

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.14 OF 2019

The State of Maharashtra
Through Police Inspector
M.I.D.C. Police Station, Latur,
Tq. and Dist. Latur

... **APPLICANT**
[Ori. Complainant]

Versus

Gorakh Pandharinath Barure
Age: 33 years, Occ: Driver,
R/o. Dapkyal, Tq. Chakur,
Dist. Latur

...**RESPONDENT**
[Ori. Accused]

....
Mr. R. D. Sanap, APP for applicant - State

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

DATE : 24.04.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

By the present application under Section 378(1)(b) of the Code of Criminal Procedure, the prosecution is seeking leave to file appeal to challenge the judgment and order dated 29.10.2018 passed by the learned Sessions Judge, Latur, in Sessions Case No.89/2016, thereby acquitting the non-applicant/

accused for the offence punishable under Sections 307 and 504 of the Indian Penal Code.

2. With the able assistance of the learned APP Mr. R. D. Sanap, we have gone through the record. We take the story of prosecution as well as evidence placed before the learned trial Court to consider whether leave can be granted to file appeal.

3. In nutshell, it is the case of prosecution that the victim PW-5 Komal and the accused were in live-in-relationship. Both of them were staying in tenanted house of PW-4 Narsing Waghmare, Vikas Nagar, Latur. The victim had returned from her parental house at Bus Stand, Latur around 10.00 p.m. on 06.10.2015. The accused was with her from Bus Stand. On their way, the accused took her to a grocery shop and purchased some article. Thereafter, she had asked accused to give money for rent and grocery, but he refused to give money. Thereafter, he abused her and demanded Rs.2,00,000/- (Rupees Two Lakh). Therefore, she told him not to stay with her, but the accused asked her to allow him to stay with her in night, which she permitted. However, around 4.00 a.m., the accused pressed her neck by hands till she became unconscious and tried to commit her murder. At about 5.30 a.m.,

PW-4 Narsing, the landlord of victim opened the lock of the gate to go for morning walk, at that time he heard groan of victim. Thereafter he woke up his wife (PW-4) telling about hearing of moaning noise from the house of victim. Thereafter he and his wife PW-3 went to the room of victim and found that the victim was lying unconscious. After opening the door, he saw accused going. At that time the PW-3 Sumanbai Waghmare told her husband PW-4 that sister of victim (Komal) is staying in nearby lane. Therefore, PW-3 visited the house of the sister of victim and called her. Thereafter the sister of victim (PW-1) came to the room of victim and took her to hospital. According to the prosecution story, the victim PW-5 was unconscious. Thereafter on 09.10.2015, the statement of victim was recorded by PW-6 Suvarna Shrawan Umap, the lady P.S.I. On the basis of said statement, Crime No.240/2015 was registered against the accused for the offence under Sections 307, 504 of the Indian Penal Code. PW-8 P.S.I. Sachin Ingewad conducted the investigation. He has drawn spot panchanama. He has collected injury certificate and recorded statement of witnesses. On completion of investigation he filed charge-sheet against the accused.

4. The learned trial Court framed the charge at Exh.13 against the accused. The accused pleaded not guilty and claimed for trial.

5. The prosecution examined in all eight (8) witnesses. Beside oral evidence, the prosecution relied on documentary evidence Exh.25, Exh.34 injury certificate, Exh.20 spot panchanama, statement of victim under Section 164 of the Code of Criminal Procedure at Exh.25/A, Arrest panchanama Exh.47. The statement of accused recorded under Section 313 of the Code of Criminal Procedure. The defence of the accused is about total denial. According to the accused, he has been falsely implicated.

6. Learned trial Court passed the impugned judgment and order on 29.10.2018 and acquitted the accused from both the offences.

7. The learned APP submitted that PW-3 Sumanbai Waghmare, landlady of the victim has deposed that around 10.00 p.m. prior to the incident, the accused had accompanied the victim PW-5 and stayed with informant. The testimony of PW-4 Narsing Waghmare - the landlord, is in corroboration with report Exh.25 lodged by the victim PW-5. He has deposed that in early

morning when he unlocked the gate and went to his room for keeping the lock, at that time the accused went out from the gate and the victim PW-5 was lying unconscious, but prior to that his wife PW-3 had heard moaning noise of victim. As per the evidence of Medical Officer PW-7, the abrasion injuries over both the knees, contused abrasion at left lateral side of neck and abrasion on anterior part of neck were found. Accordingly, PW-7 issued medical report Exh.34. Therefore, there was sufficient evidence to prove that the accused is the author of injuries and attempted to commit homicidal death of victim PW-5 and intentionally provoked her to breach the peace. However, the learned trial Court failed to consider the evidence of the victim which is in corroboration with injury certificate Exh.34. Therefore, the prosecution has made out substantial ground for re-appreciation of the evidence.

8. After going through the evidence of PW-5 injured, it appears that her marriage was solemnized with one Chandrakant Padule in the year 2000 and out of said matrimonial relations she blessed with child namely Prathamesh. Further since 2006, the victim PW-5 started residing separately from her husband due to matrimonial differences. It is evident that she was serving being a

Sweeper in Dr. Jaju's Hospital, Latur. She was acquainted with the accused. Thereafter, she and accused started residing together in live-in-relationship in rented house of PW-3 and PW-4 landlords. As per the evidence of PW-5 victim she stayed for 15 days at her parental house and returned on 06.10.2015 at Bus Stand, Latur where the accused had gone to receive her. Thereafter the victim and accused both of them proceeded towards their accommodation, but on the way, the accused visited a grocery shop and purchased something and then both of them came to their accommodation at about 7.00 p.m. Thereafter the victim (PW-5) had demanded amount from the accused for payment of rent for two months and to purchase grocery, but the accused told her that he is possessing money. Thereafter, the accused demanded amount of Rs.2,00,000/- (Rupees Two Lakh) from victim. Thereafter, the victim told the accused not to stay with her. But the accused asked her to permit him to stay only for said night. Accordingly, the accused stayed with her, however, at about 4.00 a.m., the accused pressed her neck until she became unconscious and assaulted her. As per the testimony of PW-5, she regained consciousness on 09.10.2015 in hospital. Thereafter, her statement Exh.25 was recorded by the police.

9. The prosecution examined PW-1 Thakubai Ganpati Dhok, sister of victim PW-5. The testimony of PW-1, PW-3 as well as PW-4 appears that in night of 06.10.2015, the accused and victim were present in the tenanted room. The evidence of these witnesses is hearsay on the point of assault by the accused.

10. In order to constitute the offence under Section 307 and 504 of I.P.C., it would be proper to appreciate evidence of PW-7 Medical Officer Dr. Sayed Alim Abdul Sattar. The Medical Officer deposed at Exh.33 that on 07.10.2015 at about 10.00 a.m. the patient Komal Padole (victim) was brought with history of assault and on medical examination he found following injuries:

- (i) Abrasion over right knee 2 x 1 cm.
- (ii) Abrasion over left knee, 1.5 x 1.5 cm.
- (iii) Contused abrasion at left lateral side of neck 1 x 1 cm.
- (iv) Abrasion on anterior part of neck, 1 x 1 cm.

PW-7 stated that the victim PW-5 was hospitalized between 07.10.2015 to 12.10.2015 and he had issued injury certificate Exh.34. However, the evidence of PW-7 does not appear to prove case of throttling. The medical certificate Exh.34 does not specify whether the injuries described therein were sufficient to cause death of victim if the victim PW-5 could not have been

medically treated. Further the Medical Officer has not deposed whether those injuries are grievous in nature. Though the victim PW-5 has stated that she was unconscious till 09.10.2015, however the injury certificate Exh.34 does not appear that the victim PW-5 was unconscious till her recording statement Exh.25 by the PW-6 Suvarna Umap. The PW-6 lady P.S.I. deposed that on 07.10.2015 she received M.L.C. from Civil Hospital. Accordingly, she went at Civil Hospital and sought opinion from the Medical Officer about fitness of victim PW-5 for giving her statement, but the Medical Officer told her that the patient (PW-5) is unfit to give her statement. Evidence of PW7 does not reveals that w.e.f. 7.10.2015 till 9.10.2015 the PW-5 victim was not in conscious. Further, the prosecution has not produced evidence to show that the Medical Officer attached with Civil Hospital had issued certificate about unfitness of the victim while recording her statement. The Medical Officer on duty at that time has not been examined. Further, there was no attempt to record statement on 08.07.2015. Therefore, the prosecution has not given sufficient reason for delay in lodging FIR. Evidence of PW 3, 4 and 1 does not show that they were aware about the reason of unconsciousness of victim. How they concluded that she was

assaulted is a question, when history was allegedly given to police. If they were having concrete information, then why they had not lodged any FIR against accused immediately? Evidence of PW 3 and 4 does not show that rent was outstanding from victim. Therefore, evidence of the prosecution witnesses does not appear trustworthy and it does not inspire confidence.

11. After considering the evidence, it appears that the victim PW-5 and accused started residing in live-in-relationship though she had not obtained divorce from her husband. However, it appears that due to some differences between them, the victim PW-5 appears to have lodged report. Therefore, while passing the impugned order it does not appear that the trial Court recorded perverse finding. No substantial grounds are set out to grant leave to file appeal against acquittal. Accordingly, the application is dismissed.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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