

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.31 OF 2021

The State of Maharashtra
Through Police Station, Omerga,
Tq. Omerga, Dist. Osmanabad.

... Applicant

... **Versus** ...

- 1 Rajendra Digambar Gaikwad,
Age 35 yrs., Occ.
R/o Madaj, Tq. Omerga,
Dist. Osmanabad.
- 2 Digambar Gopal Gaikwad,
Age 65 yrs., Occ.
R/o as above.
- 3 Jijabai Digambar Gaikwad,
Age 55 yrs., Occ.
R/o as above.
- 4 Sunita Tanaji Fugte,
Age 38 yrs., Occ.
R/o as above.
- 5 Tanaji Bhairoba Fugte,
Age 45 yrs., Occ.
R/o as above.
- 6 Mahadeo Digambar Gaikwad,
Age 27 yrs., Occ.
R/o as above.

... Respondents

...

Mr. S.D. Ghayal, APP for applicant

...

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

DATE : 23rd OCTOBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

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 10.02.2021 passed by learned Additional Sessions Judge, Omerga, Dist. Osmanabad in Sessions Case No.7/2013, thereby acquitting respondents – original accused from the offence punishable under Sections 498-A, 307 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. S.D. Ghayal for the prosecution and with his help we have gone through the record which was available before the learned trial Judge.

3 Respondents are the husband and relatives of the informant – PW 1 Rekha. The marriage between the informant and accused No.1 was solemnized on 24.05.2002. It is alleged that at the time of marriage her

parents had given dowry of Rs.2,00,000/-, 10 tola gold as well as incurred the expenses of marriage. After the marriage informant started cohabiting with accused No.1. Accused Nos.2 and 3 – his parents were residing together whereas accused No.4 – sister-in-law and accused No.5 – husband of accused No.4 were residing adjacent to the house of accused No.1. It is her contention that after about a year the accused persons started demanding amount of Rs.5,00,000/- for constructing the house and on account of that she was ill-treated. On one occasion her brother had given amount of Rs.2,00,000/- and thereafter she had two children. Thereafter, accused started demanding remaining amount of Rs.3,00,000/-. She was ill-treated even after her brother had paid amount of Rs.1,00,000/- out of the said remaining amount. Still the demand for Rs.2,00,000/- continued. The incident took place on 13.06.2011 and at that time accused No.1 had assaulted her and other accused persons instigated and gave threat to kill her.

4 Perusal of the evidence would show that PW 1 Rekha has supported her First Information Report, especially the fact that she was assaulted with hard substance on her head and the alleged illegal demand. Prosecution has examined PW 2 Mahadeo Madhukar Nagre – brother of Rekha and PW 3 Bharatbai – mother of PW 1 Rekha. They have supported her as regards the demand is concerned. There is testimony of PW 5 Dr. Vijay

Patil, who had examined PW 1 Rekha on 14.06.2011 and found that there was head injury, diffuse cerebral edema and other injuries. Therefore, taking into consideration this evidence we are of the opinion that case is made out for re-appreciation as prima facie there appears to be evidence to support the prosecution story. Hence, the following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 Leave is granted to the prosecution to file Appeal.
- 3 Registry to register the Appeal.
- 4 Appeal stands **Admitted**.
- 5 In Appeal, issue notice to the respondents, to be made returnable after six weeks.
- 6 Call Record and Proceedings.
- 7 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, J.)

(SMT. VIBHA KANKANWADI, J.)