

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.90 OF 2019

The State of Maharashtra,
Police Inspector, Shevgaon Police Station,
Ahmednagar (C.R. No.I-129/2012)

...APPLICANT

VERSUS

- 1) Ravindra Vitthal Thorat (Absconding),
- 2) Vitthal Madhav Thorat,
Age-70 years, R/o-Kaudgaon,
Tq. & Dist-Ahmednagar,
- 3) Lilabai Vitthal Thorat,
Age-65 years, R/o-Kaudgaon,
Tq. & Dist-Ahmednagar,
- 4) Vijay Vitthal Thorat,
Age-32 years, R/o-Kaudgaon,
Tq. & Dist-Ahmednagar.

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

...
Mr. S.J. Salgare, A.P.P for Applicant - State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 27th 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 respondent Nos. 2 to 4 by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No. 287 of 2013 from the offence punishable under Sections 498-A, 304-B, 306, 323, 504, 506 read with Section 34 of the Indian Penal Code, on 30th November 2018.

2. We have heard Mr. Salgare, learned APP appearing for the State. With the able assistance of the learned APP, we have gone through the evidence which was before the learned trial Judge.

3. It will not be out of place to mention here that in all four accused were added of committing offence, however, accused No.1, who is husband of the deceased, is absconding and therefore, trial came to be separated against the other accused i.e. accused Nos. 2 to 4, who are the father-in-law, mother-in-law and brother-in-law of the deceased. It is an admitted fact that deceased Priyanka, who was the daughter of PW-1 Adinath, got married to absconding accused No.1 on 27th November 2011. Further, it is a fact on record that deceased was in the house of

the informant on 15th June 2012 when she poured kerosene on her person at about 12.30 p.m. and set herself to fire. She was admitted to Nityaseva Hospital, Shevgaon and then shifted to Civil Hospital, Ahmednagar. She expired on 21st June 2012. It appears that there was an attempt to get her statement recorded and accordingly her statement was recorded on 19th June 2012. However the First Information Report (for short "the FIR") came to be lodged after her death, on the basis of oral complaint given by PW-1 Adinath. In this background, the prosecution examined in all 7 witnesses to bring home the guilt of the accused and after hearing both sides and perusing evidence on record, the learned Additional Sessions Judge, Ahmednagar acquitted accused Nos. 2 to 4 by Judgment and order dated 30th November 2018. Hence the present Application.

4. At the outset we would like to say, when the incident of pouring kerosene and setting herself to fire by deceased Priyanka had taken place at the house of her parents, then how Section 304-B of the Indian Penal Code would be attracted, itself is a question. Merely because the death is within the period of seven years of the marriage, the said Section will not be applicable. No doubt the death will be categorized under the

category of unnatural death but it was in the house of the parents of the deceased. In his testimony, PW-1 Adinath has stated that Priyanka had come to his house on 14th June 2012 and on the next day she set herself to fire. That means since 14th June 2012 accused Nos. 2 to 4 had no control over the deceased. Therefore, application of Section 304-B of the Indian Penal Code itself was erroneous by the investigating agency. The charge ought not to have been framed.

5. Further, the requirement of Section 304-B of the Indian Penal Code is that the deceased should have been subjected to cruelty or harassment soon before her death on account of demand of dowry. The testimony of PW-1 Adinath, PW-3 Sudhakar – uncle of deceased Priyanka, would show that even on the basis of what was told to them by Priyanka, was that on 13th June 2012 the husband had beaten Priyanka and it is stated that accused No.4 followed her with wooden log on the road and after noticing people standing on the road, he returned back. Of course nobody has been examined who has seen that incident dated 13th June 2012. Therefore, no active role is attributed to accused Nos. 2 to 4 even from 13th June 2012 to 15th June 2012. Thus, there is no concrete evidence that accused Nos. 2 to 4 had

subjected Priyanka to cruelty or harassment "soon before her death", if we consider the fact that from 15th June 2012 till 21st June 2012 the deceased was admitted in the Hospital and actual death has occurred on 21st June 2012.

6. Much has been stated about the dying declaration of the deceased recorded by Executive Magistrate PW-4 Navnath Date. It is to be noted that the said dying declaration is stated to have recorded between 23.00 to 23.20 hours on 19th June 2012. To Question Nos. 10 and 11, Priyanka has answered that she has complaint to make against those accused Nos. 1 to 4 and the reason was that they had left her to her parental house for bringing an amount of Rs.2,00,000/-. The financial condition of her parents is poor and hence she set herself to fire at her parental home. Even if we take the said statement as it is (without going into the technicalities), it appears that there is no description as to for what purpose the amount of Rs.2,00,000/- was demanded and the specific acts of harassment against each of the accused have not been stated. Leaving deceased to her parental home without further acts, cannot even be considered under Section 498-A of the Indian Penal Code.

7. Another fact to be noted is that no offence was registered on the basis of this dying declaration, even for the offence punishable under Section 498-A of the Indian Penal Code. The investigating officer has not explained the same. As compared to that dying declaration then the contents of the FIR are blown out of proportion. PW-1 Adinath has not explained as to why he had not tried to lodge any FIR after 15th June 2012 till 21st June 2012 when Priyanka was still hospitalized. He could not have waited her to die to lodge the report.

8. A detail cross-examination has been conducted in respect of PW-1 Adinath as well as PW-3 Sudhakar. PW-1 Adinath admits that some amount was given by him to his daughter at the time of marriage but it was as a financial assistance to the accused and it was in the nature of gift. Therefore, it cannot be treated as dowry within the definition of the Dowry Prohibition Act.

9. As regards accused Nos. 2 to 4 are concerned, the case is also not made out for attracting Section 306 of the Indian Penal Code, because it has not come on record that there was any direct contact between these accused persons and Priyanka before she set herself to fire. Unless there would have been

active abetment by them, they cannot be booked under Section 306 of the Indian Penal Code.

10. The learned trial Judge has rightly appreciated the evidence which has been led as against accused Nos. 2 to 4. There is no perversity in reaching to the conclusion that the offence is not made out against accused Nos. 2 to 4 and therefore, there is no merit in the present Application and it deserves to be rejected.

11. The Application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE