

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

**APPLN. FOR LEAVE TO APPEAL BY STATE NO.63 OF 2018**

|                                            |                 |
|--------------------------------------------|-----------------|
| The State of Maharashtra                   | ... Applicant   |
| Versus                                     |                 |
| 1) Digamber s/o Parshuram Kharatmol        |                 |
| 2) Mandabai w/o Parshuram Kharatmol        | ... Respondents |
| ....                                       |                 |
| Mr. A. M. Phule, APP for applicant - State |                 |
| ....                                       |                 |

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

**DATE : 23.03.2023.**

**PER COURT :-**

The present application has been filed under Section 378 (1)(b) of the Code of Criminal Procedure by the State seeking leave to appeal to challenge the judgment and order dated 24.11.2017 passed by the learned Additional Sessions Judge, Nilanga, District Latur in Sessions Case No.11/2014 thereby acquitting the present respondents / original accused persons for the offence punishable under Sections 302, 201, 203, 498-A read with Section 34 of the Indian Penal Code.

2. For the admission, we have heard the learned APP Mr. A. M. Phule for the State. We have also gone through the material which was before the learned trial Judge.

3. The prosecution story in short was that the information was given by respondent No.1 on 28.12.2013 stating that when he was fetching water around 11.00 a.m., his wife deceased Pallavi was preparing food on stove. However, due to bursting of stove, her saree caught fire and she died due to the burn injuries. He had tried to extinguish the fire by putting quilt upon her, but before that she had already died on the spot. The said information was considered under Section 174 of the Code of Criminal Procedure as accidental death report and further inquiry was started. The inquest panchanama was executed and the dead body was sent for postmortem. Spot panchanama was executed. The provisional cause of death was given by the Medical Officers who conducted autopsy and they had opined that the death is not due to burn injuries, but it is due to Cardio Respiratory Arrest due to Asphyxia due to Compression of Neck Structures (Throttling). Thereafter the Police Station Officer lodged the FIR and it appears to be only against the husband and therefore

offence under Section 302, 201, 203 of the Indian Penal Code came to be registered against him.

4. Statements of witnesses were recorded and it transpired that accused Nos. 1 and 2 both used to harass / ill-treat deceased Pallavi and therefore offence under Section 498-A of the Indian Penal Code came to be added later on. After completion of the investigation, the charge-sheet was filed.

5. After committal of the case, charge was framed and then trial was conducted. Prosecution has examined in all six witnesses in order to bring home the guilt of the accused.

6. After considering the evidence on record and hearing both sides, the learned trial judge has acquitted both the accused persons from the offence charged. Hence this application for leave to appeal.

7. Important point here to be noted is that the postmortem report and the testimony of PW-3 Dr. Sawant, who had conducted the autopsy, shows that the external and internal injuries those were noted at the time of postmortem has led to the conclusion that it is the case of throttling and according to the Medical Officer, Pallavi had

sustained 46% burns and he has also opined that the throttling is antemortem and burn injuries are after the death. He has been extensively cross examined. However, the learned trial Judge while considering the testimony of the Medical Officer appears to have not discussed the point properly as to how the death is not homicidal in nature and it is argued by the learned APP that the trial Judge got carried away with the report, the husband had given at Exh.35 which was treated under Section 174 of the Code of Criminal Procedure. Definitely this aspect deserves to be looked into and considering the said fact it is also required to be considered that if the death was caused due to throttling, then the burn injuries could be for the purpose of screening himself, and therefore, Section 201 and 203 of I.P.C. are required to be considered here.

8. No doubt, the prosecution has not examined the neighbors, but whether non examination of the neighbours would have been fatal is required to be considered, so also the prosecution story is required to be considered.

9. The prosecution has examined PW-1 Balaji who is the uncle of deceased, PW-4 Parubai, mother of the deceased, PW-5

Ranjit, cousin brother of the deceased and all of them have stated about illegal demand by accused No.1 and even giving amount of Rs.60,000/- by PW-4 Parubai to accused No.1 and thereafter he had gone to Dubai and returned to India about 5 to 10 days earlier to the incident. It can be seen that though it is stated that even the original accused No.2 the mother-in-law had made a demand and illtreated the deceased, the acts of illtreatment by the mother-in-law have not been stated and therefore we are of the opinion that there was no evidence against the original accused No.2. However, as regards the accused No.1 is concerned the evidence that has been led by the prosecution deserves to be considered and therefore the case is made out to grant leave to appeal to challenge the acquittal of the respondent No.1 only.

10. For the above stated reason, following order is passed.

### **ORDER**

- (i) The application stands partly allowed i.e. only against original accused No.1 – present respondent No.1. The prosecution is permitted to file appeal to challenge the acquittal of accused No.1.

- (ii) The application stands rejected in respect of respondent No.2.
- (iii) Leave is granted to the prosecution to file Appeal against respondent No.1.
- (iv) Registry to register the Appeal.
- (v) Appeal stands **admitted**.
- (vi) Issue notice to respondent No.1 made returnable on 06.06.2023.
- (vii) Call record and proceedings with paper-book.
- (viii) Compliance under Section 390 of Code of Criminal Procedure be got done to the satisfaction of the learned trial Judge.

[ Y. G. KHOBRADE, J. ]

[ SMT. VIBHA KANKANWADI, J. ]

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