

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 39 OF 2019

The State of Maharashtra,
Through Police Station, Gategaon,
District Latur.

... **Appellant**

VERSUS

1. Ayub Gafoor Patel
Age 27 years, Occu: Agri.

2. Hina w/o Ayub Patel
Age 21 years, Occu: Agri.

3. Jahedabi w/o Gafoor Patel,
Age 55 years, Occu: Agri.

... **Respondents**

Mr. R. D.Sanap, APP for the appellant-State

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

DATE: : 21.04.2023

ORDER (Per Y. G. Khobragade, J.):

1. The present application has been filed by the prosecution under section 378(1) (b) of the Criminal Procedure Code, seeking leave to file appeal, to challenge the judgment and order dated 23.11.2018 passed by the learned Additional Sessions Judge-1, Latur, in Sessions Case No.41 of 2013; thereby acquitting the respondents/ accused for the offences punishable under sections 498(A), 307, 323 read with sections 109 and 34 of the Indian Penal Code in Crime No. 78/2012, registered with Gategaon Police Station, District- Latur.

2. Heard Mr. R. D. Sanap, learned APP for the State and with his able assistance, we have gone through the record which was before the learned trial judge for the limited purpose of considering whether leave can be granted to file appeal against the order of acquittal.

3. In short, it is the case of prosecution that the informant Rubina Patel lodged a report with Gategaon Police Station District Latur alleging that she is first wife of accused no.1. Accused No.2 Hina is second wife of her husband and accused No.3 is her mother-in-law. After the marriage, initially she was treated well, however, later on, her in-laws started ill-treating and harassing her. Prior to one year of lodging present FIR (Exh.64), she had lodged report with Gategaon Police Station and during pendency of said criminal case, her husband performed second marriage with accused No.2 Hina. Thereafter, accused No.1 took her (informant) for cohabitation by giving assurance to treat her well. Thereafter she started residing at her matrimonial home. However, on 18.12.2012, at about 8.00 to 9.00 p.m., her husband asked her as to why she is not bringing Rs.one lakh from her parents. At that time, accused nos. 2 and 3 came there and assaulted her by kick and first blows. Her husband brought knife and assaulted on her neck, upper arms of her both hands, fingers of both hands, on stomach from the right side, both thighs and attempted to commit her murder. Thereafter, she shouted, due to which neighbours intervened

and separated the accused persons. Thereafter her husband-accused brought her in Hospital. On the basis of said report, FIR No.78/2012 (Exh.64) came to be registered against the accused persons for the offences punishable under sections 498(A), 307, 323 read with sections 109 and 34 of the Indian Penal Code against the accused persons.

4. Investigating officer (PW-15) Subhash Peddewad has drawn spot panchanama and arrested the accused on 21.12.2012. During the course of investigation, the investigating officer has seized knife, at the instance of accused no.1 under section 27 of the Indian Evidence Act. He recorded statements of witnesses and seized clothes of the victim-informant and accused. Seized Articles were sent for chemical analysis. Investigating officer collected medical certificate of the victim and on completion of investigation, filed charge sheet against the accused before the learned Judicial Magistrate First Class, Latur.

5. On compliance of section 207 of Cr.P.C., the learned Magistrate passed order under section 209 of Cr.P.C. and committed the case to the Court of Sessions. The learned trial court framed charge at Exh. 19 against the accused and recorded the plea of the accused. The accused pleaded not guilty and claimed for trial.

6. After conclusion of trial, statements of the accused under section 313 of Cr.P.C. were recorded and incriminatory evidence was put to the accused. The defence of the accused is that the informant PW-6

was asking for one room and one acre of land, however due to non-fulfillment of the said demand, they have been falsely implicated. After hearing, the learned trial judge passed the judgment and order and acquitted the accused for the aforesaid offence. Being dissatisfied with the findings recorded by the learned trial court, the prosecution has filed the present application seeking leave to file appeal.

7. In order to bring home guilt of the accused, the prosecution has examined total 15 witnesses i.e. PW-1 Aslam at Exh.53, PW-2 Shrikishan at Exh. 54, PW-3 Musa Shaikh at Exh. 57, PW-4 Shaikh Ilahi at Exh. 60, PW-5 Raju Shaikh at Exh. 61, PW-6 informant at Exh.63, PW-7 Shaikh Atikh at Exh. 67, PW-8 Abdul Ajimkhan at Exh. 71, PW-9 Dr. Champatrao Dhanwe at Exh. 75, PW-10 Parshuram Shinde at Exh. 79, PW-11 Dr. Chetan Jaju at Exh. 81, PW-12 Aminabee Shaikh at Exdh. 88, PW-13 Prakash Deshmukh at Exh. 89, PW-14 Shaikh Chandsab t Exh.95 and PW-15, Subhahrao Manikrao Paddewad at Exh. 99.

8. It is not in dispute that on 01.06.2009, marriage of PW-6 Rubina was solemnized with accused No.1 as per Muslim custom and rites. After marriage PW-6 cohabited with accused no.1 in a joint family. It has been tried to be brought on record that due to non-fulfillment of alleged demand of dowry of Rs. one lakh, the matrimonial relations between PW-6 victim and her husband accused No.1 were strained, which resulted in lodging of report in the month of January, 2011 by

PW-6. On the basis of said report, criminal action was taken. The informant- PW-6 was pregnant and delivered a child at her parental house. During the pendency of the said criminal case, accused no.1 performed second marriage with accused no.2. Thereafter, matrimonial dispute was amicably settled between PW-6 informant and the accused No. 1. The informant started cohabitation with her husband at her matrimonial house.

9. PW-6 informant has deposed that her husband gave her assurance about giving proper treatment but after two months of her father-in-law expired, the accused started ill-treating her on the ground that she has not brought amount from her parents. PW-6 informant has deposed that on 18.12.2012, her mother-in-law- accused no.3 and second wife of her husband- accused no.2 taunted and nagged her. Then at about 08.00 to 09.00 p.m., they had dinner and thereafter she told her husband about taunting and nagging by accused Nos. 2 and 3. But her husband, abused her in filthy language and asked why she is not bringing amount from her parents. Thereafter at about 11.30 p.m., he started assaulting her. He then brought knife [Article 3] and told that he would kill her and gave her blow with knife on her neck. She defended herself by raising both hands and pushed accused No.1 away, due to which she sustained injuries on the fingers of both hands. Thereafter accused Nos. 2 and 3 stretched her hair, pushed her down

and said that they would kill her. They assaulted her with kick and first blows. Thereafter, accused no.1, with intention to kill her, gave blow with knife on her upper arms, both thigh and below the stomach on right side.

10. Testimony of PW-11 Dr. Chetan Jaju who medically examined PW-6 informant appears to have noted the history of assault as per say of the informant. PW-11 deposed that he medically examined the informant Rubina and found (i) tenderness over right side chest (ii) on left arm wound was present. Superficial CLW on posterior aspect mid arm of size 4 x 1 cm (iii) left hand CLW 1 x 1 cm present on Palmer aspect right finger (iv) right arm CLW of 4 x 1 cm on posterior aspect mid arm, (v) right hand CLW 3 x 1 cm on palm and dorsal aspect middle phalyns ring finger, (vi) right hand CLW x 1 1 cm on posterior aspect was present on buttock. As per testimony of PW-11, Dr. Chetan Jaju all injuries were fresh and caused within 24 hours of medical examination. He sutured all those injuries. According to him accused no.1 Ayub has forcibly got informant Rubina discharged from his Hospital against his medical advice. PW-11 has issued injury certificate Exh. 82. PW-11 has testified that all the injuries were cut injuries and they were possible by inflicting knife [Article 3] blows. However, injury certificate Exh. 82 does not reflect that PW-6 Rubina was discharged against the medical advice or at the instance of accused no.1. The

evidence of PW-11 also lacking that due to those injuries, death of victim could have caused, if she could not have been medically treated. It also appears that he had not informed the nearest police station about the admission of informant in his hospital; though he claims that the history was stated by the informant herself. If PW 11 would have given MLC to police, her statement could have been immediately got recorded and there would not have been any delay in lodging of the FIR. Hence, PW 11 cannot be relied.

11. Testimony of the informant Rubina (PW6), PW-2 Shrikishan, Pw-5 Raju Shaikh and PW12 Aminabee would show that accused were reluctant to take the informant back to matrimonial house, however, testimony of PW-13 Prakash appears that the accused were approaching PW-6 Rubina at her parental house for taking her back. Therefore, evidence of prosecution witnesses does not appear to be in corroboration with each other.

12. Further, it appears that incident had occurred on 18.12.2012 at about 11.00 p.m. However, the victim was taken by her mother and her relatives at Gategaon Police Station on 20.12.2012 and then FIR Exh. 64 has been lodged. As per evidence of PW-5 Raju, PW-12 Aminabee, the accused No.1 had not allowed them to talk with the victim Rubina in Jaju Hospital, Latur on 19.12.2012. Though, the victim had sufficient time to narrate all the incident in FIR Exh. 64 but the

evidence of the victim is silent to that effect and does not corroborate with FIR Exh. 64.

13. In order to prove injuries sustained to the victim- PW-6, the prosecution has also examined PW-9 Dr. Sadashiv Dhanwe who was attached with Government Medical College, Latur. PW-9 deposed that on 20.12.2012, he medically examined the injured PW-6. He had found following injuries:

- (1) Incised wound over right gluteal region of size of 1x0.5x05 cm, it caused by sharp weapon and simple in nature.
- (2) Sticked incised wound over left buttock of size of 2 cm in length, it was caused by sharp weapon and simple in nature.
- (3) Abrasion over anterior aspect of neck of size 0.5 x 0.5 cm, it was caused by hard and blunt object and simple in nature.
- (4) Sticked incised wound over right arm of size of 4 cm, it was caused by sharp weapon and simple in nature.
- (5) Stitched incised wound over left arm of size of 3 cm, it was caused by sharp weapon and simple in nature.
- (6) Sticked incised over right little finger of size of 1 cm, it was caused by sharp weapon and simple in nature.
- (7) Sticked incised wound over right ring finger of size 1 cm. It was caused by sharp weapon and simple in nature.
- (8) Sticked incised wound over left middle finger of size 1 cm., it was caused by sharp weapon and simple in nature.
- (9) Incised wound over right side of chest of size of 1x0x.5x05, it was caused by sharp weapon and simple in nature.

Age of all injuries was more than 24 hours and PW-6 Sadashiv Dhanwe issued injury certificate Exh. 76.

14. The record speaks that on 19.12.2012, PW-11 Dr. Chetan Jaju, private medical practitioner had examined the victim PW-6 and issued medical certificate Exh. 82. Thereafter, on 20.12.2012, PW-9 Government Medical Officer examined the victim and found total 9 injuries described in Exh. 76. However, evidence of Medical Officer PW-9 Dr. Sadashiv Dhanwe and PW-11 Dr. Chetan Jaju is not in corroboration. There is much variance about the injuries sustained to the victim PW-6.

15. Nonetheless, though the prosecution witness PW-1 Aslam Pathan, PW-2 Shrikishan and PW-6 informant deposed about physical and mental harassment for demand of Rs. one lakh towards dowry, however PW-6 has not disclosed in her FIR Exh. 64 as to what amount was demanded and for what purpose. It is to be noted that earlier report filed by informant also disclosed that amount of Rs.1 lakh was demanded and criminal case was then filed by her. Thereafter, there was compromise and she resumed co-habitation. That means she had condoned the act of accused. The alleged harassment in this case cannot cover the period, which was covered in earlier case. It is then hard to believe that after settlement the same amount would have been illegally demanded as dowry, when accused No. 1 is said to have performed second marriage with accused No.2. Though the fact remains that informant had sustained injuries, yet prosecution failed to prove that accused are the authors of those injuries. The evidence of prosecution

witness does not prove the ingredients of sections 498(A), 307, 323 read with sections 109 and 34 of the Indian Penal Code. Therefore, defence of the accused that informant PW-6 was asking for one room and one acre of land and due non-fulfillment of said demand, they have been falsely implicated, appears to be more probable.

16. In view of the above discussions, considering the evidence available on record, it does not inspire confidence that the accused Nos. 2 and 3 had abetted accused No.1 Ayub to cause injuries to informant so that she may die. So also, evidence available on record does not reflect that the accused made attempt to commit murder of the victim PW-6 and the accused have caused hurt or threatened the informant. Learned trial court passed the impugned judgment and order on 23.11.2018 and acquitted the accused persons, which does not appear to be perverse. No case is made out for intervention by this court or for re-appreciation of evidence. Hence, the present application is liable to be dismissed. The application for leave to appeal is accordingly dismissed.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan