



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.205 OF 2019

The State of Maharashtra,
Through Police Station Wadodbazar,
Tq. Phulambri, Dist. Aurangabad.

...Applicant/Appellant

Versus

1. Tukaram Ananda Katkar
Age: 30 Yrs., Occ.:Agriculture,
R/o: Umrawati, Tq. Phulambri,
Dist. Aurangabad.
2. Santosh Ananda Katkar
Age: 36 yrs.,
Occ. & R/o: As above.
3. Ananda Gayanrao Katkar
Age: 65 yrs.,
Occ. & R/o: As above.
4. Ashok Ananda Katkar
Age: 34 yrs.,
Occ. & R/o: As above.
5. Bhagubai Ashok Katkar
Age: 26 yrs.,
Occ. & R/o: As above.
6. Rukhmanbai Raosaheb Katkar
Age: 45 yrs.,
Occ. & R/o: As above.
7. Padmabai Santosh Katkar
Age: 29 yrs.,
Occ. & R/o: As above.
8. Leelabai Saluba Khillare
Age: 25 yrs., Occ.: Agri.,
R/o: Aland, Tq. Phulambri,
Dist. Aurangabad

9. Shantabai Ratan Katkar
Age: 40 yrs., Occ.: Agri.,
R/o: Umrawati, Tq. Phulambri,
Dist. Aurangabad.
10. Laxmibai Ananda Katkar
Age: 60 yrs.,
Occ. & R/o: As above.
11. Ratan Ananda Katkar
Age: 45 yrs.,
Occ. & R/o: As above.
12. Raosaheb Ananda Katkar
Age: 48 yrs.,
Occ. & R/o: As above.

... Respondents.
[Ori. Accused.]

...
Mr. A. M. Phule, APP for Applicant - State
...

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

DATED : 29th SEPTEMBER, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Instant leave application is directed against judgment and order passed by Additional Sessions Judge-7, Aurangabad dated 22.03.2019, by which respondent nos. 1 to 12 are acquitted from chargeS under sections 498A, 304B, 504 read with 34 of Indian Penal Code (IPC). Principal prayer is leave to file appeal against above judgment.

2. According to learned APP, respondent no.1 Tukaram was married to Renuka- daughter of informant in 2006. That, for

two years she was treated well, but thereafter, husband, in-laws and all accused persons were demanding Rs.3 Lakhs for purchase of tractor. On non fulfillment of said demand, deceased was maltreated. They subjected her to mental cruelty by taunting for not bearing child. All accused kept her starved. Deceased Renuka reported ill-treatment meted out to her. Informant and family members gave understanding to accused, but they did not mend their ways. On 01.11.2012, deceased was found in the well. Viscera examination revealed insecticide. Death was unnatural and there was prompt lodgement of report. Investigation revealed complicity of accused and were therefore duly charge-sheeted. That, on going through the evidence, it is seen that, PW1 Sakharam, PW2 Raibhan and PW3 Karbhari are crucial witnesses, PW4 Machindra is the Police Officer and PW5 Dr. Zine is the autopsy doctor. That, evidence has not been properly appreciated. No proper and sufficient reasons are assigned by learned trial Judge. Hence, he prays for leave.

3. Let us first get confirmed about mode and manner of death met by deceased Renuka. PW5 Dr. Zine, who conducted autopsy. After conducting PM preserved the opinion for viscera report and on receipt of the same, according to him, viscera revealed detected carbamate insecticide carbofuran, which is

according to him, is fatal and so he opined cause of death as carbamate insecticide carbofuran poisoning with drowning.

Though, death of Renuka is shown to be unnatural, but, nothing beyond that as to whether it was accidental, suicidal or homicidal.

4. Evidence of father **PW1** Sakharam and brother **PW2** Raibhan is only consistent about agreement to give Rs. 3.51 lakhs as dowry and complying with only Rs.51,000/- and supplying articles. They speak about good treatment for two years, but thereafter, according to them, whenever deceased came, she spoke about harassment on account of remaining money. Father (PW1) speaks of daughter being kept starved and taunting for not bearing child and using insulting language. PW2 Raibhan brother merely speaks of abuse and beating to his sister and all accused ill-treating her. His evidence is ambiguous as to what role each of the accused played. He is also silent about mode and nature of ill-treatment and when such incidents took place. Even evidence of father is not clear as to when ill-treatment was made. In our opinion, such instances are essential when there is charge of commission of offence under section 304B of IPC which contemplates maltreatment in proximity to death. This aspect is precisely found to be missing in the evidence.

PW3 Karbhari claims that he was party to the meeting to give understanding to the accused. However, neither PW1 Sakharam, PW2 Raibhan nor PW3 Karbhari have narrated as to when said meeting took place. Therefore, for want of clear evidence, evidence of prosecution cannot be accepted, and therefore, learned trial Judge was left with no choice, but to acquit the accused.

5. In our view, learned trial Judge has committed no error in refusing to accept the case of prosecution. We do not find any merit in the application as the evidence gathered and relied by prosecution in trial court is apparently weak in nature, therefore, no fruitful purpose would be served by granting leave. Consequently, we proceed to pass following order :-

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)