

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

APPLICATION FOR LEAVE TO APPEAL BY STATE : 139 OF 2019

The State of Maharashtra,
Through Police Station, Lohara,
Tq. Lohara, Dist. Osmanabad

**... Applicant
(Ori. Complainant)**

VERSUS

1. Santosh Umrao Fattepure,
Age : 30 years ; Occu. Agri.,
R/o Bhatangali, Tq. Lohara,
Dist. Osmanabad.
2. Umrao Narayan Fattepure,
Age : 70 years ; Occu. Agri.,
R/o As above.
3. Suresh Narayan Fattepure,
Age 52 years, Occu. Agri.,
R/o As above.
4. Kesharbai Umrao Fattepure,
Age 65 years, Occu. household,
R/o As above.
5. Satish Umrao Fattepure,
Age 33 years, Occu. Agri.,
R/o As above.

**...Non-Applicant/
Respondents
(Ori. Accused)**

...
APP for the Applicant – State :- Mrs. V. S. Choudhary

...
**CORAM : SMT. VIBHA V. KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

DATE : 19TH APRIL, 2023.

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ORDER : (Per : Y. G. Khobragade, J.)

01. The present application has been filed seeking leave to appeal under Section 378 (1)(b) of the Code of the Criminal Procedure by the prosecution to challenge the judgment and order dated 20.03.2019 passed by the learned Additional Judge, Omerga in Sessions Case No. 05/2013, thereby acquitting the non-applicants – accused persons from the offences punishable under Sections 498-A, 304-B, 306 read with Section 34 of the Indian Penal Code.

02. Heard the learned APP Mrs. V. S. Choudhary at length. With her able assistance, we have gone through the record which was before the learned trial Court.

03. In nut shell, prosecution story is emerging from the record is that the informant P.W.1 Shivratan Sugriv Veer lodged the report Exhibit 34 on 10.06.2012, alleging that marriage of his sister Daivshala solemnized with accused No.1 Santosh Umrao Fattepure on 26.04.2012 as per customs and rites prevailing in their society. At the time of marriage dowry of Rs. 2,00,000/-, Gold ornaments of 5 tola and domestic utensils given to the accused. After marriage his sister Daivshala cohabited with her husband /accused No.1 at village Bhatangali, Taluka Lohara, Dist. Osmanabad. However, subsequently

the accused persons started demanding Rs.1,00,000/- to his sister, Daivshala for satisfaction of marriage expenses and vehicle loan. The informant further alleged that his sister Daivshala gave him phone call and informed about illtreatment to her by the accused. Therefore, he with his cousin brother Ashok Veer (P.W.3) went to the house of accused at about 12.30 a.m. on 02.06.2012 and gave Rs. 1,00,000/-. He gave understanding to the accused not to illtreat his sister Daivshala. However, the accused demanded Rs. 2,00,000/- to purchase of pick up van at that time, and told curtly that if he fails to give that amount, then he (informant) should take his sister with him. They had threatened that second marriage of accused No.1 would then be performed. He told accused that he has brought the said amount of Rs. 1,00,000/- by raising loan. He assured to fulfill their demand. Thereafter, he returned to village and disclosed said fact to his parents and relatives. He received a phone call from his sister Daivshala around 07.30 to 08.00 p.m. on 09.06.2012, reminding him to pay assured amount of Rs. 2,00,000/- to the accused. Thereafter, he received a phone call from his father at about 12.45 hours on 10.06.2012, informing him that Daivshala has committed suicide by hanging. Thereafter, his parents and relatives went to the house of accused around 05.00 a.m. According to the informant, his sister Daivshala had committed suicide due to mental and physical

harassment by the accused persons for non-fulfillment of demand of dowry. On the basis of said report, a Crime No. 40/2012 registered against the non-applicants / accused for the offence punishable under Section 498-A, 304-B, 306 read with Section 34 of the Indian Penal Code.

04. P.W.4 Police Inspector Ramchandra Lingappa Kumbhar conducted spot panchanama and inquest panchanama. The dead body was referred for autopsy. During the course of investigation, investigating Officer recorded statements of witnesses and collected Post Mortem Report. On completion of investigation, charge-sheet came to be filed against the accused persons.

05. Learned trial Court framed charge at Exhibit 16 against the accused for the said offences. The plea of accused came to be recorded. All the accused pleaded not guilty and claimed for trial.

06. In order to bring home guilt of the accused, the prosecution examined informant (P.W.1) Shivratan Sugriv Vir at Exhibit 33, P.W. 2 Sugriv Pandurang Vir, the father of deceased at Exhibit 44, P.W. 3 Ashok Saudagar Vir, cousin brother of deceased at Exhibit 50, and P.W.4 Ramchandra Lingappa Kumbhar – Investigation Officer at Exhibit 55. The defence admitted spot panchanama Exhibit 38,

inquest panchanama Exhibit 39, P.M. Note Exhibit 40, Final cause of death Exhibit 42.

07. Learned trial Court passed judgment and order on 20.03.2019 and acquitted the accused for the offences punishable under Section 498-A, 304-B, 306 read with Section 34 of the Indian Penal Code.

08. The learned APP vehemently canvassed that the prosecution had proved that the accused persons made demand of Rs. 1,00,000/- from Daivshala and that demand was illegal. Daivshala was subjected to mental and physical harassment on account of non-fulfillment of said illegal demand. Therefore, P.W. 1 and P.W. 3 had visited the house of accused and gave Rs.1,00,000/-. They thought that after the said amount is paid, Daivshala would be treated property. But subsequently the accused again demanded Rs. 2,00,000/- for purchase of pick up van and subjected the deceased to cruelty.

09. It is further vehemently canvassed that the prosecution proved cause of death certificate Exhibit 42. As per medical expert opinion, death of deceased was caused 'due to asphyxia due to hanging', which was not disputed by the accused. Further, the marriage of

deceased was solemnized with accused No.1 on 26.04.2012 and within span of two months on 10.06.2012, Daivshala committed suicide by hanging. Therefore, there is presumption under Section 113 (b) of the Indian Evidence Act that the deceased committed suicide due to subjecting her to cruelty by accused persons for non-fulfillment of demand of dowry. Therefore, the learned trial Court ought to have considered the evidence in positive manner, however, the learned trial Court wrongly appreciated the evidence and acquitted the non-applicants-accused. Therefore, the prosecution has set out substantial grounds for re-assessment of evidence, and seeking leave to file the appeal against the order of acquittal.

10. It is undisputed fact that the marriage of deceased Daivshala, the sister of informant P.W. 1 solemnized marriage with the accused No.1 Santosh as per the customs and rights on 26.04.2012. After the marriage, Daivshala started cohabitation with her husband accused No.1 at village Bhatangali, Tq. Lohara, Dist. Osmanabad. Accused Nos. 2 and 4 are father-in-law and mother-in-law of deceased. Accused No.3 is cousin father-in-law and accused No. 5 is brother-in-law of the deceased Daivshala. Daivshala committed suicide at her matrimonial house on 10.06.2012 by hanging. The inquest panchanama Exhibit 39, Post Mortem Report Exhibit 42 and spot panchanama Exhibit 38 have been admitted by the non-applicants-

accused. As per P.M. Report, the death of deceased Daivshala 'due to asphyxia due to hanging'.

11. As per the testimony of P.W. 1 Shivratan Sugriv Vir, the accused started demanding of Rs. 1,00,000/- to his sister Daivshala for satisfaction of loan and expenses incurred for marriage. The accused started illtreating, starving, harassing to the deceased. P.W. 1 deposed that he visited the house of accused with his cousin brother Ashok Vir (P.W.3) and paid Rs. 1,00,000/- to accused. They had requested the accused persons not to illtreat Daivshala. On 02.06.2012 he visited the house of accused at about 12.30 p.m., but at that time the accused demanded Rs. 2,00,000/- for purchase of pick up van, failing which he asked to take his sister Daivshala with him and they would perform second marriage of accused No.1. However, at that time P.W.1 disclosed the accused about already making payment of Rs. 1,00,000/- by securing loan and he will try to satisfy additional amount of Rs.2,00,000/-. P.W. 1 further deposed that he disclosed said fact to his parents and relatives. On 09.06.2012 he received a phone call from his sister Daivshala wherein she disclosed him that he should obey word about payment of Rs. 2,00,000/- to the appellants-accused. On next day, he received phone call of his father disclosing committing suicide by Daivshala by hanging.

12. In cross-examination P.W. 1 admitted that their financial condition is not sound, but financial condition of the accused is good. Accused No.1 Santosh is having tempo for collecting milk and supplying to the dairy. He admitted that his sister was not having mobile phone. P.W. 4 Investigation Officer has not collected CDR of mobile of the informant P.W.1 to show that a phone call was received by P.W. 1 from Daivshala. Therefore, it creates doubt whether the deceased Daivshala had given phone call to the P.W.1 on 02.06.2012 and had asked to satisfy demand of Rs. 2,00,000/-.

13. P.W. 2 Sugriv Pandurang Vir, the father of deceased deposed about payment of Rs. 2,00,000/- as dowry, 5 tola Gold and incurring marriage expenses of his daughter Daivshala. After 15 days of marriage, his daughter Daivshala had given phone call to his son Shivratan (P.W.1), who was at Mumbai. As per the testimony of P.W. 2, it appears that after the P.W. 1 had narrated him the story as to what had happened at the matrimonial home of Daivshala. He had received call from the accused informing about committing suicide by his daughter Daivshala, by hanging at about 2.00 p.m. on 10.06.2012. However, in cross-examination P.W. 2 admitted about not disclosing said fact to the police that after returning his son P.W. 1

from Mumbai he had disclosed him about receiving phone call from Daivshala about demand of Rs. 1,00,000/- to meet marriage expenses. There are material contradictions about payment of dowry of Rs.2,00,000/-, 5 tola gold, and incurring marriage expenses.

14. The prosecution has not brought substantial evidence to show that the accused had harassed the deceased Daivshala on account of demand of dowry and abetting the victim to commit suicide. Further, the evidence of prosecution witnesses does not reveal that soon after marriage, the deceased Daivshala was subjected to cruelty and abetted her to commit suicide.

15. As per the testimony of P.W. 2 Sugriv Pandurang Vir, the deceased Daivshala had come to her parental house after 8 days of her marriage and had disclosed him that everything is good. The testimony of P.W. 1 does not support this fact.

16. In order to constitute presumption under Section 113 of the Indian Evidence Act, the prosecution should establish that the woman concerned committed suicide within a period of 7 years from the date of her marriage and that her husband and in-laws had subjected her to cruelty. No doubt, in case in hand, the marriage of

victim was solemnized on 26.04.2012 with accused No.1 and on 10.06.2012 deceased committed suicide. However, evidence of the prosecution witnesses lacking about subjecting her to cruelty.

17. A conjoint reading of Section 113(b) of the Indian Evidence Act and Section 304 of the Indian Penal Code would show that, there must be material to show that soon before death of deceased Daivshala was subjected to cruelty or harassment. However, evidence of the prosecution witnesses does not appear trustworthy for raising demand either of Rs. 1,00,000/- or Rs. 2,00,000/- at the hands of accused persons soon before incident. The prosecution failed to prove call detail Report (C.D.R.) of mobile phones to prove that the deceased Daivshala had phoned the P.W. 1 and disclosed demand of Rs. 1,00,000/- at the hands of accused. Further, the evidence of the prosecution witnesses lacking about making payment of Rs. 1,00,000/- to the accused persons. The accused No.1 was already having tempo for collecting milk and supplying to the dairy. The evidence of the prosecution witnesses is also lacking about settlement of dowry amount prior to the marriage of deceased and part of dowry was paid and remaining part of dowry was unpaid, due to which deceased was tortured and she committed suicide. Learned trial Court has passed the impugned judgment and order on

20.03.2019, holding that the prosecution failed to prove that deceased Daivshala committed suicide due to illtreatment or harassment for non-fulfillment of illegal demand of dowry. The judgment is based on scrutiny of evidence as well as various case laws cited therein. After considering material available on record it does not appear that impugned judgment suffers from any illegality or perversity. Taking into consideration, the evidence adduced by the prosecution, no case is made out to grant leave.

18. Accordingly, the application stands rejected.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA V. KANKANWADI, J.)

shp/-