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

CRIMINAL APPLICATION NO. 32 OF 2019

The State of Maharashtra

..Applicant

Vs

Ruturaj Vilas Patki & Ors.

..Respondents

Ms. M.H. Mhatre, APP for Applicant-State.

Mr. M.S. Mohite a/w Mr. Shantanu Phanse for Respondents.

**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 against the impugned Judgment and Order dated 7th October 2015 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.338 of 2005.

2] Heard the learned APP for the State and the learned counsel for the respondents.

3] The first respondent is the husband of the victim. The second and third respondents are in-laws of the victim. The marriage between the deceased and the first respondent was solemnized on 23rd June 2004 and

the date of the death of the victim is on 29th October 2004.

4] The case of the prosecution in brief is that, deceased Shilpa was M.B.B.S and was working in a hospital at Aurangabad. The first respondent was working in Indian Bank at Ichalkaranji, District- Kolhapur. It is claimed that, the marriage was settled somewhere in June 2004. It is alleged that when the deceased came back to her parental house on account of Mangala Gauri, she informed her parents that the first respondent had no income and therefore, was demanding a cash of Rupees one lac. She informed her parents that the respondents-accused were insisting on her bringing a sum of Rupees one lakh in cash from her parents and she has been harassed mentally and physically by the respondents. Another allegation against the respondents by the prosecution is that the respondents were demanding gold bangles of five tolas and as the same was not provided, she was being harassed.

5] In the month of September 2004 when deceased Shilpa was at her parents' house, she gave information about severe harassment and demand of Rupees one lakh with gold bangles. According to the prosecution, six days before the incident, she gave a call to PW No.1 (her father) and informed PW No.1 that she was being subjected to a lot of

harassment. She told that the demand should be complied with before Diwali. It is alleged that, on 29th October 2004 between 8.15 a.m. to 8.30 a.m, deceased Shilpa made a phone call to PW No.2 (her mother) that her family members were coming at 11.00 a.m. PW No.1 received a phone call on that day from his son from whom he learned that deceased Shilpa had fallen down from a balcony of her matrimonial house and was taken to hospital.

6] The respondents were charged with the offences punishable sections 498A and 304 B read with 34 of Indian Penal Code and in the alternative for offences punishable under section 306 read with 302 of Indian Penal Code. The prosecution relied upon the presumption under Sections 113(A) and 113(B) of Indian Evidence Act, 1872 (for short “the Evidence Act”). Three defence witnesses were examined.

7] The learned APP has taken us through the notes of evidence and the findings recorded by the Trial Court. Her submission is that the presumption under Sections 113(A) and 113(B) of the Evidence Act ought to have been invoked by the Trial Judge. Her submission is that the death occurred approximately within four months from the date of marriage and there was evidence of demand of cash amount as well as harassment.

8] We have carefully perused the evidence on record and the findings recorded by the Trial Judge in the impugned Judgment and Order dated 7th October 2015. The learned Trial Judge held that the prosecution could not establish the allegations of cruelty and/or harassment and therefore, the condition precedent for invoking the presumptions was not satisfied. The learned Trial Judge disbelieved the version of PW No.1 and PW No.2. The evidence of PW No.1 the father of victim alleges that in September 2004, the deceased Shilpa had given a phone call informing him about the demand of payment of Rupees one lakh as well as gold bangles and consequent harassment by the respondents due to non-fulfillment of the said demand. According to him, 15 days prior to the incident, he received a phone call from his daughter when she told that she was being subjected to a lot of harassment. According to PW No.1 as well as PW No.2, the deceased Shilpa made a phone call on the date of incident at about 8.15 a.m or 8.30 a.m to PW No.2. We find that the call detail records of the phone calls of both PW No.1 and PW No.2 was not produced by the prosecution. Due to the failure of prosecution of not producing the call detail records of PW No.2, the Trial Court disbelieved the version of PW No.2 regarding the phone call received by her from deceased

Shilpa in the morning of the date of incident. In paragraph-60 of the impugned Judgment and Order, the learned Trial Judge has mentioned the lapse on the part of the prosecution in failing to produce the call records.

9] The learned Trial Judge disbelieved the version of PW Nos.1 and 2 that the deceased Shilpa and the first respondent met for first time in the last week of February 2004. In paragraph Nos.21 and 22 of the impugned Judgment, the learned Trial Judge has recorded a finding based on photographs shown to PW No.1 that in their house, the deceased Shilpa was seen in the year 2003. In paragraph-23, the learned Trial Judge noted admission given by PW No.1 that on 30th September 2003, deceased Shilpa was seen in the house of PW Nos.1 and 2. In paragraph-26, the learned Trial Judge, based on the photographs at Exhs.145 to 151, recorded a finding that the case of the prosecution that the deceased Shilpa became acquainted with the first respondent for the first time in February 2004 cannot be accepted.

10] From the evidence of PW Nos.1 and 2, it is very clear that prior to August 2004, there was no demand of Rupees one lakh. The evidence on record is very clear that from September 2003, the first respondent was carrying on business.

11] Another finding recorded by the Trial Judge is based on pay-in-slips of June to October 2004 at Exhs. 56, 57, 58, 59, 60 which show that the deceased Shilpa had deposited total amount of Rs.84,500/- in the bank account of the first respondent. The learned Trial Judge has also recorded a finding on the basis of video clip of month of July 2004 from which it can be seen that the deceased Shilpa along with the first respondent had an occasion to go for a picnic at Panshet Dam.

12] The learned Trial Judge also considered the evidence of three defence witnesses in which they deposed that the deceased was happy in the company of first respondent. The defence witness No.1 Ratnakar was examined to prove that the second accused had purchased gold bangles. The Defence witness No.3 Vinita Kulkarni deposed that the deceased was known to the first respondent for a long time. She deposed that on 27th October 2004, she met deceased Shilpa in her house and she found nothing wrong in the behaviour of Shilpa at that time. Moreover, admittedly deceased the Shilpa was M.B.B.S and working as a doctor in the hospital.

13] Thus, in our view, the findings recorded by the Trial Judge that the prosecution has failed to prove the allegations of demand of rupees one lakh as well as bangles and consequent harassment by the respondents on

account of non-fulfillment of demand are possible findings based on the evidence on record.

14] There is no other evidence on record to connect the respondents with the incident. Obviously, no evidence was adduced to prove the commission of an offence punishable under Section 302 of Indian Penal Code. Thus, the view taken by the learned Trial Judge is a possible view based on the evidence on record.

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

(A.S.GADKARI, J.)

(A.S.OKA, J.)