolas of gold, TV and VCR. On that count they had driven her out of the house. Her grandfather had

taken her to matrimonial home. However, accused did not allow her to enter because of the non-fulfillment of the demand at that moment. Thereafter, again after about 4 months the first informant alongwith his brother and other relatives took Manisha to the accused. Even at that time also she was not allowed to enter. Ultimately, on 12.5.2013, the first informant had invited all the accused persons to his village and gifted clothes, TV and VCR to accused No. 1. He assured to pay 2 tolas of gold after harvesting. Thereafter, Manisha was taken by accused for co-habitation. It is the further the prosecution story that one Sudhakar Mugave gave information to the first informant that Manisha has consumed poison and had been admitted to Ahankari Hospital, Nilanga. He alongwith relatives went to Hospital. He made enquiry with her, whereupon she told that on 21.6.2013 all the accused started abusing her because their demand was not fulfilled and they were asking her to go to Badur to bring gold. When she refused to leave the house, at that time, the accused No. 2 to 4 assaulted her by fists and kick blows, laid her on the floor and then accused No. 1 forcibly administered insecticide. She was thereafter shifted to Hospital. It is further the prosecution story that Manisha expired on 25.6.2013 during treatment at Alpha

Hospital, Latur. After her death her father Balaji went to Police Station and lodged report. On the basis of said F. I. R., the offence vide C. R. No. 38 of 2013 came to be registered and investigation was undertaken.

03. When the fact of death was reported and accidental death was registered under Section 174 of Cr. P. C. and inquest panchnama was executed. The dead body was sent for post mortem. After the registration of the offence, panchnama of the spot was carried out and again it appears that the house of the accused was searched. Panchnamas have been executed at that time. Thereafter, the accused came to be arrested. While in custody, accused No. 1 gave memorandum and discovered the insecticide, Saree, Blouse and Petticoat having strong smell and traces of liquid. Statements of witnesses were recorded. After the completion of the investigation, charge-sheet was filed.

04. After the accused appeared before the trial Court, charge was framed. Contents of the charge were read over and explained to the accused in vernacular. They pleaded not guilty. Trial has been conducted. After hearing both the sides and perusing the evidence on record, the Trial Court has acquitted all the accused

persons from the offence punishable under Section 302, 498A read with Section 34 of I. P. C. The said acquittal is under challenge in this application.

05. Heard learned A. P. P. Ms. D. S. Jape for State. Perused the record and proceedings.

06. The first and the foremost fact to be noted is that as per the prosecution story, the incident has taken place on 21.6.2013 and Manisha died on 25.6.2013. There was no attempt on the part of the investigation to record her dying declaration. Another fact that is also required to be considered is that though the F. I. R. was lodged by the father of Manisha, the first informant-Balaji expired during the trial and therefore, he could not be examined. As per his contention, the first hand information about the ill-treatment as well as the circumstances leading to her death were given by deceased to him. Therefore, the oral dying declaration allegedly given to him could not be proved by the prosecution. The third circumstance that goes against prosecution is that though the Medical Officer, who had conducted autopsy had stated that the primary opinion which he had given regarding cause of death was due to poisoning, however, the C. A. report in respect of viscera Exh. 84 says that no traces of poison

are found in the viscera. Though on the clothes, at the time of seizure it is stated that it had strong traces of liquid; the C. A. report Exh. 83 in respect of the same is also negative. The 4th circumstance that is against prosecution is that when the informant met Manisha, she was admitted to Ahankari Hospital, Nilanga. However, none of the doctor from that Hospital has been examined. What kind of treatment was given, whether she was in a fit state to give oral dying declaration etc. has not been brought on record.

07. Prosecution has examined the brother and grandfather of Manisha. No doubt, they have tried to support the prosecution story. However, in the cross-examination they have stated that whatever they have deposed about the ill-treatment was on the basis of hear say information. Even if for the sake of arguments, it is accepted that Manisha had disclosed something to them personally, yet, their evidence is silent on the point as to what happened in between 12.05.2013 to 21.06.2013. They have not claimed that during this period Manisha had again made complaint that she is being ill-treated on the count of non-fulfillment of gold. Therefore, only on the basis of such type of evidence, the learned Trial Court has taken a possible view. Merely because a second view

is possible, the Appellate Court can not take the another possible view.

08. Hence, following order;

ORDER

Application is dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-