

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 160 OF 2018

The State of Maharashtra,
Through City Chowk Police Station,
Aurangabad.

... Applicant

Versus

1. Shaikh Irshad s/o Sk. Iqbal Ahmed,
Age 30 years, Occu. Business,
R/o Mominpura, Aurangabad.
2. Shaikh Iqbal Ahmed Sk. Abdul Gani,
Age 55 years, Occu. Business,
R/o Mominpura, Aurangabad.

... Respondents

.....
Mrs. V. S. Choudhari, APP for the Applicant-State
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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATED : 13.06.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. Present leave to appeal by State arises out of the judgment and order of acquittal passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 244 of 2010 dated 06.04.2018 by which respondents herein are acquitted of the charges under Sections 498-A, 306, 304-B, 201, 302 r/w 34 of the Indian Penal Code [IPC].

Facts giving rise to the sessions trial

2. Deceased Asma was married to accused Irshad (respondent no.1 herein) on 19.05.2003. Initial period of two months were

smooth for Asma but thereafter, it is alleged that, she was subjected to harassment on account of demand of Rs.1,00,000/-. About such demand Asma informed her father. On 11.09.2017, a message was received by the informant father about death of Asma. The informant and relatives rushed to the hospital. There they learnt that Asma died due to poisoning and therefore they approached City Chowk Police Station alleging that Asma was done to death by accused for not meeting their demand of Rs.1,00,000/- for purchase of a truck. On the basis of the said report, crime was registered, investigation was carried and accused persons were duly chargesheeted.

3. Learned Additional Sessions Judge, who was seized with the matter, conducted trial during which oral and documentary evidence adduced by the prosecution was recorded, both sides were heard and after appreciating such evidence, learned trial court reached to the finding that prosecution failed to establish any of the charges and thereby, vide its judgment and order dated 06.04.2018, acquitted both the accused from all the charges.

4. Above judgment and order of acquittal is now intended to be taken up by the State by filing appeal and therefore instant leave application.

5. Inviting our attention to the oral and documentary evidence, learned APP would submit that the judgment and order under challenge is patently illegal and perverse. There is non-application of mind and improper appreciation of evidence adduced by prosecution. It is submitted that deceased Asma was married to accused no.1 as per Muslim rituals. The cohabitation was smooth only for a period of two months after marriage as thereafter accused put up a demand of Rs.1,00,000/- for purchasing a truck. That, deceased informed accused about inability of her parents to meet their demand. On that count she was subjected to maltreatment. Precisely because of the same, getting fed up by the ill-treatment, Asma consumed poison and succumbed to the same on 11.09.2007.

6. Learned APP submitted that PW2 informant Abdul Rafikkhan (father of deceased) has lodged prompt report with City Chowk Police Station. Apart from him, prosecution has adduced evidence of PW3 Abdul Raheman (brother of deceased) and PW4 Shaikh Ahmed (cousin maternal uncle of deceased). That, prosecution had established all the panchanamas. Medical expert has also been examined as PW8 Dr. Anand. It is further submitted that prosecution had brought on record cogent and reliable evidence. The same ought to have been properly appreciated and case of prosecution being full

proof, ought to have been accepted by learned trial court for recording guilt, however, it failed to do so and hence, it is submitted that as State intends to prefer appeal against the same, instant leave is sought.

7. In the light of the above submissions, we have taken survey of the entire oral and documentary evidence before the court. On carefully going through the testimony of PW2 informant Abdul Rafiq, it is emerging that marriage of Asma was performed with accused no.1 on 19.05.2003. Informant claims that accused husband put up a demand of Rs.1,00,000/- **for purchase of house**. That, his daughter informed him that for meeting such demand, she was beaten and persuaded to bring money. That, on 11.09.2007 he learnt about death of Asma. So he came to the hospital and after postmortem he learnt that she had consumed poison. Therefore he lodged report Exhibit 41.

8. While under cross-examination, above witness has answered that accused are already in their relation since beginning and as such there were cordial relations. He admitted that during cohabitation of five years, Asma and accused were blessed with two children. He has admitted that accused bore all expenses of her second delivery. He has admitted that accused no.1 runs a watch shop in City Chowk. He

admitted that since last one year of the incident he had not met Asma personally, but there were only telephonic talks. He also admitted that accused never restrained his daughter from calling and talking him on phone. He answered that his statement regarding putting up demand for purchase of house is incorrect. He answered that police read over the complaint but he could not understand its contents.

9. Now, let us visit the evidence of PW3 Abdul Raheman i.e. brother of deceased at Exhibit 43. He too states that two months after marriage, accused demanded Rs.1,00,000/- and harassed his sister for purchase of a truck. She used to inform him on telephone. In spite of giving understanding, accused did not change his behaviour and on 11.09.2007 they learnt about death of Asma. He stated that Asma committed suicide getting fed up of the harassment at the hands of accused.

While under cross-examination, he admitted that since one year after marriage of Asma, he had started residing separately from his parents. He answered that none of the outsiders were present at the time of marriage. He was unable to state when Asma told him about demand raised by accused husband. He also admitted that accused no.1 is running a shop of sell and services of watches. He stated that

prior to one year of the incident, he had come to Aurangabad and he admitted that till date he does not know the cause of death of Asma.

10. PW4-Shaikh Ahmed, who is maternal cousin uncle of deceased, deposed about marriage of Asma in 2003 with accused. He stated that at the time of marriage, it was agreed to pay Rs.1,00,000/- to accused for purchase of truck and the amount was not paid because of financial position. He stated that accused no.1 and his parents were putting up demand of Rs.1,00,000/- and in pursuance of it, there was harassment to her. He claims that he came to know about it from parents of Asma. Later on, he came to know that Asma died due to consumption of poison. In cross-examination he answered that after marriage of Asma, he did not go to her house. That, Asma used to go to his house but never met him. He was unable to state when parents of Asma informed him about ill-treatment to Asma. He stated that police did not made inquiry with him nor he went to the police station.

Above is the testimony of near and dear ones of deceased Asma. Rest of the witnesses are panchas and police.

11. PW8. Dr. Anand claims to have come across abrasions over neck and upper lip during autopsy conducted on 12.09.2007. He gave the age and measurement of injuries. He stated that it was not a case of suicide, rather it was homicidal death. In cross-examination, he answered that it is his observation and opinion that it is a case of asphyxia. He has admitted that person who conducted autopsy is required to issue final cause of death certificate. He answered that as police did not demand final cause of death, the same was not issued. He answered that he does not remember whether he saw the CA report. He admitted that in postmortem report he has issued cause of death as "suspecting poisoning" and that such noting was taken after considering the state of health of the deceased. He admitted that reason 'suspecting poisoning' for death given by him was not confirmed unless supported by CA report. He again admitted that he had not issued separate certificate showing final cause of death.

12. On analysis of above discussed evidence, here it is evident that there are allegations of demand of Rs.1,00,000/- for purchase of house. However, in the report Exhibit 41, it is reported that demand was made for purchase of truck. It is pertinent to note that accused husband is reported to be conducting business of sell and service of watches. Therefore, the obvious question that comes to mind is why

would he put up a demand of Rs.1,00,000/- for purchase of truck. There is no explanation to that extent by any of the witnesses, including the informant. There are contradictory versions on the point of demand i.e. whether it was made for house or truck.

13. In the light of such quality of evidence on record, in our considered opinion, the evidence adduced by prosecution on the point of ill-treatment is weak in nature. The evidence on that count is ambiguous. There is no material to show that soon before death there was cruelty or ill-treatment in the backdrop of any demand. What serious incident took place immediately prior to death has not been brought on record by prosecution. Therefore, under such circumstances, such evidence cannot be taken recourse to to record guilt as expected by prosecution. Hence, no infirmity or perversity can be attributed to the judgment and order passed by learned trial Judge. No case being made out on merit to grant leave, the application for leave to appeal by State is dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]