

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.13 OF 2021

The State of Maharashtra
Through MIDC Police Station,
Ahmednagar, Dist. Ahmednagar

.. Applicant

Versus

1. Vaibhav Changdev Nemane,
Age: 24 years, Occu.: Service,
2. Changdev Manik Nemane,
Age: 53 years, Occu.: Service,
3. Nanda @ Manisha Changdev Nemane,
Age: 43 years, Occu.: Household,

All R/o. Adishakti Bungalow,
Adarsha Nagar, Nagpur,
Tq. and Dist. Ahmednagar.

.. Respondents

...

Mr. S. D. Ghayal, APP for the applicant – State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

RESERVED ON : 4th July, 2023

PRONOUNCED ON : 17th July, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 04.11.2020 passed by the learned Additional

Sessions Judge, Ahmednagar in Sessions Case No.275 of 2018; thereby acquitting the respondents from the offence punishable under Sections 498-A, 304-B read with Section 34 of Indian Penal Code.

2. Heard learned APP Mr. S. D. Ghayal for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. It is admitted that deceased Sonali got married to accused No.1 on 28.04.2018. Accused Nos.2 and 3 are the parents of accused No.1. All the accused and deceased were residing together after the marriage of deceased. It is further an admitted position that deceased Sonali was found to have hanged herself in the house of accused on 23.07.2018.

4. It appears that the information regarding hanging was given to MIDC Police Station, Ahmednagar. Thereupon AD No.94 of 2018 was registered under Section 174 of the Code of Criminal Procedure. Panchanama of the spot was carried out and inquest panchanama was carried out at Civil Hospital, Ahmednagar. Thereafter the postmortem has been done. Namdev Shahadev Pawar – brother of deceased Sonali lodged FIR on 24.07.2018, which came to be registered as Crime No.443 of 2018 for the offence punishable under Section 304-B, 498-A read with Section 34 of Indian Penal Code and the investigation was undertaken.

5. After the completion of investigation, charge-sheet was filed and trial was conducted. The prosecution has examined in all three witnesses to bring home the guilt of the accused. It appears that inquest panchanama (Exhibit-33), spot panchanama (Exhibit-34) and postmortem report (Exhibit-37) have been admitted by the accused persons. P.W.1 Namdev is the informant/brother of the deceased. P.W.2 Shahadev is the father of the deceased and P.W.3 API Siddheshwar Gore is the Investigating Officer.

6. It has been vehemently submitted on behalf of the prosecution that the learned Trial Judge has not appreciated the evidence properly. The testimony of P.W.1 and P.W.2 is corroborating to each other. They both have specifically told that at the time of marriage, 7 Tola gold and household utensils were given, still Sonali was complaining after some days of marriage that there is ill treatment at the hands of accused. They were not satisfied with the gifts those were given. They were demanding amount of Rs.5,00,000/- for purchase of four wheeler on the ground that accused No.1 is a government servant. There was attempt on the part of P.W.1 and P.W.2 to convince the accused, however, the ill treatment did not stop. After the information was given about the death of Sonali, when they tried to make inquiry with the accused, they evaded and, therefore, there was suspicion that the accused persons were responsible for her death. When this clear evidence has come, the learned Trial Judge has discarded their

testimony on the ground that some independent witness has not been examined to prove the harassment. The mediator/middle man was not contacted when further alleged illegal demand was made and it has been wrongly held that the deceased might have committed suicide as she was deprived of study. Further wrong observation has been made that the small span with which deceased had stayed with accused, it cannot be said that the alleged harassment was of such an intensity which would have left no choice to deceased, but to commit suicide. The evidence needs to be re-appreciated.

7. At the outset, it is to be noted from the testimony of P.W.1 – brother and P.W.2 – father that after Sonali went to matrimonial home for cohabitation, she started complaining by giving phone call on their mobile that there is ill treatment at the hands of accused. Both of them have not stated approximately when such ill-treatment started. It is impossible to believe that from the next day of the marriage, the harassment would have begun. They then states that the accused started demanding amount of Rs.5,00,000/- for purchase of four wheeler. Both of them have not stated that since that demand was not agreed at the time of marriage but was then made, they called the meeting or they had informed Tatyasaheb Maruti Pawar, who have taken active part in settlement of the marriage. It is come on record that said Tatyasaheb is a common relative. Another fact

to be noted is that the specific acts of ill treatment have not been stated by them. Mere use of the word ill treatment is not sufficient. The testimony of these two witnesses on that point is too vague. The conduct on the part of both of them is not convincing. They have further stated that in the month of June, they had called accused No.1 for lunch as per the custom. It is then stated that accused No.1 was not in a mood to have food with the family members, but he insisted that amount of Rs.5,00,000/- should be given. He left deceased at the place of P.W.2 and went and then deceased stayed there for about two days. Important point is that in spite of this action, they both have not thought of contacting Tatyasaheb Maruti Pawar and with his intervention, the problem could be solved. In the cross-examination P.W.1 Namdev has claimed ignorance about the love affair of deceased with a boy prior to marriage. P.W.2 Shahadev has denied it. It also appears from the cross-examination of both these witnesses that deceased Sonali had desire to study further, but then she was given in marriage and, therefore, the learned Trial Judge concludes that feeling unhappy in the life, deceased might have committed suicide.

8. It has been rightly observed that the span for which she was staying with accused persons could not have been to such an extent that she should think that no alternative has been left, but to commit suicide. Coupled with the same, at the cost of repetition, we would say that if the acts of

harassment are not described, which could have been described by deceased to these two witnesses, it cannot be stated that there was any evidence, which could fall within the definition of cruelty as defined under Section 498-A of Indian Penal Code. In order to invoke the presumption under Section 113-A of the Indian Evidence Act, the prosecution will have to discharge its burden of proof. It cannot be stated that on the basis of these two witnesses, the said burden has been discharged. The trial Court was justified in arriving at the said conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. There is no perversity in the order passed by the learned Trial Judge. The application stands rejected.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm