

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.190 OF 2018**

The State of Maharashtra,
Through Daithana Police Station,
Dist-Parbhani.

**...APPLICANT
(Orig. Complainant)**

VERSUS

Sk. Mohasin S/o Sk. Noor,
Age-25 years, Occu:Labour,
R/o-Brahmapuri,
Tq. & Dist-Parbhani.

**...RESPONDENT
(Orig. Accused)**

...
Mr. R.D. Sanap A.P.P for Applicant.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 20th APRIL, 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 to file appeal challenging the Judgment and order dated 9th May 2018 passed by the learned Sessions Judge,

Parbhani in Sessions Case No.12 of 2014, thereby acquitting the respondent/accused from the offence punishable under Sections 302, 307, 498-A and 504 of the Indian Penal Code.

2. Heard learned APP Mr. Sanap appearing for the appellant – State and with his able assistance we have gone through the evidence on record which was before the learned trial Judge.

3. Prosecution story is that deceased Munnibee and accused got married one year prior to her statement recorded by PSI Achyut Mupade on 22nd July 2013. Munnibee @ Firdosbee was admitted in civil hospital on 21st July 2013 in the burn ward after sustaining burn injuries. In her statement she had stated that she was treated properly for about eight months and thereafter accused started demanding amount of Rs.15,000/- from her parents as he wanted the said amount for the marriage of his sister Raisa. Munnibee told that financial condition of her father is weak, still her father managed amount of Rs.1000/- and gave it to the accused. Accused told that his needs will not be mitigated with the amount of Rs.1000/- and he wants entire amount of Rs.15000/- and if she cannot manage to bring the said amount, she should leave the house. The accused thereafter

returned the said amount of Rs.1000/- to the father of deceased Munnibee. He used to insult her by saying that her parental house is beggars house and could not give him Rs.15000/-. She was harassed mentally and physically and therefore, she told the accused that she would commit suicide if he harasses her any more. Then accused told that why she would commit suicide, rather he would commit her murder and therefore, at about 8.00 p.m. on 20th July 2013 accused poured kerosene from the chimney (country-made lamp) and set her on fire. When she raised voice, her in-laws along with sister-in-law and husband extinguished the fire.

4. Upon the said statement, it was treated as First Information Report (for short "FIR") and offence under Section 498-A, 504, 307 of the Indian Penal Code came to be registered vide Crime No.98 of 2013.

5. It is also the prosecution story that statement of Munnibee was also recorded by the special judicial magistrate.

6. During the course of investigation, panchnama of the spot was executed and statements of witnesses under Section 161 of

the Code of Criminal Procedure were recorded. Accused came to be arrested. After completion of the investigation, charge-sheet was filed. After filing of the charge-sheet and during pendency of the case, Munnibee expired on 15th October 2014 and thereafter the charge was altered under Section 302 of the Indian Penal Code. The accused has pleaded not guilty to both the charges and then the trial has been conducted.

7. Prosecution has examined in all ten witnesses to bring home the guilt of the accused and after considering the evidence on record and hearing both the sides, the learned Sessions Judge, Parbhani has acquitted the accused from the charges. Hence the present Appeal.

8. Perusal of the evidence would show that PW-1 Shaikh Hakkani Shaikh Allabaksh is the brother of deceased Munnibee. PW-2 Dr. Rajanish Sunnap is the medical officer who had given endorsement on the statement of deceased Munnibee. He is the owner of the hospital by name 'Vision Hospital' situated at Nanded. PW-3 Shaikh Hamid Shaikh Haider was the special judicial magistrate who has recorded the second statement of deceased, Exhibit-35. PW-4 Sudhakar Chavan and PW-5 Shaikh

Yakub Shaikh Dagdu are the panch to the spot panchnama. PW-6 Dr. Sayyad Mobin Sayyad Hassan is the medical officer who had given endorsement Exhibit-45 and Exhibit-46 regarding the fitness of deceased to give statement. PW-7 Achut Mupade is the investigating officer who has recorded the statement of Munnibee, Exhibit-50. PW-8 Shaikh Sadik Shaikh Habib is brother-in-law of Munnibee. PW-9 Dr. Shekhar Deshmukh is the medical officer who had examined Munnibee in the casualty ward in civil hospital. He was the medical officer who had examined Munnibee at the initial stage. PW-10 Shaikh Fasiyoddin Gousuddin is another investigating officer who had concluded the investigation.

9. Thus, it is to be noted from the list of witnesses that the prosecution has not clarified as to whether the fact of death of Munnibee was informed to the Police or not and whether the postmortem was carried out or not. Certainly the prosecution has not produced on record any such document showing that cause of death of Munnibee was due to burn injuries. Here, it will have to be specifically noted that the incident in question had taken place on 20th July 2013 and Munnibee expired on 15th October 2014., that means, after about one year and two

months. Which treatment she was taking after she was discharged from the Vision Hospital i.e. after 14th August 2013, has not been brought on record. PW-2 Dr. Rajanish does not say that he had asked the patient to come for follow-up treatment. In his cross-examination he has specifically admitted that Munnibee was discharged from his hospital on 14th August 2013 after she was cured to some extent. As per certificate Exhibit-27, she was not called for follow-up treatment nor the patient herself had come for follow-up treatment. Further, PW-2 Dr. Rajnish has specifically stated that the infection may develop when the injuries are healed to some extent within 15 to 20 days and infection after lapse of long period is very rare. Thus, there was absolutely no evidence led by the prosecution to show the connection between the burn injuries sustained by Munnibee on 20th July 2013 and her death on 15th October 2014. No doubt, till then accused was facing trial for the offence punishable under Sections 498-A, 307, 504 of the Indian Penal Code. But when Section-302 of the Indian Penal Code came to be added, prosecution should prove the said fact beyond reasonable doubt. It has not been brought on record on behalf of the prosecution, especially by PW-1 Hakkani and PW-8 Sadik, as to where Munnibee was residing after she was discharged from Vision

Hospital. Why death of Munnibee was not reported to the nearest Police Station and why the postmortem was not got done, were the questions to which we could not find any answer in the testimony of these two witnesses.

10. Even if independently when it comes to the case of burn injuries by pouring kerosene and setting on fire, the knowledge of such act can prove the offence of murder i.e. the knowledge that death will occur if injuries are not treated. However, when Section 302 of the Indian Penal Code is added, it was for the prosecution to prove that death of Munnibee was the outcome of burn injuries sustained by her. In other words, the prosecution ought to have proved that the cause of death was the burn injuries. In absence of any such explanation by PW-1 Hakkani and PW-8 Sadik regarding what type of treatment was provided after Munnibee was asked to be taken to home, we cannot infer that offence under Section 302 of the Indian Penal Code has been made out.

11. Secondly, even as regards the offence under Section 307 of the Indian Penal Code is concerned, except those two statements which were recorded by PW-3 Hamid and PW-7

Achyut Mupade, there is nothing in the form of documentary evidence. Learned trial Judge has rightly held that at the time of initial admission of deceased Munnibee history was not recorded and it is also not the prosecution case that Munnibee herself had given the history to those doctors, then at the time of subsequent admission, with the different hospital when the relatives had arrived and then the history is given, it cannot be considered as proper communication. The two statements i.e. Exhibit-50 and Exhibit-35 cannot be considered as dying declarations as contemplated under Section 32(1) of the Indian Evidence Act. Reliance was rightly placed on the decision in ***Motisingh vs. State of Uttar Pradesh, AIR 1964 SC 900***, wherein it has been held that clause 1 of Section 32 of the Indian Evidence Act makes a statement of a person who is dead relevant only when that statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. In order to bring a statement within the purview of said provision, it has to be proved that on the day the statement was made, the maker was in expectation of death and then the death occurs within such period as it can be considered as having proximity between the incident and the death. Here the statements were made about

one year and two months prior to the death. Even if for the sake of arguments we may accept that since Munnibee had received burn injuries to the extent of 53 to 57% and the expert says that if treatment would not have been given she would have died, that means, she was under the expectation of death. Yet, the death had not occurred in this case. Rather situation of Munnibee got improved and then she was discharged. There is nothing on record that at any subsequent time Munnibee was required to be treated for the burn injuries which she had sustained in the incident in question and therefore, at the cost of repetition we would say that even if we consider that both the alleged dying declarations have been proved, yet, those cannot be accepted in the evidence as those are not admissible in view of the fact that those are not within the parameters of Section 32(1) of the Indian Evidence Act.

12. The learned trial Judge, in detail, has considered as to how even the dying declarations as it is cannot be said to have been proved, as it appears that the writers had not taken care to see that the relatives of the deceased should not be near her at the time of recording dying declarations.

13. The testimony of PW-8 Shaikh Sadik, the brother-in-law of the deceased Munnibee is on the same line as PW-1 Shaikh Hakkat, brother and therefore, to the alleged oral dying declaration given to PW-8 Shaikh Sadik by the deceased, the same rules are required to be adopted and thus it is also required to be discarded.

14. Both the written dying declarations as well as both the oral dying declarations, even if taken as it is for the sake of arguments, would show that accused had demanded amount of Rs.15,000/- for the purpose of marriage of his sister. Accused had asked deceased to bring the said amount from the parents. That demand cannot be said to be illegal demand. If accused was asking for hand-loan, it cannot be illegal demand and therefore, it does not attract ingredients of Section 498-A of the Indian Penal Code. Further, the alleged acts of cruelty have not been stated by any of the witnesses as well as nothing has been stated in the written dying declarations also.

15. Thus, the scrutiny of the evidence which was before the learned trial Judge would show that there is no perversity or illegality committed by the trial Judge in assessing the evidence

and drawing conclusion that offence was not proved beyond reasonable doubt; does not require any interference. The acquittal of the respondent – accused is justified and the Application deserves to be rejected.

16. For the reasons stated above, the Application stands rejected.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAY23