

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.160 OF 2019

The State of Maharashtra
Through : P.S.I.
Tophkhana Police Station,
Ahmednagar, Dist. Ahmednagar

.. Applicant

Versus

Pappu Keshav Yadav
Age: 25 years, Occu.: Nil,
R/o. Khandagale Building,
Kalyan Road, Ahmednagar,
Org. Resident of Bharkhara,
Thana Sukhpura, Tq. Basadi,
Dist. Baliya (Uttar Pradesh).

.. Respondent

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

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 27th June, 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 02.05.2019 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.90 of 2015; thereby acquitting the respondent from the offence punishable under Section 302 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. The prosecution story in short is that deceased Snehal was married to accused Pappu Yadav on 06.05.2013 and it was their love marriage. The accused was addicted to liquor and was suspecting the character of wife. He used to beat her under the influence of liquor. It is said that Snehal was taking training of Nursing course at Ahmednagar. Accused came home around 9.00 p.m. on 06.10.2014 in drunken condition. He abused and assaulted wife. As she was fed up with the cruelty, she poured kerosene on her person and threatened the husband that she would immolate herself. Thereupon, the accused replied that as to why she is threatening to ablaze herself and will die, he will do it himself and then he lighted up the matchstick and set her to fire. When she was admitted to hospital, her dying declaration came to be recorded on 07.10.2014 by ASI Barhate attached to Kotwali Police Station, Ahmednagar. On the basis of her dying declaration, offence under Section 307 of Indian Penal Code came to be registered. She was then shifted to another hospital i.e. Sahyadri Multispeciality Hospital, Ahmednagar and her second dying declaration came to be recorded on 08.10.2014 by Executive Magistrate. It is the further prosecution story that she was then shifted to Sassoon

Hospital, Pune. She got discharged and was brought home on 17.10.2014, but she died on 18.10.2014. Thereafter, offence under Section 302 of Indian Penal Code came to be added. In the meantime, during the investigation panchanama of the spot was carried out. Certain articles were seized. Accused came to be arrested. After the completion of the investigation, charge-sheet was filed.

4. The prosecution has examined in all seven witnesses to bring home the guilt of the accused. After hearing both the sides and perusing the evidence on record, the learned Trial Judge gave finding that death of Snehal on 18.10.2014 is not homicidal and the prosecution has failed to prove that the accused has committed murder of his wife. Hence, the accused came to be acquitted. The present application has been filed to challenge the said acquittal.

5. As aforesaid the prosecution has examined seven witnesses to bring home the guilt of the accused. What has been proved through P.W.1 Dr. Ashok, medical officer from Civil Hospital, Ahmednagar that she had sustained 87% burns. He has stated that she was admitted around 11.20 p.m. on 06.10.2014 by her relatives and the history of burn was given. Important point to be noted is that it is not stated by him that the history was not that the husband had set her to fire. P.W.2 Sau. Vidya is the mother of the deceased. It appears that she resides at a distance from the house of deceased. She has stated that some

boys from nearby house of the accused went to her house and told that Snehal had sustained burns and lying in the house. Therefore, she went to the house of her daughter. She says that the daughter had received totally burn injuries, still she had asked Snehal as to how the things had happened. She narrated that her husband came after consuming liquor and as usual beaten her by expressing suspicion over her character. Therefore, she herself poured kerosene on her person and threatened that she would die, thereupon the accused set her to fire. Important point to be noted is that this fact which has been told by PW.2 Sau. Vidya would clarify that some other person had seen Snehal earlier to PW.2 and would have tried to extinguish the fire. If Snehal was in a position to speak, then she would have told something to that person, but none of the neighbours or even the boy, who had given the message to PW.2 Sau. Vidya, has not been examined by the prosecution for the reasons best known to it. It can be seen that the relationship between deceased Snehal and the husband were not cordial or in a way they used to dispute quarrel and therefore, she had the reason to implicate the accused. This shadow of doubt regarding possibility of implication ought to have been removed by the prosecution, then only we can rely on the written dying declarations as well as oral dying declaration alleged to have been given by the deceased to PW.2. In the cross-examination, she has stated that the accused was not present on the spot when she went there. Her daughter was using LPG gas for cooking and surprisingly she says that she will not be able to tell whether there was no

kerosene in her house. Then she has corrected herself and said that there was a stove in her house. She has not tried to lodge any report with the police before the dying declaration FIR was recorded. From the spot of incident also, as per the spot panchanama, no bottle as such of the kerosene has been recovered, but a plastic mug has been recovered, which was having smell of kerosene. There is no investigation as to from where that kerosene was brought. Any way it was poured by the deceased herself as per the prosecution story.

6. Prosecution is mainly relying on two dying declarations, which have been tried to be proved through P.W.3 Barhate, P.W.1- Dr. Ashok Khatke, who had given the endorsement. As aforesaid, P.W.1 Dr. Ashok Khatke has not stated about the history given. When already the deceased was accompanied by P.W.2 Sau. Vidya, the learned Trial Court has rightly held that possibility of dying declaration being tutored by the relatives cannot be ruled out. Same is the case that the second dying declaration was recorded by P.W.4 Bhaskar Bhos, learned Special Judicial Magistrate and endorsed by Dr. Narendra Pandit P.W.5. No doubt, if we see the contents of both the dying declarations, then they are consistent, but the other documents on record show that there is endorsement that Snehal was in semiconscious state few hours earlier and, therefore, a doubt has been raised by the learned Trial Judge. P.W.2 Sau. Vidya is not explaining as to under which circumstance Snehal was discharged

on 17.10.2014 when in fact she was taken to Sassoon Hospital, Pune on 16.10.2014. If her condition was critical, she should not have been got discharged and she died on 18.10.2014. The said information was also not given to the police and it appears that the last rites have been performed. There is no inquest panchanama, nor postmortem has been conducted on the dead body and, therefore, the learned Trial Judge was justified in arriving at the conclusion that the evidence does not suggest that the death was homicidal in nature. No doubt, the act is sufficient to indicate that the accused would know the consequences of his act and then the said consequence happens, for example setting a person to fire should be with knowledge that the person may die and such act would fall under the definition of Section 299 punishable under Section 302 of Indian Penal Code, but here except two dying declarations, which are under the shadow of doubt, there is no evidence.

7. Merely because two views are possible, the Appellate Court is not supposed to take the second view. Unless perversity is shown, the Appellate Court cannot interfere and, therefore, we hold that no case is made out to grant leave to file appeal. Hence, the application stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm