

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.162 OF 2018

The State of Maharashtra
Through : Police Inspector,
Sonaee Police Station,
District : Ahmednagar

..Applicant / Appellant

VERSUS

Ambadas Vinayak Vairagar
Age: 20 years, Occu.: Labour,
Resident of Krushnanagar Zopadpatti
Ghodegaon, Taluka Newasa,
District : Ahmednagar.

..Respondent
(Ori. Accused)

...

APP for Applicant : Mr.R.D.Sanap

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

DATE : 13th JUNE, 2023

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

1. Instant application is by State seeking leave to assail judgment and order passed by the learned Additional Sessions Judge, Newasa, Dist.Ahmednagar dated 31-01-2018 in Sessions Case No.45 of 2016 by which respondent herein is acquitted from the charges under sections 498-A, 304-B, 201 of the Indian Penal Code (IPC) and under Section 4 of the Dowry Prohibition Act.

BACKGROUND IN BRIEF

2. Sonai Police Station Tq.Newasa, Dist.Ahmednagar, charge-sheeted respondent Ambadas Vinayak Vairagar on the premise that he was married to deceased Pallavi. That after four months or so, accused started demanding Rs.1,00,000/- and a gold ring by way of dowry. On failure to meet the said demand, he subjected her to physical and mental cruelty., He started beating her, kept her starved in the backdrop of demand. Deceased promptly informed it to her father and family members. On 23-04-2016 also demand was raised. In the afternoon of 24-04-2016, informant father learnt that his daughter suffered burns. While taking treatment at City Care Hospital, she succumbed at around 07:15 p.m. Hence, the report came to be lodged.

3. After investigation, accused was arrested and after completing procedural formalities he was charge-sheeted for above offence and tried before the learned Additional Sessions Judge, Newasa, wherein prosecution examined in all six witnesses and relied on documentary evidence. After hearing both the sides and on appreciating available evidence, learned trial Judge reached to a finding that the prosecution has failed to bring home the charges and by his judgment and order dated 31-01-2018 acquitted the accused from all the charges.

It is the above judgment and order, which is sought to be challenged by the applicant State and hence, to do so, leave is sought by way of instant

application.

4. Heard learned APP for the applicant State.

It is pointed out that marriage of deceased and accused was performed barely a year before the incident. Four months after the marriage, accused put up a demand of Rs.1,00,000/- and a gold ring and on such count subjected deceased wife to mal-treatment. According to learned APP, prosecution has examined relatives of deceased and their evidence was trustworthy and consistent i.e. informant father, mother, brother of the deceased. They have all unequivocally deposed about the ill-treatment meted out to deceased. Unnatural death has taken place while deceased was in the custody of husband. Only on account of unlawful demand, she was subjected to ill-treatment. Accused respondent is solely responsible for the death and therefore, when there was cogent and reliable evidence, learned trial Judge ought to have accepted the case of prosecution and ought to have recorded conviction. However, by adopting erroneous approach in appreciating the evidence on record, accused is acquitted. Therefore, such judgment needs to be corrected by this Court and consequently, it is prayed that leave deserves to be granted to file appeal.

EVIDENCE ON BEHALF OF PROSECUTION

5. We have examined entire record placed before the trial Judge. It is

emerging that **PW1** Vasant Shripad Valhekar, informant is the father; **PW2** Bapu Pandurang Avhad is the relative and also a Panch to spot; **PW3** Zumbarbai Vasant Valhekar is the mother; **PW4** Ashok Shripat Walhekar is the brother of informant; **PW5** Suresh Tolaji Vairagar, Panch to memorandum of disclosure and seizure whereas **PW6** Rafiq Manik Sayyad, is the Investigating Officer.

6. Precise case of prosecution is that after four months of marriage deceased was subjected to cruelty on failure to meet demand of Rs.1,00,000/-. In support of such case, prosecution has heavily relied on testimony of **PW1** Vasant, **PW3** Zumbarbai and **PW4** Ashok. Rest are panchas to various panchanamas. Let us see whether there is evidence suggesting cruelty being inflicted to deceased.

7. **PW1** Vasant - informant in his testimony at Exh.21 speaks about a settlement that expenses which were to be incurred for marriage, were supposed to be given to the accused as dowry amount of Rs.1,00,000/-. However, after four months of marriage, Pallavi was ill-treated by not giving food and beaten on account of non-fulfillment of Rs.1,00,000/-.

8. **PW3** Zumbarbai - mother of deceased in her substantive evidence stated that at the time of marriage the dowry of Rs.1,00,000/- and a gold ring was

decided to be given. After marriage Pallavi went to reside with her husband and in-laws and she was treated well for initial four months. Thereafter deceased was harassed on account of demand of Rs.1,00,000/-.

9. **PW4** Ashok - uncle of deceased also stated about dowry of Rs.1,00,000/- and a gold ring agreed to be given. He again corrected and stated that they supposed to pay Rs.1,00,000/- to accused for his cow trading business. After 3 to 4 months of marriage, above demand was made by accused and deceased was harassed mentally and physically by not giving food.

ANALYSIS AND CONCLUSION

10. On carefully going through their evidence and answers given in cross, here it is apparent that parents and uncle of deceased are not consistent on account of dowry demand. None of them speak about nature of ill-treatment except stating that she was not given food. Even when instances of ill-treatment given to deceased took place are not specified by any of these witnesses even by approximation. Infact PW3 Zumberbai - mother of deceased has not uttered a word about nature of ill-treatment. Therefore, it is evident that there is no reliable evidence on the aspect of offence under Section 498-A of the IPC.

11. Now let us see whether there is evidence that death of deceased was in

the backdrop of dowry demand and accused is responsible for the same. Unfortunately, Autopsy Doctor, who would have been the best witness to opine about mode of death, has not been examined in the trial Court. However, prosecution has come with the case that accused incinerated deceased. Admittedly, there is no direct evidence. Therefore, let us see whether circumstances cogently suggest accused to be the author of burns suffered by deceased. For this, we again visit the evidence of parents and uncle. **PW1** Vasant claims that on the night of 23-04-2016 his son-in-law and deceased and accused claimed to be stayed at his house. On the next day i.e. on 24-04-2016 they all supposed to go to Varkhed to visit a temple. At that time parents of accused also came to his house. This witness states that accused informed that he and deceased would go to Varkhed on Motorcycle. However, instead of proceeding towards Varkhed, accused returned mid way to go to Devgaon informing that he needs to go to Ghodegoan and thereafter, at around 03:15 p.m. a phone call was received regarding Pallavi suffering burns. Similar version is given by **PW3** Zumbarbai - mother as well as **PW4** Ashok - uncle.

12. On carefully going through their above testimonies, it is emerging that **PW3** Zumbarbai - mother speaks about deceased telling her the reason of returning from middle of the way that they should pay the amount since the accused was abusing and beating her. Such reason is not assigned by **PW1**

Vasant - informant regarding accused coming with deceased from middle of the way when they all proceeded towards Laxmi Devi temple.

13. **PW4** Ashok -uncle has narrated a very different story, as he stated that on 23-04-2016, accused came with deceased, he was called by his brother and at that time, deceased told that they should pay the amount or else accused would beat her and would desert her. He stated that parents of accused were also called and they accordingly came. Then on 24-04-2016 i.e. on next day, they all departed to Varkhed. At such time, accused and deceased were asked to accompany them in the Tempo but accused refused and instead they came on Motorcycle but in the middle of the way there was quarrel between accused and deceased on account of money and hence they came back to their house at around 02:00 p.m.

14. Therefore, here regarding the events that took place on 23-04-2016 and 24-04-2016 neither parents nor uncle of deceased are found to be consistent. What exactly happened after accused and deceased returned back to go their house i.e. from mid way while proceeding towards Varkhed, has not come on record. In absence of such material, what preceded the burns suffered by Pallavi is unclear. There is no eye witness and there is clear admission by very Investigating Officer to that extent. However, Investigating Officer also admits that accused himself took deceased to hospital and he was available in the

hospital till her death. Investigating Officer has also admitted in cross that while recording memorandum of accused, he had stated that at the time of incidence he was giving water to the cattle and on returning in the house, he noticed that deceased suffered burns and he tried to extinguish the fire by using quilt. Investigating Officer also admits that prior to incident, there was quarrel between accused and deceased on the ground of suspicion raised by deceased on account of alleged illicit relationship between accused and his sister-in-law and due to such misunderstanding deceased herself ablaze. Therefore, other theory is probabalized by accused.

If at all prosecution intends to rely on the so called memorandum of accused, then it has to be accepted in its entirety and if that is done then cause of burns seems to be immolation. Even the said incident appears to be outcome of suspicion of character of accused and as such there is no nexus about dowry death.

15. Therefore, with such material coming on record, we do not consider it a fit case to grant leave as prayed for. Hence, application stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)