

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.168 OF 2018

The State of Maharashtra,
Through Officer Incharge of
Police Station, Gangakhed,
Tq. Gangakhed, Dist. Parbhani

.. Applicant

Versus

1. Nirmalabai w/o Nagnath Gurav
2. Manik s/o Nagnath Gurav
3. Navnath s/o Nagnath Gurav
4. Meera w/o Revan Pawar

.. Respondents

...

Mr. S. D. Ghayal, APP for the applicant – State.

...

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

DATE : 11th July, 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 10.04.2018 passed by the learned Additional Sessions Judge, Gangakhed, Dist. Parbhani in Sessions Trial No.07 of 2017; thereby acquitting the respondent from the offence punishable under Sections 498-A, 302 read with Section 34 of Indian Penal Code.

2. Heard learned APP Mr. S. D. Ghayal 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. All respondents are the husband and in-laws of deceased Seema. Seema's marriage was solemnized with accused No.2 in the year 2011. She had two children. Seema received burn injuries around 9.00 p.m. on 14.10.2016 and was admitted to Government Hospital, Gangakhed and then shifted to Government Hospital, Ambejogai. She expired on 23.10.2016. On the basis of her dying declaration, the offence came to be registered. In her dying declaration, she has stated that when she was in her room, in the matrimonial home, her mother-in-law i.e. accused No.1 came inside, poured kerosene on her person and lighted match stick and set her to fire. While going out of the room she had locked the door from outside. After hearing hue and cry, accused No.2 rushed and accused No.4 Meera – cousin sister-in-law poured water on her person and extinguished the fire. They had taken her to Government Hospital, Gangakhed. According to the said dying declaration all the four accused used to assault her and ill treat her.

4. At the outset, we would say that even if we take the dying declaration as it is, it is not disclosing offence under Section 498-A of the Indian Penal Code against any of the accused person. There is absolutely

no disclosure that there was demand of money and as it was not fulfilled, she was subjected to cruelty. The acts of cruelty have not been stated though word “मारहाण” has been used. The reason for such cruelty or assault has not been stated. The incident has taken place in the year 2016 and by that time, she had two children but the age has not been stated. Further, on the day of incident what was the occasion for accused No.1 to behave in such a way has also not been stated. Act of pouring kerosene and setting her to fire is attributed only to accused No.1. Rather, in the said dying declaration, it is stated that the husband and other accused were outside and after hearing the noise, they came and extinguished the fire. If they had the intention to kill her they would not have extinguished the fire. No doubt, the autopsy report and testimony of P.W.5 Dr. Vishwajeet says that she had sustained 55% superficial to deep injuries, but *per se* it was not sufficient to come to the conclusion that the burn injuries were with intention to kill and the death is homicidal in nature. It appears that in all two dying declarations were recorded. Exhibit-54 dying declaration recorded by Naib Tahsildar-cum-Executive Magistrate, Ambejogai between 1.00 p.m. to 1.45 p.m. was earlier in time and dying declaration Exhibit-35 recorded between 4.25 p.m. to 05.05 p.m. was the second, but the FIR has been lodged on the basis of second dying declaration, which was recorded by Police Chowki Amaldar of SRTR Hospital, Ambejogai. In order to prove

Exhibit-54, the medical officer as well as the Naib Tahsildar, who recorded the same, have also been examined. Said Exhibit-54 is in detail and it says that cousin sister-in-law had come to house two days prior to 14.10.2016 and accused No.1 was saying to the deceased that accused No.2 is not doing anything to earn. Thereafter, at about 9.00 p.m. on 14.10.2016 accused No.1 poured kerosene on the person of deceased and by going outside, accused No.1 started shouting that the daughter-in-law has set herself to fire. When Seema started shouting, the husband and cousin sister-in-law had come, extinguished the fire and took her to Government Hospital, Gangakhed and then to Government Hospital, Ambejogai. She has also then stated that the mother-in-law, cousin sister-in-law and brother-in-law were insisting her that she should bring amount of Rs.20,000/- from her parents. Thus, it is to be noted that there also she is keeping her husband away from those allegations under Section 498-A as well as Section 302 of Indian Penal Code. Another fact that has not been explained at all by the prosecution is that when the incident had taken place on 14.10.2016 and she was admitted in the hospital on the same day, why the dying declarations were recorded on 18.10.2016. There is a Police Chowki within the premises of the Government Hospital, Ambejogai. It has not been brought on record by the prosecution as to when the Medico Legal Certificate was given by the hospital authorities to the Police Chowki. When there is intentional suppression of evidence, then the benefit of the

same should go to the accused. Belated recording of dying declaration is one of the reason that has been given by the learned Trial Judge while acquitting the accused persons. We do not find any perversity in the order passed by the learned Trial Judge. The application stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm