

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 258 OF 2019**

The State of Maharashtra,  
Through Asstt. Police Inspector,  
Police Station, Bhada, Taluka AUSA,  
District Latur.

... Applicant

Versus

1. Kishor s/o Shrihari Dhok,  
Age 22 years, Occupation Agri.,
2. Shrihari s/o Vishwanath Dhok,  
Age 55 years, Occu. Agri.,
3. Mahananda w/o Shrihari Dhok,  
Age 50 years, Occu. Agri.,

All r/o Samdarga, Taluka AUSA,  
Dist. Latur.

... Respondents  
[Orig. Accused]

.....  
Mr. S. D. Ghayal, APP for the Applicant-State  
.....

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

**DATED : 03.10.2023**

**ORDER [ABHAY S. WAGHWASE, J.] :**

1. Getting dissatisfied by the judgment and order of acquittal passed by learned Sessions Judge, Latur in Sessions Case No. 60 of 2015 dated 04.10.2019, thereby acquitting present respondents from charge under Sections 306, 498-A, 304-B and 323 r/w 34 of the Indian Penal Code [IPC], the State is intending to prefer appeal under Section 374 of the Code of Criminal Procedure [Cr.P.C.] and hence instant leave application is pressed into service.

2. Learned APP would submit that in the light of nature of charge, prosecution had adduced evidence of in all 15 witnesses. He pointed out that report is at the instance of cousin brother of deceased. Deceased Pooja was married to respondent Kishor on 19.02.2014. He pointed out that barely after a month or so, accused husband and in-laws started maltreating Pooja in the backdrop of demand of money. They used to beat her, abuse her and kept her starved. They even asked her to remain ex-communicated from her parents. He submitted that even the efforts made for amicable settlement at the hands of Tanta-mukti Samiti had gone futile. That, in spite of giving understanding to the accused, they did not mend their ways and

continued the maltreatment only for the sake of their demand. Learned APP submitted that there is evidence of father, mother and informant brother of deceased and they have all consistently deposed about the treatment meted out by respondents-accused. He pointed out that only because of the ill-treatment, getting fed up, deceased had consumed poison. That was the sole reason for her suicidal death.

3. Learned APP further pointed out that apart from family members, even neighbours and other villagers, who were acquainted with both the families and were aware of the ill-treatment, have deposed in the witness box. That, death had taken place within seven years of marriage. Therefore, offence under Section 304-B of IPC was also attracted. That, all necessary ingredients for attracting the charge were very much available in the prosecution evidence and therefore, learned trial court ought to have accepted the case of prosecution. However, according to learned APP, learned trial Judge has misconstrued the evidence and has not appreciated the same as required by law and reached to an erroneous finding which is not sustainable in the eyes of law.

Therefore, it is his submission that, State has a good case in appeal where there would be proper re-appreciation and re-analysis and hence he prays for leave.

4. In the light of above submissions, we have visited the prosecution evidence which is placed on record along with the impugned judgment passed by learned trial court. It is emerging that here, important witnesses are PW3 Yogesh [informant-brother of deceased], PW4 Mahadev [father of deceased], PW5 Govind Yadav [relative of PW4 Mahadev], PW8 Yadnawati [mother of deceased], PW9 Sunita [aunt of deceased] and PW6 Sugriv and PW7 Govind Tidake [neighbours]. We have carefully gone through the substantive evidence of all these witnesses. It is pertinent to note that there is no dispute about marriage of accused husband and deceased Pooja to be a love marriage. There is further no dispute that they are not only residents of same village, but are even residing in the same locality. It has come in the evidence of informant as well as parents of deceased that accused husband was an agriculturist and was prominently involved in the business of selling milk.

5. Precise accusation of prosecution is that after one month of marriage, accused persons put up a demand of money and on such count, ill-treated Pooja. However, what is conspicuous is that informant brother PW3 Yogesh, who had set law into motion, in his evidence at Exhibit 28 merely speaks of demand of Rupees two lakh

as dowry. What others are deposing regarding demand of money for setting up an automobile shop is not finding place in his entire substantive evidence. He has also not elaborated details about the instances of maltreatment or nature of maltreatment allegedly meted out to Pooja.

6. Likewise, even evidence of parents is conspicuously silent about when the incidences of maltreatment, demand, beating, abuse or starvation had taken place. It is worth noting that deceased resided merely few yards away from her own parents' house. There is no previous complaint and that is admitted by informant as well as parents in their cross. Therefore, we have noticed that necessary ingredients for attracting Section 498-A of IPC are patently missing in the evidence of all these crucial witnesses. The president of Tanta-mukti Samiti, who is stated to have acted as mediator in the matrimonial dispute, has also not been examined.

7. Alleged incident of suicide seems to have taken place on 17.01.2015. The bottle containing poison is also seized in presence of PW2 Hariba. It is noticed that in spite of occurrence taking place and seizure of bottle being done on 17.01.2015, the seizure is sent to CA on 22.2.2015 at a belated stage. What exactly preceded earlier night

or in the morning in the house has not come on record. On the contrary, all prosecution witnesses are admitting that their daily chores and family affairs were continued as usual. What exactly prompted Pooja to consume poison has not come on record. There is no whisper in the evidence of any of the prosecution witnesses regarding abetment at the hands of any of the respondents-accused. Therefore, even on the count of abetment to commit suicide, there is absolutely no evidence.

8. Here, there was charge under Section 304-B of IPC which provides for punishment on account of unnatural death of a woman taking place within seven years of marriage. No doubt unfortunate death of Pooja has taken place shortly after marriage, but the very essential requirement as to soon before her death, she was subjected to ill-treatment is required to be brought on record. Here, as stated above, no incidence involving accused has come on record which was in the proximity of alleged suicidal death in the morning of 17.01.2015. What happened exactly prior to alleged consumption is not brought on record and therefore, even for want of essential requirement of Section 304-B of IPC, the said charge cannot be said to be brought home.

9. We have considered the judgment passed by learned Sessions Judge. In our opinion, all legal aspects have been taken into account and in view of its requirement, evidence adduced by prosecution seems to have been examined. Therefore, in our opinion, there is no perversity or illegality on the part of learned trial Judge in appreciating such evidence and refusing to accept the case of prosecution. Resultantly, finding no merit in the case, we refuse to grant leave. The application is accordingly rejected.

**[ABHAY S. WAGHWASE, J.]**

**[SMT. VIBHA KANKANWADI, J.]**

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