

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.279 OF 2019

The State of Maharashtra
Through Police Station, Partur,
Tq. Partur, Dist. Jalna.

... Applicant

... Versus ...

Bhaskar Kisan Ranvir,
Age 68 yrs., Occ. Labour,
R/o Partur, Dist. Jalna,
At present r/o Kehal Wadgaon,
Tq. Mantha, Dist. Jalna.

... Respondent

...

Mr. A.M. Phule, APP for applicant

...

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

DATE : 10th JULY, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 30.09.2019 passed by

learned Sessions Judge, Jalna in Sessions Case No.115/2018, thereby acquitting respondent – original accused from the offence punishable under Section 302 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.M. Phule for the applicant and with his help we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – one Rameshwar Lalu Rathod (PW 7) is the owner of Gat No.41 situated at Yedlapur shivar. The present respondent – original accused was serving with him in his field on yearly basis and he used to reside in the tin shed constructed in the field along with his wife. Rameshwar went for the inspection of his field around 6.00 to 7.00 p.m. on 29.04.2018 and saw that the accused was in a drunken condition. Rameshwar did not talk to accused anything, but on the next day i.e. 30.04.2018 around 6.00 to 6.30 a.m. accused gave phone call to Rameshwar and told that there were thieves in his field, who had beaten him as well as his wife and due to the said beating his wife has died. Rameshwar went in the field along with his son, saw that the wife of the accused is dead. The dead body was covered with bedspread (*chadar*). The accused was asked by him to remove the *chadar* and the accused removed it till her neck.

Rameshwar saw the injuries on the face of the deceased. He directed the accused to remain there and then he went to Police Station and gave information. Police came to the field and started panchnama of the spot and inquest. Thereafter, the dead body was shifted to postmortem. When the Investigating Officer PSI Mr. Antarap made inquiry with accused, he found that there were several injuries on the body of the wife of the accused, but there was no injury on the person of accused. Thereafter the neighbouring landholders were made inquiry and thereupon it was found that when they were providing water to the sugarcane in their field around 11.00 p.m. on 29.04.2018, they found that the accused was playing loud music. But during the intervening gap of two songs they heard shouts of wife of accused. Therefore, they came near the tin shed of the accused. They saw that accused was beating to his wife by stick, fists and kicks. When accused saw them, he abused them and drove them away. Those neighbours returned to the field and continued their agricultural operation. Further inquiry was made with other neighbours and found that accused was shouting at his wife and asking her to keep quiet. Thereupon the Investigating Officer arrested the accused. When the Investigating Officer himself lodged the First Information Report, further investigation was then completed by PW 10 and charge sheet was filed.

4 After the committal of the case, charge was framed and trial was conducted. Prosecution has examined in all ten witnesses to bring home the guilt of accused. After considering the evidence and hearing both sides the learned Trial Judge has acquitted the accused. Hence, present application.

5 It is to be noted that from the testimony of PW 8 Dr. Snehal Khandagale the learned Trial Judge has held that prosecution has proved that death of Radhabai – wife of accused was homicidal in nature. At this stage, there cannot be a dispute to the same. We are considering the present application at the admission stage i.e. whether leave can be granted to challenge the said acquittal. The acquittal is on the point that no cogent evidence has been proved against the accused.

6 In order to prove that accused was the author of the crime, the prosecution was relying on the testimony of PW 3 and 4, who were alleged to be the eye witnesses. However, it is to be noted that their testimony has been disbelieved on the basis of their conduct. It is to be noted from their cross-examination that both of them had not disclosed that they had seen the incident to PW 7 Rameshwar, the land owner. They admitted that they were present at the time of execution of spot panchnama at 10.45 a.m., but still they did not come forward to disclose the same. The incident is stated to

have taken place on 29.04.2018 and the First Information Report has been lodged on 01.05.2018. This gap has not been properly explained, when PW 3 and 4 are stated to be the eye witnesses. Doubt has been also created in respect of spot panchnama alleged to have been executed on 30.04.2018 early morning and the reasons are cogent. It is hard to believe that in spite of witnessing that the lady is being beaten; yet two male persons will not intervene and leave it by saying that it is the matter between husband and the wife. It is not a case that PW 3 and 4 were not having the mobile number of PW 7. They could have immediately told the said fact to PW 7. It appears that they both are got up witnesses. The learned Trial Judge has correctly considered the legal position of presumption under Section 106 of the Indian Penal Code. Merely because the relationship was of husband and wife and the wife was found to be murdered at a particular place, it is not always necessary for the husband to explain the circumstances, in which the wife was found to be murdered. If we discard the testimony of PW 3 and 4, there is absolutely nothing with the prosecution. Well reasoned judgment and order has been passed, which requires no interference. Application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)