



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.37 OF 2021

The State of Maharashtra,
Through Police Station Murud,
on the complaint of
Pandurang S/o. Dhondiba Kasbe,
Age : 65 years, Occu. Labour,
R/o. Sathe Nagar, Dhoki,
Tq. and Dist. Osmanabad.

... Applicant.

Versus

Datta S/o. Sitaram Bhise,
Age : 30 years, Occu. : Driver,
R/o. Chavanwadi, Tq. Murud,
Dist. Latur.

... Respondent
(Orig. Accused)

...
Mr. S. D. Ghayal, APP for Applicant - State
...

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

RESERVED ON : 10th OCTOBER, 2023

PRONOUNCED ON : 20th OCTOBER, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Acquittal of respondent from charges under sections 498(A), 302, 323 and 504 of Indian Penal Code (IPC) is sought to be questioned by applicant-State and hence, vide instant application leave to do so is sought.

2. Learned APP submitted that, accused-respondent

subjected deceased Pragati to mal-treatment. Her parents have stepped into the witness box to depose to that extent. That, during the marriage of brother of deceased Pragati, accused was demanding gold ring and on failure to meet the said demand, he insulted, humiliated and abused PW2 father-in-law as well as deceased and forced her to accompany him. In anger, he left that day and did not come in spite of understanding to attend the marriage, but he came and forcibly took deceased and children and on the very next day deceased met unnatural death with several injuries. It is submitted that, prosecution had established the charges by examining as many as 12 witnesses. That, learned trial court ought to have accepted the case of prosecution and convicted the accused, but it failed to do so and hence it is submitted that, there is total non application of mind. Evidence of material witnesses, like parents of deceased is not considered in correct perspective. Therefore, there is need for re-appreciation in appeal and hence the prayers.

3. We have gone through the papers before us. In support of its charge prosecution seems to have examined 12 witnesses and their status is as under :-

PW1 Raju is the pancha to spot panchanama of alleged incident and also inquest panchanama.

- PW2** Pandurang is the informant and father of deceased.
- PW3** Kesharbai is the mother of deceased.
- PW4** Shankar is the witness who allegedly at the spot, but he has not supported the prosecution.
- PW5** Arun is the pancha to the memorandum of disclosure.
- PW6** Anant is the witness who allegedly at the spot. He informed the police about incident. His statement is at Exh.32.
- PW7** Sayyed Faruq Maheboob is the carrier of the muddemal to C.A.
- PW8** Chaitanya is the minor son of deceased.
- PW9** P.I.Shaikh, **PW11** P.S.I. Ghodke and **PW12** A.P.I. Waghmode are the police officials and Investigating Officers.
- PW10** Dr. Prachi is the Medical Officer, who conducted the post mortem of deceased Pragati.

4. PW2 Pandurang and PW3 Kesharbai are parents of deceased. They both have deposed about marriage of deceased with accused and they having children. They both deposed that, on 16.05.2017, marriage of their son Avinash was fixed and for the same, on 14th accused and deceased had come to Dhoki. It has come in their evidence that, accused demanded gold ring for him also, but when informant refused and assured to see afterwards, it is alleged that, accused-respondent got enraged and he abused

informant i.e. father-in-law as well as deceased and left the place. It is alleged that, he came next day, but did not attend marriage and rather, forced deceased to accompany him back. Informant has alleged that after one and half hours he received phone call of his daughter about assaulting and asked informant to come immediately to Murud, and therefore, he and PW3 Kesharbai went there, but there was lock to the house of accused and on inquiry with neighbours, he claims that they told that their daughter had fallen in the well and so they approached Murud police station and gave oral informant to the police and came back to Dhoki and on 18.05.2017, he visited the well and saw the dead body and therefore lodged the report.

5. However, cross of informant as well as his wife show that instances of mal-treatment are not stated by them. There are omnibus allegations about cruelty. Therefore, necessary ingredients for attracting section 498(A) are patently missing. In para 10 of the cross of informant, he has admitted that, for the purpose of marriage, none had been to fetch deceased. Prior to two days of the marriage, accused, deceased and their children had been to the house of PW1 Pandurang for marriage of his son and he in the company of accused distributed the marriage cards. He admitted that, the function for marriage going on for 2 - 3 days after the marriage. He admitted that, on 17.05.2017 i.e. next day

of marriage, deceased was got examined in the hospital at Dhoki. Evidence of this witness shows that he claims that neighbours told that their daughter had fallen in the well on 17.05.2017 itself, but apparently report is lodged on 18.05.2017. In fact in spite of allegedly receiving information on 17.05.2017 he had not gone to the well for the best reasons known to him.

6. Mother PW3 Kesharbai seems to have admitted in cross that there is to be quarrel between deceased daughter and accused son-in-law on account of work and that their daughter had stayed with them for a period of two years. She also admits that two days prior to the marriage, her daughter had come and accused had accompanied her for all arrangements prior to the marriage. She too admitted that, daughter was taken to hospital after marriage.

7. Investigating machinery does not seem to have gathered CDR calls to demonstrate information passed by deceased about she being assaulted by husband. No other witness is examined. No relative or guest who attended the marriage is examined to lend support to the alleged episodes of demand of ring, abuses by respondent-accused. Very son of deceased and accused PW8 Chaitanya, a child witness also has not supported prosecution.

8. Accusation of prosecution is that, accused threw deceased in the well water, but there is no evidence in that regard. Though deceased had died due to drowning, there is no evidence to show that accused took her towards the well and threw her. Medical legal evidence is merely about death due to drowning and several abrasions.

9. Deceased after attending marriage has left her parents house on 17.05.2017 itself, dead body was found on 18.05.2017, but there is no incriminating circumstance or material suggesting deceased to be in the company of accused and they both going towards the well. In spite of receiving alleged information about deceased falling in the well on 17.05.2017, no report is lodged on that day itself.

10. Therefore, there is weak of scanty evidence in support of charges. There being no direct evidence, case is based on circumstantial evidence, but none of the circumstances are cogently and firmly proved, and therefore, no fault can be found in appreciation at the hands of learned trial Judge, so as to grant leave as prayed. No case being made, we refuse leave.

11. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)