

Dond

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 35 OF 2019

The State of Maharashtra
Vs
Asmita Shivaji Chavan & Anr

..Applicant
..Respondents

Mr. J.P. Yagnik, APP for Applicant-State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 22nd January 2019.

P.C.:

1] This is an application under Section 378 (3) of Code of Criminal Procedure, 1973 seeking leave to file an appeal impugning the Judgment and Order dated 30th December 2015 passed by the learned Additional Sessions Judge, Gadhinglaj, District Kolhapur, in Sessions Case No.24 of 2013 acquitting the respondents for the offence punishable under sections 302 and 201 read with Section 34 of Indian penal Code.

2] Heard the learned APP for the Applicant-State. Perused the entire record.

3] It is the prosecution case that the respondent No.1 was having illicit relations with the respondent No.2. The said fact was noticed by Smt Kamalabai, mother-in-law of respondent No.1. That Smt. Kamababai admonished the respondent No.1 about the same and directed her, not to continue with the said relations. That on 6.3.2013 Shivaji Chavan husband of respondent No.1, had been to pilgrimage to village Jakhewadi. The respondent No.1 and Smt. Kamababai were only present in the house. It is alleged that thereafter the respondent No.1 with the help of respondent No.2 committed murder of Smt. Kamalabai by strangulating/throttling her. Smt. Kamalabai died on the spot. In the morning on 7.3.2013 the respondent No.1 informed the death of Smt. Kamalabai to her relatives and gave reason that, Smt. Kamalabai died due to heart-attack. Many of the relatives gathered at the house of Smt. Kamalabai. The dead body of Smt. Kamalabai was taken to cremation and while performing last rites, some of the women present at the site saw that, there were some marks of injuries on the neck and some abrasion on the chest of Smt. Kamalabai. The villagers present there told the said fact to Dattatray (PW No.3), brother of deceased Smt. Kamalabai. As there was pilgrimage in their village which was scheduled then in the near future, they did not raise much suspicion and

thereafter last rites were performed. The immersion ceremony of ash of Smt. Kamlabai was scheduled on 9.3.2013 therefore the relatives and other villagers had gathered there. A relative of Smt. Kamalabai namely Smt. Suvarna Chavan (PW No.4) was sweeping the house when she found two human teeth and she showed it to women gathered there. The relatives of Smt. Kamalabai therefore asked the respondent No.1 about the said teeth, upon which the respondent No.1 confessed the guilt of having illicit relation with the respondent No.2 and commission of murder. After the husband of respondent No.1 returned from pilgrimage, the respondent No.1 was taken to the office of Tanta Mukti Samiti of the village Gajargaon where she further confessed the guilt.

The prosecution in support of its case, examined in all 11 witnesses. The Trial Court after hearing the parties to the said case passed the impugned Judgment and Order acquitting the respondents.

4] The evidence on record indicates that, there is no independent corroboration to the alleged confession given by the respondent No.1. It appears from the record that, the alleged confession of guilt given by the respondent No.1 was in fact given under duress and coercion exerted by the close relatives of Smt. Kamalabai and other villagers. The said extra judicial

confession is not voluntary and given by free will and therefore needs to be kept aside from consideration.

5] There is another facet to the case. Though the respondents faced charge under section 302 of Indian Penal Code, the prosecution has failed to prove the basic fact that the death of Smt.Kamalabai was a homicidal death caused by the respondents. As noted earlier, the dead body of Smt Kamalaba was already cremated in the presence of close relatives without raising suspicion about cause of her death. The finding of teeth of Smt. Kamalabai in her own house which fact is duly corroborated by DNA report only shows that,the said teeth were of Smt. Kamalabai. It is to be noted here that, the witnesses to the cremation ceremony of Smt. Kamalabai did not notice the loss of said two teeth of Smt. Kamalabai. In the circumstances, it is very difficult for us to hold that at the time of commission of offence i.e. strangulation of Smt. Kamalabai by the respondents her teeth were parted from her mouth.

6] After taking into consideration the entire evidence available on record, we are of the considered view that the Trial Court has not committed any error, either in facts or in law while acquitting the respondents from the offences charged against them.

7] No case is made out for grant of leave to file appeal against the impugned Judgment and Order. Application is accordingly rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)