

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

APPLICATION FOR LEAVE TO APPEAL BY STATE : 117 OF 2018

The State of Maharashtra, Through
Police Station MIDC Cidco,
Aurangabad.

**... Applicant
(Ori. Complainant)**

VERSUS

1. Rajesh s/o Satish Dongare,
Age 27 years, Occu. Labour,
R/o Hanuman Chowk,
Chikalthana, Aurangabad.

2. Satish s/o Shobraj Dongare,
Age 64 years, Occu. Labour,
R/o Hanuman Chowk,
Chikalthana, Aurangabad.

3. Sagarbai w/o Satish Dongare,
Age 55 years, Occu. Household,
R/o Hanuman Chowk,
Chikalthana, Aurangabad.

4. Lankabai w/o Rajesh Dongare,
Age 30 years, Occu. Household,
R/o Hanuman Chowk,
Chikalthana, Aurangabad.

**... Non-Applicants/
Respondents
(Ori. Accused)**

...
APP for the Applicant – State :- Mrs. V. S. Choudhari

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

DATE : 10TH APRIL, 2023.

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

01. The prosecution has filed present application under Section 378(1) (b) of Cr.P.C. seeking leave to file appeal quashing judgment and order dated 11.01.2018 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 65/2012 thereby acquitting the non-applicants / accused for the charges under Section 307, 498-A read with Section 34 of the Indian Penal Code.

02. Heard the learned APP Mrs. V. S. Choudhari for the State and with her help we have considered the evidence which was before the learned trial Court with a view whether the leave can be granted to file an appeal.

03. In nut-shell, it is the case of prosecution that on 31.12.2010 the patient Rekha Papalal Dongare (P.W.1) was admitted in Burn Ward of Ghati Hospital due to burn injuries. Accordingly, the MLC was issued to the concerned Police Station. P.W. 4 -Eknath Mansing Chavan, ASI recorded statement of the injured wherein she stated that, on 31.12.2010 at about 01.00 p.m. she was present in kitchen of

her house. Her husband -accused No.1 Papalal was in the house with her three months old son and her daughter aged about 6 years old was playing on the terrace. At that time she was asking to her husband Papalal as to why he is not going to attend the work. But due to hearing noise, her mother-in-law accused No.4 Sagarbai and accused No. 5 Lankabai Rajesh Dongre, the wife of her brother-in-law came to her house. Both of them asked to her to remove her ornaments which she received in the marriage. In meanwhile her father-in-law -accused No.3 Satish and accused No.2 Rajesh her brother-in-law came there. Accused No.1 told her about spending Rs. 2,00,000/- for construction of house and if she wants to stay in house then she required to pay Rs. 2,00,000/-, failing which she should vacate the house. She (victim) replied him that “the house constructed by her father-in-law, why she should pay”. The accused No.3 -her father-in-law asked her that “whether her father paid dowry and asked her to go out of her house”. Thereafter her mother-in-law -accused No. 4 and wife of her brother-in-law Smt. Lankabai (accused No.5) caught hold her hands and her father-in-law (accused No.3) poured kerosene on her person. Her brother-in-law (accused No.2) ignited match-stick, due

to which she sustained burn injuries. After her hue and cry, her husband Papalal extinguished her fire. Thereafter her husband brought her by rikshaw in Hospital.

04. On the basis of such statement, Crime No. 2/2011 registered with MIDC Cidco Police Station, Aurangabad for the offences punishable under Sections 307, 498-A read with Section 34 of the Indian Penal Code.

05. P.W.4 -Eknath Mansing Chavan, ASI of Cidco MIDC Police Station went the place of incident and seized articles i.e. one stove, match box, kerosene Can and drawn seizure-cum- spot panchanama. The further investigation was conducted by P.W.5 -Giridhar Pandurang Thakur, who arrested the accused persons under separate arrest panchanama and recorded statements of witnesses. All seized articles were sent for chemical examination and collected injury certificate of the victim P.W.1. On completion of investigation, the charge-sheet came to be filed against the non-applicants / accused.

06. After the order of committal passed by the learned

Judicial Magistrate First Class, the learned trial Court framed charge at Exhibit 14 against the accused for the offences punishable under Sections 307, 498-A read with Section 34 of the Indian Penal Code. The accused pleaded not guilty and claimed for trial.

07. In order to bring home the guilt of the non-applicants – accused, the prosecution examined five witnesses i.e. P.W.1 Rekha Papalal Dongre (P.W.1) at Exhibit 34, Mahendra Vithalrao Gadve (P.W.2) at Exhibit 47, Shivaji Bhausahab Agle (P.W.3) at Exhibit 54, Eknath Mansing Chavan (P.W. 4) at Exhibit 57 and Giridhar Pandurang Thakur (P.W. 5) at Exhibit 72. Besides oral evidence, the prosecution has proved oral report Exhibit-35, spot panchanama Exhibit 55 , C.A. Reports Exhibits 78, 79.

08. On 11.01.2018, the learned trial Court passed the impugned judgment and order and acquitted the non-applicants / accused for the offences punishable under Sections 307, 498-A read with Section 34 of the Indian Penal Code, however, during the pendency of trial, the original accused No.1 Papalal Satish Dongare (husband of victim -

P.W.1) died on 19.01.2013. Hence, the trial as against original accused No.1 is abated.

09. The learned APP canvassed that as per the testimony of injured P.W. 1 on 31.12.2010 at about 1.00 p.m. when she was in kitchen room there was quarrel between her and her husband on account of not attending work. In the meantime, accused Nos. 4 and 5 (mother-in-law and the wife of her brother-in-law) came in her house and asked her to remove ornaments which she got in her marriage. Thereafter accused No. 1 - her brother-in-law and accused No.2 her father-in-law Satish Dongare came in her house. The accused No. 1 Rajesh said her about spending Rs. 2,00,000/- for construction of house and if she wants to live in the house, she should pay such amount. She replied about construction of house by her father-in-law (accused No.3). The accused No.3 asked her that her father not paid any dowry and asked her to go out of the house. Thereafter her mother-in-law -accused No.3 and the wife of her brother-in-law -accused No. 4 caught hold her hands and accused No. 2 her father-in-law poured kerosene on her person from Can and the accused No.1 ignited match-stick. Due to which, she sustained burn

injuries. On hearing hue and cry her husband poured water from plastic bucket upon her person. The evidence of other witnesses shows about mental and physical harassment at the hands of the accused for demand of dowry and they set the victim (P.W.1) on fire and tried to commit her murder. However the learned trial Court failed to consider material evidence and wrongly acquitted the non-applicants – accused. Hence, prosecution wants to file appeal.

10. On face of record, it appears that P.W.1 - Rekha Papalal Dongre, injured deposed at Exhibit 34 that on 31.12.2010 at about 01.00 p.m. she was in kitchen room and her husband was not doing any work since last four months. Therefore, she asked her husband as to why he is not going to work. After hearing noise her mother-in-law, accused No. 3 and wife of her brother-in-law -accused No. 4 Lankabai came to her. Both of them asked her to remove ornaments which she had received in her marriage.

11. Thereafter, her brother-in-law -accused No.1 Rajesh Dongare and her father -in-law accused No. 2 -Satish Dongare came to her. Then accused No. 1 disclosed her

about spending Rs.2,00,000/- for construction of house and demanded Rs. 2,00,000/- to her, if she wants to stay in the house. Her father-in-law -accused No. 2 asked her about not providing any dowry by her father. Thereafter, her mother-in-law accused Nos. 3 and 4 wife of her brother-in-law caught hold her hands and accused No. 2 -father-in-law poured kerosene on her person from a Can. The accused No. 1 her brother-in-law ignited match-stick and set her on fire, due to which, she sustained burn injuries. Her husband poured water on her person and extinguished fire.

12. In cross-examination P.W.1 admitted that she studied upto B.A. First Year. Her husband was not attending any work prior to four months of the incident. She and her husband are staying in two rooms and her in-laws and her brother-in-law and his wife i.e. original accused Nos. 1 to 4 are residing separately. When she was burned at that time her husband was on the terrace. Though her parents visited her at about 03.00 to 03.30 p.m., but she did not disclose that the accused persons set her on fire. She admitted about initiating proceeding under the Domestic Violence Act against her husband.

13. The prosecution examined P.W. 2, P.W. 4 and P.W.5, however, the evidence of these witnesses does not suggest about raising mental or physical cruelty against P.W.1 -victim on account of non-fulfilment of demand of dowry. Nonetheless, testimony of victim P.W.1 is silent about raising of demand of dowry at the hands of the non-applicant's-accused. P.W.1 was not cohabiting in joint family along with accused Nos. 1 to 4. Therefore, the question of raising demand of dowry does not arise.

14. On face of record, it appears that on 31.12.2010, P.W. 1 -victim was admitted to the Hospital in injured condition till 13.02.2011. However, the prosecution has not taken any effort to secure the presence of Medical Officer who treated informant P.W.1 and the gravity of burn injuries not been proved. As per the testimony of P.W.1 -victim, the non-applicants accused persons set her on fire. When her husband was present. But the prosecution not examined the husband of injured P.W.1. The defence of the accused that the informant sustained burn injuries due to explosion of stove while cooking. As per the spot panchanama-cum-seizure panchanama (Exhibit 55), one stove match-stick and kerosene Can seized from the spot of incident. However,

P.W.3 witness to the panchanama deposed about seizure of only stove by the police. P.W.3 -Shivaji Bhausaheb Aagle not fully supported the panchanama. P.W. 2 -Mahendra Vithalrao Gadve is the friend of brother of the informant P.W.1, who had received information from one Kishor Parse and then he informed on phone to brother of victim. Since the informant is alive, stepped into witness box, therefore the dying declaration recorded by Special Executive Magistrate P.W. 4 Eknath Mansing Chavan can be treated as a statement recorded u/s.164 of Cr.P.C. either for corroboration or contradiction.

15. In case of *Sunilkumar Vs. State, AIR 1997, SC 940*, it has held that when the person making the dying declaration is surviving, his dying declaration can be treated as a statement recorded u/s. 164 of Cr.P.C. and can be used either for corroboration or contradiction when maker is examined as a witness.

16. The prosecution has not brought any material evidence on record to prove that P.W. 1 victim was subjected cruelty and she was set on fire about the non-fulfilment of

said illegal demand of dowry. Nonetheless, the clothes of informant were not seized by the investigation machinery. The seized articles – stove, plastic Can and match-box were sent for chemical analysis. The prosecution produced C.A. Reports Exhibit 78 and 79 on record. However, clothes of the informant not seized and not examined from the forensic laboratories. Therefore, in absence of the said C.A. Report, the fact can be adversely inferred. The testimony of prosecution witness does not inspire confidence about pouring kerosene on person of victim and setting her fire.

17. On 11.01.2018, the learned trial Court passed impugned order after considering the evidence available on record and acquitted non-applicants-accused persons from the offences punishable under Sections 307, 498-A read with Section 34 of the Indian Penal Code which does not suffer illegal, perverse, bad in law, which does not require any interference at the hands of this Court. No case is made out to grant leave. Accordingly application stands rejected.

(Y. G. KHOBRAGADE, J.) (SMT. VIBHA V. KANKANWADI, J.)

shp/-