



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 25 OF 2019

The State of Maharashtra
Through Bardapur Police Station,
District Beed.

... Applicant

Versus

1. Dashrath s/o Haribhau Jogdand,
Age 38 years, R/o Girwali-Bawne,
Taluka Ambajogai, District Beed.
2. Uttam s/o Khandu Dahiwade,
Age 39 years, R/o Girwali-Aapet,
Taluka Ambajogai, District Beed.

... Respondents
[Orig. Accused]

.....
Mr. D. J. Patil, APP for the Applicant-State.
Mr. S. G. Kawade, Advocate for the Respondents.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.04.2024

Pronounced on : 16.04.2024

ORDER :

1. This is a leave application at the instance of State, thereby seeking leave to question the judgment and order passed by Assistant Sessions Judge, Ambajogai in Sessions Case No. 35 of 2016 dated

09.11.2017, by which present respondents are acquitted from charge under Sections 306, 323, 504 r/w 34 of the Indian Penal Code [IPC].

2. Learned APP would point out that respondents were chargesheeted through Bardapur police station for commission of above offences. That, present respondents had abetted death of Meenabai Dahiwade. Because of continuous harassment and threats, Meenabai had immolated herself. Learned APP pointed out that she had given dying declaration, thereby naming accused persons responsible for the same. That apart, prosecution had adduced evidence of as many as 9 witnesses. That, in spite of dying declaration being truthful version and inspiring confidence, learned trial court has refused to accept the same on the sole ground that it is doubtful whether deceased was in a fit state to give dying declaration. Learned APP pointed out that the Doctor who gave endorsement, himself has stepped into the witness box, but his testimony has not been believed. That, there is a good case on merits. Because of improper appreciation, trial resulted in acquittal. Therefore, learned APP submits that case needs to be re-appreciated in appeal and hence the leave.

3. Per contra, learned counsel for the respondents would point out that there was false implication. According to him, the essential ingredients for attracting charge under Section 306 IPC were patently missing. That, complainant himself was not an eye witness and had rather hearsay information. The dying declaration was doubted by the trial court because deceased had suffered 90% burns and was thereby unfit to give dying declaration. Even there was record that she was unable to speak when she was taken to hospital. Therefore, there is correct appreciation and prosecution having failed to prove the charges, learned trial court was justified in acquitting the accused. Hence, for all above reasons, he prays to refuse the leave.

4. Heard both sides.

5. It seems that present respondents were made to face trial for offence under Sections 306, 323, 504 r/w 34 of IPC. The gist of the prosecution case is that informants brother Rohit, on demand, had given hand loan to accused no.2. When Rohit demanded it back, accused no.2 denied saying that Rohit's father Mahadeo (accused no.3) owes Rs.15,000/- and to go and ask him. Therefore complaint to that extent was lodged by deceased on 11.06.2014. It is the case of

prosecution that accused persons instigated accused no.3 to abuse and beat deceased to withdraw complaint. Therefore, under influence of alcohol, it is the case of prosecution that, deceased was abused, threatened and manhandled and so deceased poured kerosene on 24.06.2014 and she died due to burns on 25.06.2014.

6. Case of prosecution in trial court primarily rested on the dying declaration. PW8 Dr. Kaushal is the treating Doctor who also certified fitness for giving dying declaration. He is examined at Exhibit 47. It seems that at Exhibits 36 and 38, there are endorsements about fit mental and physical state of deceased. It seems that in cross, said Doctor has admitted that consciousness and orientation are two different things. He admitted that patient being oriented, he issued such endorsement. Learned trial court has observed that deceased was endorsed to be conscious, but it is not stated that deceased was oriented.

7. Learned trial court seems to have held that deceased was not in a position to talk and was lacking capacity to give said dying declaration. Therefore, *prima facie* it appears that testimony of Doctor as well as the endorsements made by him about fitness was doubted holding that deceased to be not in condition to give statement.

Therefore, taking such observations into consideration, this Court finds that there is a good point to be dealt in appeal. Resultantly, leave as prayed is required to be granted. Hence, following order is passed.

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

[ABHAY S. WAGHWASE, J.]