

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.30 OF 2020

State of Maharashtra
Through P. S. Sillod (Rural),
Tq. Sillod, Dist. Aurangabad

.. Applicant

Versus

1. Eknath Kisan Tayade
Age: 23 years, Occu.: Agri.,
2. Ananda Kisan Tayade
Age: 25 years, Occu.: Agri.,
3. Chandrabhagabai Kisan Tayade,
Age: 35 years, Occu.: Agri.,
4. Sandu Bhika Tayade
Age: 35 years, Occu.: Agri.,
5. Anjanabai Govind Chaidul
Age: 35 years, Occu.: Agri.,
6. Bhagwat Govind Chaidul,
Age: 20 years, Occu.: Agri.,

All residents of Kulgaon
Tq. Sillod, Dist. Aurangabad

.. Respondents

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Mr. A. M. Phule, APP for the applicant – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 7th October, 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 02.12.2019 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.493 of 2011; thereby acquitting the respondents from the offence punishable under Sections 302, 498(A), 304(B), 306, 323 read with Section 34 of Indian Penal Code.

2. Heard learned APP Mr. A. M. Phule 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. Accused No.1 had married to Archana, who was daughter of P.W.1 Kashinath and P.W.2 Mandabai. Their marriage had taken place in the year 2009 on the day when in fact their engagement was scheduled. Accused Nos.2 and 3 are the parents of accused No.1. Accused Nos.4, 5 and 6 are the relatives of accused No.1. They are resident of village Kulgaon, Taluka Sillod, District Aurangabad, however, accused Nos.1 to 3 are residing separately. After the marriage, Archana went to cohabit with accused No.1 at Kulgaon.

4. The prosecution had come with the case that Archana was treated properly for 2 to 3 months and thereafter they started ill-treating her on the

ground that dowry was not given at the time of marriage. They asked that she should bring amount of Rs.25,000/- for digging well. Archana had informed about the ill-treatment to her maternal uncle Ananda. Thereafter, the accused persons were persuaded, but even then the harassment at the hands of accused to Archana continued. Two months prior to the incident, Archana had met P.W.3 Ananda and had told that accused persons had administered poison to her, as amount of Rs.25,000/- was not given to them. At that time also it is the prosecution story that the maternal uncle and the parents of deceased Archana had given understanding to the accused. Accused No.4 Sandu had given a phone call on 25.07.2011 informing that Archana has fallen in the well and she was taken to Rural Hospital, Sillod. P.W.1 Kashinath went to Rural Hospital and found that Archana was dead. He then lodged the report with Sillod Police Station.

5. After the registration of offence, inquest panchanama was carried out and then the dead body was sent for postmortem. Panchanama of the spot was executed. Seizure of articles were done. Accused came to be arrested. Statements of witnesses were recorded. Viscera was sent for chemical analysis. After the completion of investigation, charge-sheet was filed.

6. After the committal of the case, prosecution had moved an application to add offence under Section 302 of Indian Penal Code and therefore, charge was framed under Section 302, 304-B, 306, read with

Section 34 of Indian Penal Code.

7. The prosecution has examined in all five witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Trial Judge has acquitted all the accused persons.

8. Perusal of testimony of P.W.1 and P.W.2, who are the parents of deceased and P.W.3 Ananda, who is the maternal uncle of deceased, it can be seen that they had tried to corroborate each other in respect of alleged illegal demand of Rs.25,000/- to dig the well and they have stated that Archana was ill-treated on that count. However, their examination-in-chief is absolutely not clear as to what kind of ill-treatment was given. Mere use of word ill-treatment will not suffice. Another point that requires consideration is that two months prior to the incident it is stated that Archana had informed P.W.3 Ananda that accused persons had forcibly administered poison to her. Why no complaint was lodged and why Archana was asked to cohabit with the accused persons is not clarified by these witnesses. If the allegation was so serious, then the reaction would have been different. There is absolutely no further details as to which kind of poison was given, whether she was required to be admitted, what medical treatment was given to her, everything is silent. Therefore, the conduct on the part of these three witnesses after the alleged information that the accused had tried to kill her by administering poison and still these

witnesses had not reacted and rather they say that they persuaded the accused and Archana was asked to cohabit is unbelievable.

9. All these three above-said witnesses are not the eye witnesses. They were informed about falling of Archana in the well by accused No.4. P.W.1 and P.W.2 have not stated that they felt that their daughter has been murdered. P.W.3 Ananda says that Archana has committed suicide. Thus, it appears that the prosecution witnesses were themselves not firm as to whether Archana has committed suicide or she has been murdered. Both the charges cannot go together.

10. Accused persons have admitted the postmortem report wherein the probable cause of death is due to drowning. The spot panchanama and the inquest panchanama are corroborating the said finding. Therefore, three possibilities would arise (i) Archana's death being homicidal, (ii) her death is accidental and (iii) her death is suicidal. In order to prove that the death was either homicidal or suicidal, the prosecution should rule out the possibility of accidental death. The situation in the spot panchanama Exhibit-52 would clearly show that the parapet wall of the well was broken. The well was situated in the field of accused. There were two steel utensils (हंडे) and another utensil (कळशी) lying near the well. Therefore, the situation appears that Archana might have gone for fetching the water and

she had accidentally fallen in the well. In other words, the possibility of accidental death has not been ruled out.

11. When accused Nos.4, 5 and 6 are residing separately from accused Nos.1 to 3, why they would demand amount of Rs.25,000/-. It is a fashion to rope all the relatives of the husband in such cases. Accordingly, it appears that accused Nos.4, 5 and 6 have been joined as an accused.

12. When the well was already in existence, why there can be need for another well and it is absolutely not possible that a well can be dug in the expenditure of Rs.25,000/-. Therefore, the learned Trial Judge has rightly observed that the prosecution has failed to prove the guilt of the accused. Therefore, no case is made out for grant of leave to file appeal. Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm