



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 40 OF 2018

State of Maharashtra
At the instance of
Bhoom Police Station.

... Applicant

Versus

Vijay Ananta Kasabe
Age: 45 years, Occ. Agriculturist,
R/o. Belgaon, Tal. Bhoom,
Dist. Osmanabad.

... Respondent
[Orig. Accused]

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Mr. S. M. Ganachari, APP for the Applicant-State.
Mr. Mayur Subhedar h/f Mr. C. V. Dharurkar, Advocate for the sole
Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 09.01.2024

ORDER :

1. By this application under Section 378 of the Code of Criminal Procedure, State is seeking leave to file appeal against the judgment and order of acquittal passed by learned Additional Sessions Judge, Bhoom dated 18.11.2017 in Sessions Case No. 32 of 2015.

2. Learned APP submitted that respondent was chargesheeted for commission of offence punishable under Sections 498-A, 306, 323

and 504 of the Indian Penal Code [IPC]. According to learned APP, in spite of marriage of deceased Gangubai and appellant to be 18 years old and in spite of they having grown up children, accused used to consume liquor and abuse and beat her continuously and as the same became unbearable, she had come to stay with her parents. He further pointed out that thereafter accused himself went and took her away to stay with him, but thereafter she was found dead in a well. That, death has taken place while she was in custody of accused husband. He gave misleading information and did not lodge missing report. That, one day prior to the alleged occurrence, there was quarrel. Therefore, he was solely responsible. According to him, with such evidence on record, learned trial court ought to have accepted the case of prosecution and returned the guilt, but learned trial Judge failed to appreciate the available evidence in correct perspective and erred in acquitting the accused holding that prosecution failed to establish the charges. Lastly, it is submitted that there is strong evidence on record and prosecution has a good case on merits and therefore, he seeks leave to file appeal.

3. After considering the above submissions and on going through the papers, it seems that deceased Gangubai and appellant were married almost 18 years prior to the incident in question and they

have two sons aged 17 and 14 respectively. From the evidence of prosecution, it is gathered that respondent used to harass deceased and beat her under influence of liquor and thereafter, she had come back to stay with her parents. Evidence further suggests that appellant had brought her back and she was with him for almost six months. However, *prima facie* evidence does not suggest that after being brought back, the previous treatment was again meted out. Prosecution claims that there was a quarrel one day prior to the incident and elder son of appellant and deceased, namely, Ajay was party to the said quarrel. However, he has not been examined by prosecution. Therefore, there is total vacuum. Resultantly, there is no evidence to suggest that there was quarrel and further, instigation or abetment at the hands of appellant to commit suicide. There is no material to indicate that harassment was of such extent that appellant intended deceased to end her life. How deceased went to the well and whether she jumped or it was an accidental fall is also not discerned from the available evidence.

4. Therefore, learned trial court seems to have committed no error whatsoever in refusing to accept the case of prosecution. The view taken by learned trial court is the possible view that can emerge with such quality of evidence. Necessary ingredients for attracting the

charges are patently missing and therefore there cannot be said to be any perversity in the findings so as to permit or grant leave to the State to prefer appeal. In the considered opinion of this Court, no fruitful purpose would be served by granting leave. Hence, the Application for Leave to Appeal by State is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

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