

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.64 OF 2020

The State of Maharashtra,
Through: Police Station Officer,
Sonaee Police Station,
Tq-Newasa, Dist-Ahmednagar.

...APPLICANT

VERSUS

- 1) Shivaji Mahadeo Shirshat,
Age-40 years, Occu:Agriculturist,
- 2) Laxman Punja Ghule,
Age-43 years, Occu:Agriculturist,
- 3) Bhagwat Bansi Ghule,
Age-39 years, Occu:Agriculturist,
- 4) Sandip Ramkisan @ Ramkishna Shirsath,
Age-37 years, Occu:Agriculturist,

All R/o-Rajegaon, Tq-Newasa,
Dist-Ahmednagar.

**...RESPONDENTS
(Orig Accused)**

...
Mr. A.V. Deshmukh, A.P.P for Applicant.
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**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 7th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of the respondents by the learned Additional Sessions Judge, Newasa, District-Ahmednagar in Sessions Case No. 33 of 2015 from the offence punishable under Sections 376-D, 342, 323, 427, 504, 506, 542, 120-B of the Indian Penal Code on 4th February 2020.

2. The accused persons stood prosecuted on the basis of the First Information Report (for short "the FIR") lodged by the victim. Victim used to reside with her husband and two children. She has three daughters who are married and at the time of incident they were cohabiting with their husbands. The respondents – original accused persons are from the same village. All the accused persons went to the house of the informant around 1.00 p.m. on 29th March 2015. Accused No.2 started asking the husband of the victim as to why he disclosed about the marriage of his daughter to Police and also as to why he is making inquiry regarding the accounts of the programme of *Harinam Saptaha*. The husband of the victim told him that neighbour has disclosed the said information about the marriage

to the Police and not he himself and he had also not asked for the accounts. Still, her husband was dragged out of the house and beaten. It caused fracture to his leg. He was beaten by wooden sticks, axe and iron rod. At that time one of the daughter of the victim was also present and she had suffered injury in the incident. Husband of the victim was taken to the hospital. It was Sunday and therefore the Doctor told that operation would be performed on the next date. They were supposed to make arrangements for the money and therefore, victim herself with her another son came back to village. During night when she was sleeping in the house, she heard noise of breaking the lock of the iron grill around 12.00 to 12.30 a.m. Accused No.1 threatened her son on the gun point and accused Nos.1 and 4 dragged her son into the kitchen and he was beaten. He was tied with the rope and his mouth was shut by a cloth. Thereafter accused Nos.1 and 4 went towards the victim. Accused No.2 then started saying to the victim that since her husband has disclosed about the marriage of his daughter to the Police, her husband's leg only fractured but if she wanted her son to be alive then she should keep quiet. She was asking for pardon but accused No.1 slapped her and asked her to touch his feet and bow down. Accused No.4 also assaulted her and asked

her to beg for her son's life. Accused Nos. 1 and 3 made her to sleep on the mattress. Accused No.2 had then put knife on her neck. Accused No.2 had forcible intercourse with her and thereafter accused Nos.1, 4 and 3 had forcible intercourse with her. In the said process her bangles got broken. After giving threats all of them left. Victim then untied the son and then the incident was informed to her nephew who came to the house and other relatives residing nearby also called. Thereafter they went to the Police Station and the FIR was lodged.

3. Upon the said FIR, crime was registered, investigation was carried out and trial was committed to the Court of Sessions. As the accused pleaded not guilty, trial has been conducted. Prosecution has examined in all 9 witnesses to bring home the guilt of the accused. After hearing both the sides and perusing evidence on record, the learned trial Judge has acquitted all the accused persons. Hence this Application.

4. We have heard learned APP and with his able assistance we have gone through the entire record which was before the learned trial Judge. PW-1 is the victim who has given all the details of the incident. She has been cross-examined at length

and it appears that the defence is of enmity. It is then required to be seen as to whether that reason alone was sufficient to implicate four persons. Further her testimony stood supported by PW-3, her son. Whether the alleged discrepancy between these two witnesses was crucial and going to the root of the case, is definitely required to be considered when the support is to the extent that such incident had taken place. There is also medical evidence showing that there were injuries on the person of the victim. Those injuries have been brushed aside by the learned trial Judge and it appears, even *prima facie*, that he was carrying his own whims about such offences. At one place he is taking note of the injury to the wrist and at another place he is saying that if the bangles would have been broken, there has to be injury to the wrist of the victim. The spot panchnama is proved through PW-2 Sachin and his evidence shows, at that time they found that door was broken. There were other articles lying at the spot. Under such circumstance, when evidence of two persons has been discarded, one is the victim herself and another is the eye witness in a sense, and also the victim, then definitely in such serious case, leave deserves to be granted to Appeal as we are of the considered opinion that the matter

requires reconsideration and re-appreciation. Hence the following order:-

ORDER

- (I) Application stands allowed.
- (II) Leave is granted to the prosecution to file Appeal.
- (III) Registry to register the Appeal.
- (IV) Appeal stands admitted.
- (V) Call Record and proceedings.
- (VI) Action under Section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE