

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4922 OF 2016

The State of Maharashtra
Through, Police Station, Mukhed,
Tq. Mukhed, Dist. Nanded.

.. Applicant

Versus

1. Shrirang Kashiram Bedede
Age: 26 years, Occu.: Business,
2. Kashiram Biru Bedede
Age: 50 years, Occu.: Agril.,
3. Ahilyabai Kasshiram Bedede,
Age: 47 years, Occu.: Household,
4. Pandurang Kashiram Bedede,
Age: 28 years, Occu.: Service,
5. Ranjanabai Pandurang Bedede,
Age: 25 years, Occu.: Business,
6. Jyotibai Balaji Kokre,
Age: 26 years, Occu.: Household,
7. Khanderao Dnyanoba Alure,
Age: 42 years, Occu.: Agri.,
8. Ishwar Dnyanoba Alure,
Age: 39 years, Occu.: Agril.,

Accused Nos.1 to 5 and 7 to 8 are
resident of Wadwal, Tq. Chakur,
Dist. Latur.

Accused No.6 is resident of Hippalgaon,
Tq. Shirur, Anantpal.

.. Respondents

...
Mr. S. J. Salgare, APP for the applicant – State.

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

DATE : 27th June, 2023

ORDER :-

. Present application has been filed by the State under Section 378(1) (b) of the Code of Criminal Procedure to challenge the acquittal of the respondents from the offence punishable under Section 498-A, 304-B read with Section 34 of Indian Penal Code by learned Additional Sessions Judge, Kandhar, Link Court, Mukhed, Dist. Nanded in Sessions Case No.35 of 2014 on 30.05.2016. It will not be out of place to mention here that original accused No.1 – husband has been held guilty of committing offence punishable under Section 302 of Indian Penal Code and he has challenged the said conviction before this Court by preferring Criminal Appeal No.424 of 2016.

2. We have heard learned APP Mr. S. J. Salgare at the stage of admission and with his able assistance, we have gone through the evidence on record.

3. If we peruse the evidence of P.W.1 and his FIR, as regards the present respondents, who are the relatives of the husband is concerned, he states that accused Nos.7 and 8 used to harass the deceased by giving kicks and

fists. Accused No.3, who is the mother-in-law, alleged to have committed the acts of keeping the deceased starved and giving abuses. Accused No.6 is the sister-in-law of the deceased, who used to manhandle the deceased. Accused No.4 is the brother-in-law of the deceased, who used to have ill eye on the deceased and accused No.2 who is the father-in-law of the deceased used to harass the deceased on the count that she should bring money for running the hotel. It is to be noted that the marriage has taken place on 02.05.2013 and as per the FIR as well as the testimony of P.W.1 deceased was treated properly for about six months. When the deceased as well as her husband had gone to the informant at the time of Diwali, it is stated that the accused has demanded an amount of Rs.1,00,000/- for running hotel, it was refused on the ground that the informant does not have any amount and then the husband i.e. accused No.1 left the house of the informant alone. When the informant had gone to leave the deceased at her matrimonial home after about 8 days thereafter, at that time, accused No.1 has asked him as to whether he has brought amount of Rs.1,0,000/-. Even at that time, informant shown his inability to give the amount. Accused No.1 had told him that if the deceased is killed, then he would perform second marriage and he will get amount of Rs.2,00,000/-. Even after informant returned to his house, accused No.5, who is wife of accused No.4, told the deceased that she has brought Rs.80,000/- from her parents and, therefore, deceased should bring the amount of Rs.1,00,000/-

and therefore, deceased informed it to the informant. Again the informant put excuses regarding the financial capacity. The informant then says that deceased along with the husband had gone to the village of their grandparents on 17.07.2014. Informant also reached there to fetch deceased, but around 10.30 p.m., accused No.1 told that he would go and stay at Pune along with the deceased and on the next date, the dead body of the deceased was found within the jurisdiction of village Khandgaon.

4. From the evidence that has been led, especially through PW.1, PW.2, PW.3 and PW.4, it can be seen that it is as per the above-said story. The said evidence has been appreciated by the learned Trial Judge, especially in paragraph No.19 of the judgment. It has been held that evidence of PW.1, PW.2, PW.3 and PW.4 lacks the particulars of cruelty or ill treatment and whatever have been stated about the acts done by those accused persons are general allegations. We are also of the same opinion after considering the evidence. First of all, it appears that accused No.6 – sister-in-law is the married lady and resides at her matrimonial home. Whether only for manhandling the deceased she could have been coming daily, itself is a question and unbelievable fact. The father-in-law used to say that the deceased should bring amount to run the hotel, however, this demand appears to be not followed by any action and, therefore, will not fit in the ingredients of Section 498-A of Indian Penal Code. Same is the case with

the alleged act of the other accused persons. Another vital requirement for Section 498-A of Indian Penal Code to be considered along with Section 304-B of Indian Penal Code would be that the act of the accused persons should be of such a degree, i.e. the ill treatment should be of such a degree, that the deceased would have been driven to end her life. No such act has been done. Rather Section 304-B of Indian Penal Code contemplates that there should be a dowry death. Here, whatever amount was allegedly demanded will not come within the definition of dowry under Section 2 of the Dowry Prohibition Act. It has not come in evidence that the said amount was settled at the time of marriage or promise to be given after the marriage. Therefore, the appreciation of evidence as against the respondents – original accused is concerned is proper and it is also in respect of accused No.1 as regards Section 498-A, 304-B read with Section 34 of Indian Penal Code. We clarify that since we are considering only the Criminal Application under Section 378(1)(b) of the Code of Criminal Procedure, we have made these observations and it has nothing to do with the appeal filed by accused No.1 challenging his conviction under Section 302 of Indian Penal Code. The application therefore stands rejected.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE