

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.51 OF 2023

. The State of Maharashtra
Through : Police Inspector,
Police Station, Peth Beed,
Dist.Beed. ..Applicant

VERSUS

1. Muktaram s/o Masu Galdhar
Age: 65 years, Occu.: Nil.
2. Luxmibai w/o Muktaram Galdhar
Age: 55 years, Occu.: Nil.
3. Shivaji s/o Muktaram Galdhar
Age: 28 years, Occu.: Nil.
4. Vikas s/o. Muktaram Galdhar
Age: 22 years, Occu.: Nil. ..Respondents

...
APP for Applicant State : Mr.A.M.Phule

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

DATE : 22nd June, 2023

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

1. Acquittal of respondent nos.1 to 4 at the hands of learned Additional Sessions Judge, Beed in Sessions Case No.95 of 2016 which was tried for the offence under Section 304-B, 306, 498-A of the Indian Penal Code, has prompted applicant State to question the said judgment and so present

application for leave to file appeal is pressed into service.

2. Taking us through the FIR, learned APP for the applicants State submitted that deceased was married to accused on 04-07-2014. In spite of performing marriage as decided, accused started raising demands alleging amount to be remaining due. It is submitted that in the backdrop of non-fulfillment of dowry payment deceased Pooja was ill-treated and harassed i.e. by abusing her and beating her. That **PW1** Deelip Phawade - father of deceased set law into motion narrating the entire events regarding unnatural death of Pooja dated 07-07-2015 to be in the backdrop of dowry demand. That apart from informant's cogent evidence, there was evidence of close friend of deceased Pooja i.e. **PW3** Chhaya Mundhe and **PW4** Sheshrao Phawade - paternal uncle of deceased. That they all are consistent about dowry demand harassment and ill-treatment. However, such evidence has not been appreciated by the learned trial Court and it has unfortunately acquitted accused from all the charges. Learned APP for the applicant submitted that there is total non-application of mind on part of the learned trial Judge and even law as required has not been considered and hence, it is submitted that prosecution has every hope of succeeding in appeal and so he prays that application for leave to appeal be allowed.

3. We have gone through the FIR, panchnamas, post mortem report as

well as substantive evidence of prosecution witnesses. It is emerging that deceased Pooja was married to accused Shjivaji on 04-07-2014. Deceased reported to be died due to “Cardio-respiratory arrest due to asphyxia due to hanging” on 07-07-2015.

4. In view of the nature of charges, it is to be seen whether prosecution has succeeded in establishing demand and ill-treatment which were in close proximity to the alleged death of Pooja i.e. whether soon before her death, accused had ill-treated deceased for satisfying demand of money. Prosecution evidence suggests that as many as six witnesses are examined by them. Precise accusation is that **PW1** Deelip – informant, father of deceased paid Rs.1,00,000/- cash as dowry, ornament like gold and clothes as decided. It is further stated that Rs.75,000/- towards dowry was paid in cash and remaining Rs.25,000/- was yet to be paid and was assured to be given by the time of Diwali. Around August that year, deceased informed to this witness about husband and in-laws abusing her for remaining money of dowry. She was not given complete meals timely. Deceased Pooja had come for stay at maternal house for eight days but she again left to her matrimonial house. In October month, when brother of deceased brought her for Diwali festival to her maternal house, it is the case of prosecution that, deceased told her father to pay the remaining amount of dowry as they are harassing her. Understanding was given to the accused that remaining amount would be paid and not to harass the deceased.

According to informant, on 12-06-2015 deceased and her husband had come for the marriage ceremony of relative and at that time also deceased informed about harassment given to her. Four days prior to the incident also deceased had called up her brother Amardeep and told him that her in-laws should be called for Dhonda festival and proper respect be given and honours be made or else they would see her dead face. On 07-07-2015 deceased Pooja was found in hanging condition.

5. On minute scrutiny of the evidence, it is emerging that on 12-06-2015 deceased had accompanied accused husband for marriage of her own relative and at that time she had informed her father to meet the demand of remaining amount. Testimony of informant shows that after 4 to 5 days, deceased called her brother Amardeep and put up a request to give proper respect and honours by calling her husband and in-laws for Dhonda festival and alleged incident has taken place on 07-07-2015. Therefore, though deceased called her brother Amerdeep after 4 to 5 days thereafter, there was no request for complying with the demand of remaining amount. Rather what deceased appears to have told her brother Amardeep, according to the informant, is that she had requested to give proper respect to her husband and in-laws when they will come for Dhonda festival. Resultantly, by 16-06-2015 or 17-06-2015, deceased had not conveyed about any harassment in the backdrop of remaining amount. Alleged incident of hanging has taken place on 07-07-2015. Therefore,

from 16-06-2015 to 07-07-2015 what actually happened and whether there was any harassment or ill-treatment, more particularly, in the backdrop of remaining amount of dowry, has not been come on record.

6. As stated above, for invoking Section 304-B of Indian Penal Code, it was expected of prosecution to bring on record that immediate in proximity to 07-07-2015 deceased was mal-treated in the backdrop of dowry demand. This aspect has not come on record. There is no material also on record suggesting instigation to hold accused responsible for abetment of suicide. Omnibus allegations are apparently levelled about ill-treatment. Therefore, in the light of such quality of evidence, the view taken by the learned trial Judge is the only possible view that could emerge. Evidence on behalf of prosecution is not full-proof or inspiring confidence in the light of manner of occurrence. Hence, as necessary ingredients for attracting charges are patently missing, in our opinion, learned trial Judge has committed no error in acquitting the accused. No perversity or infirmity is brought to our notice so as to consider the request for granting leave to file appeal. Resultantly, we pass the following order :

ORDER

- i) Application stands rejected.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE