

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

6 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.188 OF 2018

The State of Maharashtra
Through Mukundwadi Police Station,
Aurangabad.

... Applicant

... Versus ...

Kashinath Gopinath Tidke,
Age 31 yrs., Occ. Labour,
R/o Bhakarwadi, Tq. Badnapur,
Dist. Jalna.
At present R/o Gat No.52, Swarajnagar,
Mukundwadi Area, Aurangabad.

... Respondent

...

Mrs. V.S. Choudhari, APP for applicant

...

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

DATE : 10th JULY, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

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 23.05.2018 passed by

learned Additional Sessions Judge, Aurangabad in Sessions Case No.264/2015, thereby acquitting respondent – original accused from the offence punishable under Section 302 of the Indian Penal Code, 1860.

2 Heard learned APP Mrs. V.S. Choudhari for the applicant and with her able assistance we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – the accused is the husband of deceased Mangal. First Information Report is lodged by younger brother of Mangal informant Anil Damu Pawar on 01.09.2015, wherein it is stated that accused got married to Mangal about five years prior to the incident and she has son aged 02, who resides with the informant. According to him, accused was demanding money to Mangal for purchasing motorcycle and on that count he used to harass her, therefore, his mother had given amount of Rs.25,000/- for motorcycle and some amount for purchasing domestic gas connection by raising it on credit. A month prior to First Information Report Mangal and Kashinath had shifted to Mukundwadi area at Aurangabad. They had taken room on rent. Mangal used to go in Shendra M.I.D.C. for work, whereas Kashinath was working as Mason. Mangal and Kashinath had gone to the house of informant on 29.08.2015 for celebrating

Rakshabandhan. They left for Aurangabad around 2.00 p.m. on 30.08.2015. On 31.08.2015, the maternal aunt of accused gave information to one Bappa Ghorpade from the village of informant that Mangal is ill and her parents should be sent. Thereupon the informant went on motorcycle with his cousin brother Umesh Ganesh Mule to the house of Mangal. They reached around 9.00 p.m. and found that many persons had gathered. They saw Mangal in a pool of blood and blood was spread all over the room. There was iron rod lying besides her. She had sustained severe injuries to her head and forehead. They could not find Kashinath in the house. He, therefore, lodged report around 02.05 a.m. on 01.09.2015.

4 After the investigation was over, charge sheet was filed and accused came to be arrested. After the committal of the case, trial was conducted. Prosecution has examined in all 11 witnesses to bring home the guilt of the accused and after hearing both sides and perusing the evidence on record, the learned Trial Judge has acquitted the accused. Hence, the present application.

5 In the nutshell, the learned APP would submit that the trial Judge has not appreciated the evidence properly. The incident has taken place at night time. Further, it has come on record through the testimony of neighbouring persons that they had heard the quarrel between the couple

prior to the alleged incident and, therefore, the trial Judge ought to have considered that the circumstance in which the wife was found murdered has not been explained by the accused. Section 106 of the Indian Evidence Act has not been pressed into service and, therefore, re-appreciation is required. A very technical approach appears to have been taken.

6 At the outset, we would like to say that the trial Court has come to the conclusion that the death of Mangal is homicidal in nature and the prosecution has proved it beyond reasonable doubt. Since the prosecution itself has challenged, it cannot be said that there is challenge to this finding. When it is proved that death of Mangal is homicidal in nature, it was then required to be proved by the prosecution that accused is the author of the crime. Testimony of PW 1 Anil – informant would show that the accused was demanding some amount and the said demand was not fulfilled, but, then there is no charge under Section 498-A of the Indian Penal Code. It is required to be seen as to whether that could have been the motive for committing the crime. PW 3 is the panch to the spot panchnama and PW 5 Rushikesh is the panch to the seizure of mobile phone of the accused. They have supported the prosecution story. PW 6 Archana Take and PW 7 Bhagwan Borde are the neighbouring persons, who have stated that they have heard the noise of quarrel. It has come on record that Kashinath and

Mangal had moved to the said area only a month prior to the incident. Under such circumstance, the acquaintance of these two persons with the accused and wife may not be of that degree to explain everything regarding the relationship between the accused and the wife. But their testimony would show that they had heard the voice of quarrel and PW 6 Archana appears to be the person, who went to the spot after police had reached. PW 8 is the photographer, who had taken the photographs of the dead body and the room. PW 9 is the panch to the seizure panchnama of the clothes of the deceased and also the memorandum panchnama of the seizure of clothes of the accused. PW 10 is the Investigating Officer. Therefore, taking into consideration the account of the testimony of these witnesses, case is made out to grant leave to see whether those witnesses have withstood the cross-examination also or not and whether the trial Court was justified in holding that the offence is not proved beyond reasonable doubt. It appears that the evidence is not scanned from the point of view of Section 106 of the Indian Evidence Act. On that count the leave deserves to be granted. Hence, following order.

ORDER

1 Application stands allowed and disposed of.

2 Leave is granted to the prosecution to file Appeal.

3 Registry to register the Appeal.

4 Appeal stands **Admitted**.

5 In Appeal, issue notice to the respondent, to be made returnable
on 21.08.2023.

6 Call Record and Proceedings.

7 Action under Section 390 of the Code of Criminal Procedure be
taken against the respondent to the satisfaction of the trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

agd