

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

909 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.45 OF 2020

THE STATE OF MAHARASHTRA
VERSUS
SANTOSH VITTHAL MASULE AND OTHERS

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Mr. A.M. Phule, APP for applicant

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

DATE : 06th JUNE, 2023

ORDER :

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 03.12.2019 passed by learned Additional Sessions Judge, Dhule in Sessions Case No.59/2016, thereby acquitting respondents – original accused persons from the offence punishable under Section 302, 307, 316, 498-A, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 3 and 4 of the Dowry Prohibition Act, 1961.

2 Heard learned APP Mr. A.M. Phule for the prosecution and with

his help we have gone through the record which was available before the learned Trial Judge.

3 The prosecution has come with a case that deceased Ratnabai got married to accused No.1 Santosh about 11 years prior to the incident. They both used to do labour work to earn daily livelihood. They were not blessed with child but four months prior to the incident Ratnabai had the good news and she had become pregnant. The Doctor had advised her not to do any work and, therefore, she was not doing the labour work. Accused Nos.2 to 10 are the relatives of accused No.1, but then it has come on record that Ratnabai and accused No.1 were residing separately since a year prior to the incident. According to the prosecution story, even prior to the incident and living of the accused No.1 and deceased separately, all the accused persons used to harass Ratnabai and, therefore, she had filed case against them in the Court of law. But the compromise arrived and, therefore, she had resumed the cohabitation with accused No.1. As Ratnabai was not attending the labour work, accused started harass her by demanding amount of Rs.3,00,000/- by saying that she would stay idle for about nine months in the house and that amount would be required for her maintenance. According to the prosecution, all the accused persons had picked up quarrel with deceased Ratnabai around 9.30 a.m. on 17.04.2016 on the same count

and then accused No.1 poured kerosene on her person. Accused No.2 provided match box to accused No.1 and asked accused No.1 to ablaze Ratnabai. Accused No.1 promptly did the said act and then all the accused persons left the spot. Ratnabai came out in burning condition and raised shouts. The persons in the vicinity then extinguished the fire. Around 12.00 noon she was taken to Hire Medical College and Hospital, Dhule in Ambulance, however, during treatment Ratnabai died on 27.04.2016 along with fetus, which was 12-16 weeks in her womb.

4 It is the prosecution story that the Dying Declaration of Ratnabai was recorded at 12.15 p.m. on 17.04.2016 when she was admitted in Civil Hospital, Dhule and on the basis of the said statement offence was registered. The second Dying Declaration was recorded by Executive Magistrate around 3.30 p.m.

5 After the investigation was done, charge sheet was filed and after the committal of the case it was tried before learned Additional Sessions Judge, Dhule. All the accused persons stood acquitted by Judgment dated 03.12.2019. Hence, the present application.

6 It is to be noted that prosecution has examined in all 11 witnesses to bring home the guilt of the accused, whereas the accused have

examined in all 03 witnesses in defence. The learned Trial Judge has discarded both the Dying Declarations Exhs.61 and 46 on the count of improbability and the admissions those have been given regarding the state of health of deceased when the Dying Declarations were recorded. The testimony of PW 5 retired Police Head Constable Mr. Sonawane and PW 6 Dr. Saner would show that deceased had sustained 92% burns; yet, full names of the accused persons have been given in the said Dying Declaration. There are in all 09 accused persons. Even if for the sake of argument we take the said Dying Declaration as it is; yet, the fact remains is that since last about a year deceased along with husband was residing separately, we cannot consider the earlier alleged ill-treatment given by the accused persons to her, for the simple reason that though she had lodged case in the Court of law, she had compromised it and started resumption of the cohabitation. That means, she had condoned the act of deceased regarding alleged harassment i.e. offence under Section 498-A of the Indian Penal Code. Another fact to be noted is that she became pregnant four months prior to the incident, for which she says that she was asked to bring the amount of Rs.3,00,000/-. This ground would not have been there about a year prior to the incident when accused No.1 and deceased started residing separately. In other words, after she started residing separately with her husband, the day to day transactions or daily affairs between her and the other accused would have

changed. There would not have been reason for the other accused persons to demand amount of Rs.3,00,000/-, since the deceased would not have worked and some amount would have been spent on her delivery. Another aspect that can be seen from the admissions given by the Doctor as well as PW 5 Mr. Sonawane that deceased was finding it difficult to breath and she was groaning. The doubt expressed by the learned Trial Judge appears to be correct. Same is the case as regards the second Dying Declaration. Both the Dying Declarations have been recorded on the same day within a span of three hours. However, the endorsement on the second Dying Declaration regarding the mental state and fitness is by another Doctor i.e. PW 8 Dr. Choudhari and the Executive Magistrate i.e. PW 1 Mr. Magan Ramole. The witnesses have stated that when they have entered the Burn Ward room, where the deceased had kept, deceased was surrounded by her relatives and, therefore, taking into consideration the tenor and the statements, the learned Trial Judge has observed that both the Dying Declarations appear to be the result of tutoring by the relatives. Even if we may not go to that extent; yet, the fact remains the condition of deceased was not good; yet, lengthy statements are stated to have been made by her and the alleged motive as against the other accused persons does not appear to be convincing. After about 11 years of marriage when Ratnabai was intending to enjoy the motherhood, similar feelings would have been to accused No.1 because the

Dying Declarations do not say that the accused No.1 had ever raised suspicion or was not happy when he heard the news about the pregnancy of his wife. But in that circumstance asking her to bring amount of Rs.3,00,000/- as she would be staying idle appears to be a concocted version.

7 The prosecution, for the reasons best known to it, has not examined any neighbouring person who had reached the spot immediately and extinguished the fire. Rather such person has been examined in defence. DW 1 Digambar has stated that he saw flames from the house of accused No.1 around 9.00 a.m. and then he raised shouts. Prior to that around 7.00 a.m. he had seen accused No.1 leaving his house for work by taking tiffin. It is to be noted that Digambar is a 70 years old person and may not be doing anything and, therefore, he says that he was sitting on the Ota in front of his house. After he raised the shouts after seeing the flames, he says that he entered the house along with other people who had gathered and saw Ratnabai into flames and then they had extinguished the fire. The cross-examination of this witness has been conducted by learned APP, however, allowing him to refer the statement of the witness under Section 161 of the Code of Criminal Procedure was not legal. When he was not examined as a prosecution witness, his statement under Section 161 of the Code of Criminal Procedure cannot be then used to contradict him. There is nothing on record

to support the prosecution story. From the testimony of DW 2 Dr. Manjulata Agrawal, who is a Gynecologist and DW 3 Dr. Rajesh Tongaonkar, who is also a Gynecologist, it can be seen that they had examined Ratnabai on the respective dates and they had confirmed the fact of pregnancy of Ratnabai. They had prescribed certain medicines to her and it does not appear from their testimony that they had ever advised bed rest to the pregnant lady. No doubt, DW 2 Dr. Agrawal has stated that bleeding per vagina may occur during the period of pregnancy and it is correct to say that in such situation bed rest is advised. However, it is to be noted that in her examination-in-chief she has stated that when she had examined Ratnabai, though Ratabai had come with a complaint of bleeding per vagina; her examination showed that Ratnabai was not suffering from such kind of bleeding. In such circumstance, question of advising her bed rest was not there, which has been tried to be posed as the reason to demand the amount.

8 The learned Trial Court has appreciated the evidence properly. There is absolutely no perversity in acquitting the accused persons. Application, therefore, deserves to be rejected. Accordingly, it is rejected.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)