

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.622 OF 2016

Salim Tajuddin Attar.	]	... Applicant / Orig. First Informant
Versus		
State of Maharashtra & Ors.	]	... Respondents

Mr. R. R. Parmane i/b Mr. V. R. Gaikwad for Applicant.
Mrs. M. H. Mhatre, APP for State – Respondent No.1.

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE :- 30 JULY, 2018

P. C. :-

1. The Applicant has approached this Court seeking leave to appeal against the Judgment and Order passed by the learned Additional Sessions Judge, Karad, in Sessions Case No.59 of 2012, thereby acquitting the Respondent Nos.2 to 4 / original accused nos.1 to 4 from the offences punishable under Sections 302, 304B and 498A of the IPC.

2. The Respondent Nos.2 to 4 / original accused nos.1 to 4 were tried for committing murder of the deceased who had married

just prior to 8 months before the date of the incident. The alternate charge was for an offence punishable under Section 304B of the IPC, since the deceased had died within a period of seven years from the date of the marriage.

3. Mr. R. R. Parmane instructed by Mr. V. R. Gaikwad appearing for the Applicant submits that the learned trial Judge has grossly erred in acquitting the accused. He submits that the defence of the accused persons is falsified in view of the spot panchanama inasmuch as the stove is found to be intact. He further submits that the learned trial Judge has also erred in not believing the ocular witnesses PW 11 Sattar Mulla and PW 12 Priya Mane.

4. The original accused no.1 is the husband of the deceased, the original accused no.2 is the father-in-law of the deceased, the original accused no.3 is the mother-in-law of the deceased and the original accused no.4 is the sister-in-law of the deceased.

6. We have perused the evidence PW 11 Sattar and PW 12 Priya. Insofar as the evidence of PW 11 Sattar is concerned, he has

deposed that on earlier occasions, there used to be quarrels between the deceased on one hand and the accused on the other hand. He has deposed that on the date of the incident i.e. on 12/05/2012 when he was in his shop, one small boy came near him and said that '*Ammi ko jalaya, Ammi ko jalaya*'. He has further deposed that he thereafter finished his work and went to the house of Usman Gani. He found that the deceased had sustained burn injuries. Apart from this, his evidence is full of omissions and contradictions, what he states is that he only heard that '*Ammi ko jalaya, Ammi ko jalaya*'. The evidence of this witness does not take the prosecution case any further.

7. Insofar as PW 12 Priya is concerned, no doubt in her examination-in-chief she has stated many things about the earlier ill-treatment to the deceased. She has further stated that when she heard the cries of the deceased, she went to the spot and found the deceased burning. It is to be noted that, paragraph 7 of her deposition shows that in the witness box, she was found with her statement recorded under Section 161 of the Cr.P.C.. She has admitted that before she gave her evidence, before entering the witness box, she met police in the office of the Additional Public

Prosecutor and had gone through the contents of her statement under Section 161 of the Cr.P.C. Insofar as the earlier quarrels are concerned, we find that the said part of the evidence is an omission in her statement under Section 161 of the Cr.P.C. As such, the said witness cannot be found to be truthful, cogent and reliable. We, therefore, find that no interference is warranted insofar as acquittal under Section 302 of the IPC is concerned.

8. Insofar as the acquittal under Section 304B is concerned, the essential ingredients for conviction under the said offence are that the deceased must be ill-treated prior to she dying on account of non-fulfillment of demand of dowry and further that the ill-treatment should be of such a nature that the deceased has no other alternative than to choose death. No evidence of such sort is led by the prosecution.

9. No perversity or impossibility is noticed to warrant interference. The Application is rejected. The Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)