

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

911 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.175 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

KISHOR SHRIMANT MORE

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Mr. A.M. Phule, APP for applicant

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

DATE : 13th JUNE, 2023

ORDER :

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 24.05.2018 passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No.46/2016, thereby acquitting respondent – original accused from the offence punishable under Section 302 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.M. Phule for the prosecution and with his help we have gone through the record which was available before the

learned Trial Judge.

3 At the outset, we would like to say that testimony of PW 4 Dr. Ramesh Wasnik, who has carried out the autopsy, would show that he had noted about 16 injuries on the person of deceased Neeta. He has stated that all the injuries are possible due to hard and blunt object and in specific he has stated that these injuries are not possible due to railway accident. It is to be noted that the dead body of Neeta was found near the railway track. Injury No.9 stated by him is irregular contused abrasion with hard base of size 1.5 cm. X 1.5 cm. over dorsum of right hand, reddish and according to him, it can be caused by electrical equipment. However, in the cross-examination he has admitted that he has not stated in the Postmortem Report that said injury is possible by electric equipment. He volunteered that it was suggestive of that type of injury. The medical expert's opinion is an opinion and, therefore, unless the facts are placed before him, it cannot take concrete structure. Though he has stated that all the injuries together were sufficient to cause death, important point to be noted is that he has stated that the age of the injuries was within 24 hours. The prosecution has not come with the case that Neeta was murdered at a different place and then her dead body was thrown on the railway track. The testimony of Investigating Officer is totally silent on the point, as to how the dead body was appearing on the

railway tracks and what kind of investigation he had made. Under such circumstance, when the dead body found near the railway track and except one injury the other injuries can be said to be possible due to railway accident, we hold that the evidence regarding homicidal death of Neeta appears to be shaky, but still it is to be noted that learned Trial Judge has held that it is homicidal death, which is in support of the appellant.

4 Now, it is required to be noted that whether the prosecution had adduced the evidence to connect the accused with the said homicidal death of Neeta. Accused is husband of deceased. PW 1 Madhukar Mhaske is the maternal uncle of Neeta. He has stated that Neeta's marriage with accused was solemnized about 3 to 3½ years prior to the incident. After marriage Neeta made complaint about ill-treatment by the accused and the reason for such behaviour of the accused was stated to be doubt over her chastity. He has stated that Neeta had tried to convince the accused, but he had given threat to kill her and when this fact was informed to the witness, witness told her that as her mother is not alive and the father is drunkard, she should continue to live with her husband. That means, at that time no efforts were taken by PW 1 Madhukar to resolve the dispute. He has not stated that Neeta had informed him the name of the boy, in whose name the accused used to make the said allegations about having relationship with Neeta. But

then prosecution has examined PW 5 Sachin. He is on the point of 'last seen together' also but the tenor of his examination-in-chief would show that at the time when he along with his friends went near the rickshaw stand of Shivaji Nagar, at that time the accused and deceased had come on motorcycle and at that time in the presence of the friends accused asked him as to whether witness Sachin has brought to his friends to beat him. Sachin answered in the negative and asked to friends to leave that spot. He has not given as to where exactly his friends went and then when the further dialogues between the accused and himself started. Accused asked him, as to whether Neeta used to make phone calls to him. He answered in the negative. Neeta also answered in the negative and asked accused, as to whether it is all over. Then the witness says that accused had slapped Neeta and when he objected to the accused; accused asked him to leave the spot. According to him, this had happened prior to 8.30 p.m. and around 8.30 p.m. when he came to house, had dinner, he received phone call of the accused asking as to whether he has seen Neeta. He gave reply in the negative. Important point to be noted is that what was the distance from said place i.e. rickshaw stand of Shivaji Nagar till the railway track, where the dead body was found, has not come on record. It was PW 5 Sachin who had left the spot first and, therefore, he cannot be the witness to say that accused and deceased went together from the said spot. Therefore, he cannot be said to

be the person on the point of “last seen together”. This witness further said that around 9.30 p.m. his sister Yashoda told him that accused is having doubt about his illicit relations with Neeta. Thus, it can be considered that before his statement was recorded under Section 161 of the Code of Criminal Procedure, this witness was having idea that a doubt has been raised about his relationship with the deceased. Therefore, we cannot say that he is an independent witness. The prosecution has not examined the friends of PW 5 Sachin, who were along with him near the rickshaw stand.

5 PW 1 Madhukar - the informant was admittedly not around the deceased even prior to the incident and as aforesaid, he had not tried to resolve the dispute between the deceased and the accused. PW 6 Geeta is the younger sister of Neeta. She has been examined to support the case of the prosecution that accused used to raise suspicion over the character of deceased and had given threat to kill her. It can be seen from her examination-in-chief also that she has not actively participated in settling the dispute.

6 Bhausahab Bankar is the witness who is the panch to the discovery panchnama of pipe, sari and stone. He has turned hostile and, therefore, the alleged weapon cannot be said to be the murder weapon. Even

as per the First Information Report the informant says that he had received the information that Neeta had suffered railway accident. He, therefore, went to the house of Neeta. He met Neeta's mother-in-law and she told him that they should search who has killed Neeta. That means, the informant had no independent opinion. Taking into consideration the evidence on record the learned Trial Judge has rightly acquitted the accused. No ground is made out to admit the appeal by allowing the application. Application stands dismissed.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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