

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO. 230 OF 2018**

The State of Maharashtra
Through Police Inspector,
Karjat Police Station,
Dist. Ahmednagar

... Applicant

Versus

1. Dada Maruti Gite
Age: 40 years, R/o Therwadi,
Tal Karjat, Dist. Ahmednagar
2. Maruti Yogiraj Gite (Dead)
3. Girjabai Maruti Gite
Age: 68 years, R/o Therwadi,
Tal. Karjat, Dist. Ahmednagar
4. Nanda Vijay Hange
Age: 50 years, R/o Therwadi,
Tal Karjat, Dist. Ahmednagar
5. Sindhu Babasaheb Hange
Age: 45 years, R/o. Kawadgaon,
Tal. Jamkhed, Dist. Ahmednagar
6. Santosh Babasaheb Hange,
Age: 23 years, R/o Kawadgaon,
Tal. Jamkhed, Dist. Ahmednagar

...Abated

**... Respondents
(Ori.Accused)**

....
Mr. A. V. Deshmukh, APP for applicant – State
....

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

DATE : 29.03.2023.

ORDER (PER Y. G. KHOBRADE, J.) :-

The present application has been filed by the prosecution under Section 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.) seeking leave to file appeal to challenge judgment and order dated 13.07.2018 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.217/2016, thereby acquitting the accused No.1 Dada Maruti Gite for the offences punishable under Section 498-A, 302 read with Section 34 of the Indian Penal Code (I.P.C.) in Crime No.I-77/2016 registered with Karjat Police Station, District Ahmednagar.

2. With the help of the learned APP, we have considered the prosecution story narrated in the FIR as well as the evidence brought before the learned trial Court, from the point whether leave can be granted to the prosecution to file appeal.

3. Informant PW-3 Parshuram lodged a report on 10.04.2016, with Karjat Police Station stating that 20 years prior to the lodging of FIR, marriage of his sister Sunita was solemnized with accused No.1 Dada Maruti Gite. His sister Sunita and accused No. 1 are blessed with two children, namely, Amol aged about 16

years and Shubham aged about 12 years. The accused Nos. 2 and 3 are in-laws and accused Nos.4 and 5 are married sister-in-law of Sunita. His sister's in-laws were having ancestral agricultural land, but they sold the said land in parts and were asking his sister Sunita to bring the amount from her brother and father to meet household expenses. The accused persons were mentally and physically ill-treating Sunita due to non-fulfillment of said illegal demand. The informant had visited the house of accused and gave them understanding, but it was in vain. In the year 2000, Sunita had filed a suit against the accused, restraining them from alienating ancestral property, but subsequently, there was compromise between her and the accused. Informant had received a phone call from his sister Sunita at about 9.00 p.m. on 09.04.2016 and informed him about harassment at the hands of the accused persons. At that time he told his sister that he would visit to her house within two – three days. However, he received a phone call from one Kisan Gite at about 7.00 a.m., on 10.04.2016, who informed him about murder of his sister Sunita and her son Shubham in the night time. It was informed that both of them were lying in pool of blood on the floor of their house. Therefore, he went to the house of his sister Sunita and found dead body of his nephew Shubham and his sister. He alleged that the accused

have committed their murder. On the basis of said report, Crime No.I-7/2016 registered against the accused persons for the offence punishable under Sections, 143, 147, 148, 149, 498-A, 302 of the Indian Penal Code.

4. The Investigating Officer PW-5 Mr. Chintale investigated the crime and drawn inquest panchanamas of dead bodies of Sunita and Shubham and forwarded both the dead bodies for postmortem. The Investigating Officer has also drawn spot panchanama Exh.49, snapped photographs of both dead bodies and seized clothes appearing on dead bodies under seizure panchanama. All the seized articles were sent for chemical examination. When the Investigating Officer had visited the house of accused No.2 on 11.04.2016, he found one plastic bucket in front of residence of accused having blood stains, hence said bucket seized under the seizure panchanama and arrested the accused Nos. 1 to 3. During the course of investigation, PW-5 the Investigating Officer seized an axe on disclosure memorandum of the accused No.1 as well as clothes of accused No.1 containing blood stains and sent the seized articles for Chemical Analysis and obtained medical opinion as well as postmortem reports. The Investigating Officer recorded statement of the witnesses and on completion of investigation, the charge-sheet filed against the

accused persons before the learned Judicial Magistrate First Class, Karjat. On compliance of Section 207 of the Code of Criminal Procedure, the learned J.M.F.C. Karjat, passed order under Section 209 of the Code of Criminal Procedure and committed trial to the Court of Session.

5. During the course of trial, the accused No.2 Maruti Yogiraj Gite, father-in-law of deceased Sunita reported dead, hence, the trial against accused No.2 has abated. The learned trial Court framed the charge against the accused persons at Exh.28 and 28A for the offence under Section 498A, 302 read with 34 of Indian Penal Code. The plea of accused recorded. Respondents /accused pleaded not guilty and claimed for trial.

6. In order to bring home guilt of the accused Nos. 1, 3 to 6, the prosecution examined six witnesses, viz; PW-1 Om Ramji Khupse at Exh.46, PW-2 Shriram Uttar Borude at Exh.56, PW-3 Parshuram Dnyanoba Latpate at Exh.66, PW-4 Amol Dada Gite at Exh.79, PW-5 Police Inspector Chintale at Exh.86 and PW-6 Medical Officer Dr. Dayanand Pawar at Exh.98.

7. On conclusion of trial, the learned trial Court recorded statements of the accused under Section 313 of Cr.PC. The defence of the accused is of total denial. Learned trial Court passed the

impugned judgment and order on 13.07.2018, and convicted the respondent accused No.1 Dada Maruti Gite for the offence punishable under Section 302 of I.P.C. for committing murder of his wife Sunita and son Shubham and awarded life sentence for committing two murders. However, the accused No.1 has been acquitted for the offence punishable under Section 498A of I.P.C., and accused Nos. 3 to 6 / respondents are acquitted for the offence punishable under Section 498A, 302 of I.P.C.

8. Being aggrieved by said judgment and order, the prosecution seeks leave to file appeal to the extent of challenging acquittal of respondent No.1 for the offence under Section 498A and acquittal of respondent Nos. 3 to 6 for the offence under Section 302, 498A read with 34 of I.P.C.

9. It is not in dispute that 20 years prior to the lodging of the FIR Exh.68, marriage of Sunita was solemnized with the accused No.1 and they were blessed with two sons i.e. Amol aged 16 years and Shubham aged 12 years. Further it is not in dispute that the accused No.2 was father-in-law, accused No.3 is mother-in-law and accused Nos. 4 and 5 are married sisters-in-law of deceased Sunita, whereas accused No.6 is the son of accused No.5.

10. It is evident from record that in the intervening night of 09.04.2016 and 10.06.2016, dead bodies of deceased Sunita and her son Shubham were found in their Varanda.

11. As per the inquest panchanama Exh.47 and 48 as well as Postmortem Reports of both the deceased Exh.99 and 100, are in corroborating with the evidence of Medical Officer PW-6 Dr. Pawar who conducted Postmortem on dead bodies of Sunita and Shubham. There is no dispute about nature of death of deceased Sunita and Shubham as homicidal. PW-6 Medical Officer Dr. Pawar, had conducted autopsy on 10.04.2016 on the dead body of Shubham and found following injuries.

1. CLW on right parieto temporal region – 8x6x3 cm.
2. CLW in midline anteriorly in scalp – 6x4x3 cm.
3. CLW in left temporal region – 6x4x2 cm.
4. CLW in left temporal region – 6x3x2 cm.

The PW-6 Medical Officer Dr. Pawar issued the Postmortem report of Shubham at Exh.99.

12. The PW-6 Medical Officer conducted autopsy on dead body of Sunita and found following injuries.

1. CLW on left parietal region 8x3x3 c.m.
- The injury as noticed was ante mortem.

13. As per the opinion of the Medical Officer, death of deceased Shubham was due to “hemorrhagic shock due to multiple head injury” and death of deceased Sunita was due to “cardio respiratory arrest due to head injury”.

14. PW-1 proved the spot panchanama Exh.49 and spot of incident to be the residential house of deceased Sunita. There is no serious challenge by the accused persons to the spot panchanama and seizure panchanama of clothes of deceased Exh.50.

15. The prosecution examined PW-2 Shriram Uttar Borude at Exh.56 in whose presence the accused Dada Maruti Gite gave his disclosure memorandum Exh.57 and there is recovery of his Full Shirt Article-13, Pant Article-14 and Axe Article-12 under seizure panchanama Exh.58.

16. PW-3 informant deposed at Exh.66 about solemnization of marriage of his sister Sunita with the accused No.1 prior to 20 years his sister blessed with two children out of matrimonial relations. His sister had filed civil proceeding in the Court of law restraining the respondents accused from alienating the ancestral property. The prosecution absolutely has not brought

any material on record to prove that the deceased Sunita was subjected to cruelty due to non-fulfillment of demand of dowry. There is no evidence to support the contention that accused persons used to subject Sunita to harassment by making demand that she should bring money for mitigating household expenses.

17. The prosecution examined PW-4 Amol Dada Gite, the son of accused No.1 and deceased Sunita at Exh.79. The PW-4 deposed that at the time of incident he was studying in 10th standard and his grand-parents were used to reside adjacent to his house and his father was abusing his mother on account of selling of land and his mother (deceased) had filed civil proceeding against his father and grand-parents. He along with his maternal uncle Parashuram Dnyanoba Latpate (PW-3) and maternal aunt Lata had visited Therwadi on 10.04.2016, who informed him about death of his mother and brother. PW-4 admitted in his cross examination that prior to 10 – 12 years of the incident, his parents were residing separately from the accused persons and accused numbers 4, 5 and 6 are residing in different villages separately. His grand-parents are residing adjacent to his house. He has also not stated the acts of 'cruelty' meted out to his mother. Vague allegations are not sufficient to prove offence under Section 498-A of IPC. Specific acts of cruelty should be narrated and deposed.

There is no direct or indirect evidence against accused No. 3 to 6 to prove that they had participated in the commission of the crime of murder.

18. It is a fact on record that respondent No.1 accused Dada Maruti Gite had filed Criminal Application No.4236 of 2019 in Criminal Appeal No.100/2020 on 22.01.2020 and this Court condoned the delay and admitted the appeal of the respondent No.1 accused. The said appeal was pending, however, vide communication dated 20.09.2021 received from the Superintendent of Yerwada Central Prison, Pune-6, it is reported that the respondent No.1 – accused convict (C-17959) Dada Maruti Gite died in J. J. Hospital, Mumbai on 06.05.2021 at about 1.21 a.m. Therefore, not only this case, but also the said appeal filed by him stands abated.

19. Learned trial Court passed the impugned judgment and order on 13.07.2016 and acquitted the respondent No. 1 from the offence punishable under Section 498A of IPC and respondents accused Nos. 3 to 6 for the offences punishable under Sections 307, 498A read with Section 34 of I.P.C., which does not appear perverse and no grounds are made out to interfere with the findings recorded by the learned trial Court.

20. In view of above discussion the present application stands dismissed against accused No. 3 to 6. This application stands disposed of as abated against accused No. 1.

21. Record and proceedings be remitted back to the trial Court.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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