

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

912 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.73 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

SHAIKH MAHEBOOB SHAIKH SAEED AND OTHERS

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Mr. A.V. Deshmukh, APP for applicant

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**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.**

DATE : 05th APRIL, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed seeking leave under Section 378(1)(B) of the Code of Criminal Procedure, 1973 to file criminal appeal against Judgment and order dated 14.12.2017 passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No.80/2014, thereby acquitting the respondents from the offences punishable under Section 307, 328, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.V. Deshmukh for the applicant. With his able assistance we have gone through the record which was before the Trial Court.

3 The prosecution has come with a case that informant Sameera has lodged a report on 05.10.2013 alleging that the accused persons had attempted to commit her murder by administering poisonous substance to her by assaulting and abusing, threatening her. She has stated that she got married to accused No.1 about four months prior to the incident. Prior to that she was married to another person, who had given divorce to her. Thereafter, she was residing with her mother and her daughter. It is then stated that even dispute arose between her and accused No.1 and, therefore, on the day of incident she was residing with her mother. She was returning from the school of her daughter after dropping her around 10.00 a.m. on 24.09.2013. At that time, accused No.2, who is the aunt of accused No.1, met her. Accused No.2 abused her, as to why she has married to her nephew. At that time, accused No.2 had assaulted her with fists and blows. She then states that she went to the house of accused No.1 and told him about the incident. She also asked, as to why he has sent accused No.3 to the house of her mother on the previous night. Accused No.1 denied to have sent accused No.3. Thereafter, the quarrel took place between accused Nos.1 and 3 on one part and the informant on the other. She has stated that accused No.3 had slapped her and assaulted her with fist blows. Accused No.1 caught hold of her and then accused No.3 had brought phenyle bottle from the bath room and poured the liquid in her mouth, because of which she vomitted. She has

then stated that accused No.1 had then taken her to Government Hospital, where preliminary treatment was given and thereafter she was referred to Civil Hospital, Jalgaon. While undergoing treatment at Jalgaon she was given the First Information Report.

4 PW 1 is a panch witness to the spot panchnama, however, he has turned hostile. PW 2 also appears to be the spot panch, however, he has also turned hostile. PW 3 is informant, who has stated as per the First Information Report in her examination-in-chief, however, in her cross-examination it has come on record that though accused No.1 had taken her to Civil Hospital, Jalgaon, on 24.09.2013 she has lodged the report with the police on 05.10.2013. Further, the incident had taken place on 24.09.2013 itself. In her cross-examination when statement dated 26.09.2013 was shown to her i.e. Article 'A', she denied to have stated the said statement to the police. But then she has admitted the signature on the same. She has also stated that she was admitted in Civil Hospital, Jalgaon from 24.09.2013 to 26.09.2013, however, prosecution has not produced on record any cogent evidence giving reason/history at the time of her admission as forcible administration of the poisonous substance. Rather PW 5 Dr. Sagar Basavnathe, who was attached to Primary Health Centre, Nagardevala, who examined her on 24.09.2013, says that informant had come to the Primary

Health Centre along with her sister. She made complaint about headache, general weakness, nausea etc. and then he says that at about 5.30 p.m. she declared that she had given phenyle forcibly, therefore, he referred her to Civil Hospital, Jalgaon. During the entire day she was complaining about the pain in abdomen vertigo and nausea. This behaviour of the witness itself is doubtful. If the incident had happened the way now she intends to project, then she would have told it to the Doctor. At one place she says that she was admitted by accused No.1, but the prosecution witness – the Medical Officer says that she had gone to the Hospital along with her sister. Stomach wash was not collected at all. Under the said circumstance, there is no possibility of report of the chemical analysis. Under such circumstance, except the bare words of PW 3 there is nothing to support her story. Why accused No.1 would try to kill her is not explained, what was the quarrel between them and why she had gone to reside with her parents has also not been clearly stated by her. In fact, the relationship between accused Nos.1 and 3 has also not come on record. Therefore, on the basis of evidence that was led by the prosecution, the learned Trial Judge has correctly held that offence is not proved beyond reasonable doubt. No case is made out for grant of leave. Application stands dismissed.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)