

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.155 OF 2018

The State of Maharashtra
Through Parner Police Station,
Tal. Parner, Dist. Ahmednagar

.. Applicant

Versus

Dipak Popat Kedare
Age: 25 years, Occu.: Agriculture,
R/o. Gat No.74, Pimpalgaon-Kauda,
Tal. Nagar, Dist. Ahmednagar

.. Respondent

...

Mr. A. M. Phule, APP for the respondent – State.

...

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

DATE : 9th June, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 22.03.2018 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.315 of 2015; thereby acquitting the respondent from the offence punishable under Section 302 of Indian Penal Code.

2. Heard learned APP Mr. A. M. Phule for the applicant – State. With the able assistance of learned APP, we have gone through the record, which

was before the learned Trial Judge.

3. The prosecution has in all examined seven witnesses to bring home the guilt of the accused. The case of the prosecution is based on circumstantial evidence. PW.3 is the informant, who is brother of deceased – Jayshree, who is the wife of accused. PW.5 Suresh is the father of deceased. Both of them were not present in the house of the deceased, nor they were residing in the same village also. PW.1 Nandu Salve and PW.2 Ramdas Salve are both the panchas to the inquest panchanama. PW.6 Dr. Mohd. Shahid Mohd. Taher is the medical officer who has conducted autopsy and has proved that the probable cause of death was “hemorrhagic shock with liver laceration with head injury intracranial bleed”. Taking into consideration the inquest panchanama as well as postmortem report Exhibit-45, it can be certainly said that the cause of death is homicidal in nature. The place of death is stated to be the house of the accused. Both the panchas i.e. PW.1 and PW.2 are the panch to the spot panchanama also. The place of incident was a sitting room. Only on the basis of the said fact whether provisions of Section 106 of the Indian Evidence Act can be raised or not will have to be considered. Important point to be noted is that the prosecution has not examined any neighbouring person and incident is stated to have occurred between two to three hours on 11.08.2015. No doubt, normally a person should be at home at night hours, but no

presumption can be drawn. Not a single person has been examined to show that at night time, the accused had arrived at the house. Unless basic facts are proved, the presumption under Section 106 of Indian Evidence Act cannot be pressed into service. The learned Trial Judge has considered the said principle. Merely because the deceased was found in the house in dead condition; the prosecution cannot adopt an approach that it will not lead any evidence in the matter. Basic rule of law is that the prosecution should prove the guilt of the accused beyond reasonable doubt. If those basic facts are brought on record, then only the question of shifting of burden on the accused to disclose whatever was within his knowledge would arise under Section 106 of Indian Evidence Act.

4. PW.3 Ganesh and P.W.5 Suresh have tried to say that the accused was harassing deceased by raising suspicion over her character. However, the cross-examination of both of them would show that the relationship was normal and they were on visiting terms. Even three to four days prior to the incident P.W.3 Ganesh had visited the house of the accused, but he had not stated in examination-in-chief that he had tried to persuade accused for not treating his sister with cruelty. In his cross-examination he has admitted that accused had accompanied him to the bus stand when he was going back to his village. Even at that time also he had not entered into dialogues with the accused. It appears that they both had celebrated the birthdays of

both the children of the accused and also attended the marriage of sister of the accused. Thus, when the relationship was normal, it does not have force in the say of the prosecution witnesses i.e. P.W.3 Ganesh and P.W.5 Suresh that deceased was subjected to ill treatment by the accused by raising suspicion over her character. Thus, the motive has not been proved in this case, which is the crucial aspect when it comes to circumstantial evidence.

5. The alleged murder weapon i.e. iron rod was found at the same place, but the necklace and rings which the accused had given to the deceased were not found on her person. Under such circumstance, the defence that was taken by the accused and he has tried to explain under which circumstance the deceased might have died was that there are houses of Pardhi community at some distance from his house and his house is situated in a hilly area and, therefore, somebody might have killed his wife with an intention to steal the golden ornaments. The prosecution has not tried to bring some contradictory facts. Another fact is that the deceased and the accused were having two children. Son was aged two years and daughter was aged four years. Taking into consideration their tender age, they could not have been examined, but still the attempt could have been made to make inquiry with the daughter about where she was when the incident had taken place.

6. The conduct even as regards P.W.3 Ganesh is concerned will have to be brought on record. When the FIR was lodged it was only against the husband i.e. present respondent, but thereafter supplementary statement was given by him involving parents-in-law as well as sister-in-law and then second supplementary statement is again recorded stating that in fact those in-laws were residing separately from the accused and the deceased since many days prior to the incident. This shows his tendency to implicate and such witnesses cannot be believed.

7. We do not find any illegality or perversity in acquitting the respondent. No case is made out for grant of permission. The application stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm