

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.103 OF 2020

The State of Maharashtra
Through Police Inspector,
Pathardi Police Station, Pathardi,
Taluka and District Ahmednagar

.. Applicant

Versus

1. Hitesh @ Kumar s/o Ramesh Bhagat
Age: 28 years, Occu.: Service,
2. Ramesh Suryabhan Bhagat
Age: 57 years, Occu.: Business,
3. Sangita Ramesh Bhagat
Age: 49 years, Occu.: Household,
4. Chetan Ramesh Bhagat
Age: 29 years, Occu.: Contractor,
5. Jyoti @ Nisha Chetan Bhagat
Age: 27 years, Occu.: Household,
6. Satish Suryabhan Bhagat
Age: 40 years, Occu.: Agri.,
7. Ashok Muktaji Bhagat
Age: 49 years, Occu.: Agri.,

Applicant Nos.1 to 7 R/o. Kasar
Pipalgaon, Taluka Pathardi,
District Ahmednagar.
8. Prakash Chimaji Shinde
Age: 61 years, Occu.: Retired,
R/o. F. No.1 Om Sai Shradha
9. Ashilisha Kishor More (Abscond)
Age: Major Occu.: Service.

.. Respondents

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Mrs. V. S. Choudhari, APP for the applicant – State.

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

DATE : 16th October, 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 30.06.2020 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.222 of 2017; thereby acquitting the respondents from the offence punishable under Sections 306, 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned APP Mrs. V. S. Choudhary 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. It is not in dispute that the marriage of deceased Jyoti @ Neha was performed with accused No.1 on 04.12.2015 at Ashirwad Mangal Karyalay, Tisgaon. After marriage, she went to reside at Kasar, Pipalgaon, Taluka Pathardi, District Ahmednagar and then to the place of service of accused No.1. Accused Nos.2 to 8 are the relatives of accused No.1 husband. The incident took place on 07.05.2017 at Adicha Mala, Chitali Shivar, Taluka Pathardi, District Ahmednagar, which is the native place of her father P.W.1

Ashok. She had committed suicide by consuming poison. The C.A. report Exhibit-98 which is admitted by accused shows that the articles like bottle seized from the spot had residues of Organo Phosphorous Insecticide DIMETHOATE (ROGOR). It is also admitted that since about February, 2017 till her death, Jyoti was residing with her parents.

4. It was the prosecution case that the marriage between deceased and accused No.1 was performed in grand manner by giving 21 Tolas of gold ornaments and incurring expenditure worth Rs.21,00,000/-. She was treated properly for about one month and thereafter accused No.1 disclose that he is having love affair with accused No.9. He has married against his wish because of the pressure from the relatives and now he cannot cohabit with her. He suggested that she should take divorce from him, otherwise face the consequences. Accused No.9 was helping accused No.1 for causing ill-treatment. Thereafter, when the supplementary statements were recorded it was also stated that there was illegal demand for getting 1/3rd share in the factory of the father of the deceased. Deceased used to communicate about the harassment to her parents and relatives on telephone or whenever they meet.

5. After the FIR was lodged, investigation was undertaken and after the completion of the investigation, charge-sheet was filed. Prosecution examined in all seven witnesses to bring home the guilt of the accused.

After considering the evidence and hearing both sides, the learned Trial Judge has acquitted all the accused persons. Hence, this application by prosecution to allow it to file appeal.

6. Perusal of the evidence on record would show that in February, 2017, Jyoti went to stay with her parents and the alleged suicide has been committed on 07.05.2017. Till that date, she had not lodged any report/offence against any of the accused persons. No reason is coming forward for the same. Jyoti committed suicide on 07.05.2017, but the FIR has been lodged on 11.05.2017. There is no explanation given by the prosecution for delay in lodging the FIR. The testimony of P.W.1 father, P.W.2 Dipak – brother and P.W.3 Meena is totally silent on the point that in what manner after February, 2017 till 07.05.2017 the alleged harassment or cruelty was given to Jyoti. What they say is that after she was left at their house, they were making inquiry with some of the accused and their relatives as to when they would be taking Jyoti for cohabitation. It is said that they assured, but did not come. P.W.1 Ashok says that he called father-in-law of Jyoti and told him to take her, he said yes, but did not come. He says that his daughter was under stress. Except oral statement, there is no evidence to support his said statement. How he used to call, on which number he used to contact, nothing is given and it is not supported by C.D.R. Another fact is that why he had not taken Jyoti and left her to her

matrimonial home, is a question. He also says that accused No.1 used to call Jyoti under the influence of liquor, threaten her and ask her to stay with her parents only. Again it is not supported by documentary evidence in the form of C.D.R. On this count also she has not lodged any report against the accused No.1. It is alleged that there was illicit relations or love affair between accused No.1 and accused No.9. Why a meeting was not arranged with the help of mediator who had fixed the marriage and there was an attempt to resolve the dispute, is a question.

7. The learned Trial Judge has correctly evaluated the evidence of P.W.1 and P.W.3. Further, as regards evidence regarding the improvements made by them from time to time in respect of alleged illegal demand of dowry and supply of the mobile numbers etc. by deceased to him appears to be a concocted version. It was tried to be suggested that deceased could not adopt the urban lifestyle at matrimonial home, as she was coming from rural background. The dispute between the husband and wife could have been resolved, but it appears that it has not been handled properly. Evidence of P.W.3 Meena shows that she had suggested deceased that she should get divorce from accused No.1 and her second marriage would be possible. Then why this course was not adopted is a question. As regards the evidence of other witnesses is concerned i.e. P.W.4 Nitin, he is the friend of P.W.1 Ashok. His testimony is hearsay. The electronic evidence has also

not been properly and procedurally adduced. Therefore, there was no evidence to attract Section 498-A of the Indian Penal Code and, therefore, the presumption under Section 113-A of the Indian Evidence Act could not have been invoked. There was no positive evidence for abetment to bring the offence under Section 306 of Indian Penal Code.

8. In the nutshell, the learned Trial Court has properly appreciated the evidence, which does not require any interference. The application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

scm

[SMT. VIBHA KANKANWADI]
JUDGE