

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.131 OF 2018

VERSUS

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- APP for Applicant : Mrs. V. S. Choudhari

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

DATE : 10th July, 2023

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

1. The State has invoked Section 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.) thereby seeking leave to file appeal against judgment and order dated 07-02-2018 by Additional Sessions

Judge, Sangamner in Sessions Case No.28 of 2009 by which present respondents have been acquitted from charges under Sections 306, 304-B, 498-A r/w 34 of the Indian Penal Code (IPC).

2. Learned APP for the applicant would state that in support of above charges, in trial Court, prosecution has examined father of deceased **PW1** Bhimraj. He has stated about marriage of his deceased daughter on 14-02-2005 with accused respondent no.1. Rest of the respondents are parents-in-law of deceased. That accused persons were demanding Rs.1,00,000/- for construction of a well and they were annoyed for delivering second girl child. There was harassment in that backdrop. That only because of such harassment and instigation, deceased committed suicide by jumping in well. That, apart from the testimony of father, prosecution has also examined **PW2** Sagar, brother of deceased and he has lend support to the version of his father on the point of harassment to deceased on account of demand of Rs.1,00,000/- and for delivering girl child for second time also. That, there was continuous ill-treatment and demand at the hands of accused husband and in-laws. That, understanding was given by the father of deceased to accused on day prior incident. However, on the very next day, deceased went missing

and dead body was found in a well. It is pointed out that all ingredients for commission of offence under Sections 304-B, 306, 498-A r/w 34 of the IPC were available in the evidence. Investigation at the hands of **PW3** Ramnath Padvale (ASI) and **PW4** Suresh Whaval (HC) had revealed complicity of accused. Therefore, with such quality of evidence when guilt was brought, it is submitted by the learned APP that, charge was proved. However, learned trial Court has failed to appreciate and consider the evidence and the law and hence, according to her, State intends to challenge the impugned judgment and order and hence the prayers.

3. After hearing submissions, we have gone through the entire chargesheet and both, oral and documentary evidence.

4. From the evidence of **PW1** Bhimraj and **PW2** Sagar i.e. father and brother of deceased, it appears that deceased was married to present respondent no.1 on 14-02-2005. Evidence of these witnesses show that accused persons are residing jointly.

Evidence of **PW1** Bhimraj shows that it was agreed to pay Rs.50,000/-. However, in subsequent evidence he speaks about demand of Rs.1,00,000/-. Even reason for demand said to be for

construction of a well. However, testimony of this witness is silent about exact nature of harassment and when said instances took place.

5. If we go through the evidence of **PW2** Sagar, brother of deceased, we find that his testimony is completely improved and full of material contradictions. His version is entirely different from the version given by his father. It is apparently exaggerated and improved version than what is stated to the Police under Sections 161 of the Cr.PC i.e. paragraph nos.5 and 6 of his cross-examination clearly show that there are material improvements, contradictions and omissions. There is no other witness apart from such evidence.

6 It is emerging from the evidence of only **PW2** Sagar, brother of deceased that on 19-05-2008 they had been to the house of accused persons and requested them not to harass deceased Nanda. According to him, accused threatened that if demand is not fulfilled, harassment would continue. However, testimony of **PW1** Bhimraj is silent on above aspect.

7. What happened exactly prior to deceased Nanda went missing

has not come on record. No immediate neighbours are examined for bringing home charges under Sections 498-A r/w 34 of the IPC. Ill-treatment and harassment were expected to be cogently proved. Likewise, there was charge of Section 304-B, which ought to have been proved beyond reasonable doubt. Soon before death what exactly happened has not come on record. It is merely stated that deceased was subjected to ill-treatment and harassment in the backdrop of demand of money but there is no cogent evidence to that extent. Only two witnesses i.e. father and brother of deceased and two Police Officials are examined. With such evidence on record and more particularly, when testimonies of father and brother of deceased are ambiguous and full of material omissions and inconsistent, we do not think that any error has been committed or there is any perversity on behalf of learned trial Judge in acquitting the accused. Having found no merit in the case, the application for leave to appeal by State is hereby rejected.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE