

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 CRIMINAL APPEAL NO. 978 OF 2022
WITH ALS/167/2022

PRAKASH S/O SAKHARAM SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Appellant : Mr. Gopal D. Kale
APP for Respondent-State : Mr. R. D. Sanap
.....

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

DATED : 08 JUNE 2023

PER COURT :-

1. Present appeal has been filed under Section 372 of the Code of Criminal Procedure [Cr.P.C.] by the original informant, whereas, the prosecution has filed Application for Leave to Appeal No. 167 of 2022 under Section 378 (1)(b) of Cr.P.C. seeking leave to appeal. Both of them are challenging the acquittal of the respondents-original accused by learned Additional Sessions Judge, Biloli, District Nanded in Sessions Case No. 49 of 2014 on 15.09.2022 from the offences punishable under Sections 304-B, 498-A r/w 34 of the Indian Penal Code [IPC].

2. With the help of learned Advocate for both the parties, we have gone through the evidence which was before the learned Sessions Judge. The original accused no.1 is the husband and others are his relatives. Accused no.1 got married to one Sushma about three years prior to the incident. The incident had taken place on 24.06.2013. Sushma and accused no.1 have a son. According to the prosecution, there was harassment to Sushma by the accused persons on account of dowry and she had gone to her parental home for about two months prior to the incident and specially since Diwali, prior to 2013, she was residing with her parents at village Undari. However, thereafter she resumed cohabitation and her parents had met the accused on 30.05.2013 and gave understanding to the accused persons that they should treat her properly. Still when ill-treatment continued, a meeting was organized in the matrimonial home on 23.06.2013 which was attended by the villagers and the President of Village Tanta Mukti Committee. However, on the same night at about 3.00 a.m., deceased had poured kerosene upon herself and ablaze.

3. Two dying declarations have been recorded. The first is by the police officer on the basis of which the offence was registered and the second is by the Executive Magistrate. As per the informant and the prosecution, both the dying declarations are consistent and well

supported by the witnesses, especially PW5-Pandurang More, who was the then President of the Village Tanta Mukti Committee. The death of Sushma at night time is unnatural. The dying declarations have been discarded by the learned trial Judge on technical issues which ought not to have been considered. Learned Sessions Judge has not considered the case from the point of view of Section 106 of the Indian Evidence Act, 1872 and the burden was on the accused persons to explain under which circumstance deceased caught fire. In nutshell, both, learned Advocate for the appellant as well and learned APP have stated that since the evidence has not been properly appreciated, it deserves to be appreciated by this Court.

4. Apparently, case of the prosecution rests on two dying declarations and in order to prove both the dying declarations, the writers and the medical officer, who examined the injured at the relevant time, have been examined. What *prima facie* appears is that it was certified by the Doctor that deceased Sushma was in a fit state to give statement. PW5-Pandurang More also says that such meeting was organized on 23.06.2013 and he had given understanding to the accused. No doubt it appears that though he was the President of the Village Tanta Mukti Committee, yet he was also a relative of the deceased, but whether that was sufficient reason to discard his entire

evidence would be a question. Apart from that, there is oral dying declaration to him also. When all these facts are coming forward, we find that this is a fit case where the evidence needs to be re-appreciated. Leave deserves to be granted to the prosecution as well as the appeal by the informant deserves to be admitted. Hence the following order:

ORDER

- I. Criminal Appeal No. 978 of 2022 stands admitted
- II. Application for Leave to Appeal By State No.167 of 2022 is allowed and the said appeal stands admitted.
- III. Issue notice to the original accused persons to be made returnable on 14.07.2023.
- IV. Call record and proceedings.
- V. Compliance under Section 390 of Cr.P.C. be got done in Application for Leave to Appeal By State No.167 of 2022

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]