



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY STATE NO. 60 OF 2021

The State Of Maharashtra
VERSUS
Rameshwar Anandrao Thore And Another

.....
Mr. Rajdeep D. Raut, APP for Applicant – State
Mr. V.S. Kadam, Advocate for Respondents No.1 and 2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd SEPTEMBER, 2024

ORDER :

1. The State has filed this appeal under section 378 (1) (b) of the Code of Criminal Procedure, challenging the judgment and order of acquittal dated 25.03.2021 passed by learned Additional Sessions Judge, Parbhani in Criminal Appeal No.100 of 2015.

2. Respondents/accused were charged for offences punishable under sections 498-A, 306, 504 read with section 34 of the Indian Penal Code. It is the prosecution case that a complaint was lodged by Narayan Dnyanoba Gadhave i.e. father of deceased alleging that his daughter Bhagyashree was married with accused no.1 in the year 2010. After the marriage, Bhagyashree went for cohabitation. All the accused

were residing together. Initially, for a period of one year, Bhagyashree treated well. Thereafter, accused started abusing her in filthy language. Accused No.1 used to beat her. Bhagyashree got pregnant, and therefore, she was brought to the maternal home for delivery. At that time, she disclosed about the ill treatment given by accused. Bhagyashree delivered a girl child. Thereafter, ill treatment continued. On 01.12.2012, on telephone, a message was received that Bhagyashree was burnt and she is admitted in Bembde Hospital, Aurangabad. Therefore, informant and his relatives went to see her. On the next day, on inquiry with Bhagyashree, she was told that on 01.12.2012, accused Nos.2 and 3 abused her in the name of her mother in filthy words and went to their agricultural field. Thereafter, accused No.1 came home and beat her. Due to the said ill treatment and harassment, in heat of anger, she poured kerosene on her person and set herself ablaze.

Two dying declarations of Bhagyashree were recorded. In support of its case, prosecution has examined 15 witnesses. Trial Court has acquitted the accused. Hence, the present application for leave to file appeal against acquittal.

3. Heard learned APP for applicant-State and learned advocate for Respondents/accused. Perused the appeal memo, documents placed on record, notes of evidence, dying declarations made available by the learned APP and learned learned advocate for respondent and impugned judgment and order of acquittal.

4. Learned APP assailed the impugned judgment and order of acquittal contending that, learned Assistant Sessions Judge was justified in convicting the accused persons in Sessions Trial No.92 of 2013, and the appellate Court has committed an error in recording the impugned judgment and order of acquittal. He submits that the reasons assigned by the appellate Court while acquitting the accused are not proper and the judgment and order of conviction passed by learned trial Court ought to have been sustained in the facts of the present case.

5. Learned advocate for respondent/accused, on the other hand, supported the impugned judgment and order of acquittal.

6. With the assistance of learned APP and learned advocate for respondent, I have perused the notes of evidence

and dying declarations. In the first dying declaration, (Exhibit-42) recorded on 01.12.2012, Bhagyashree has stated that, her marriage was performed with accused No.1 prior to two years and one girl child is born out of wedlock. Her mother-in-law (accused No.3) is staying at Sailu and father-in-law (accused No.2) stays along with her. On 01.12.2012, in the morning at about 10.00 a.m. accused Nos.2 and 3 abused her in filthy language in the name of her mother. Due to which, she became angry and could not tolerate the same and she poured kerosene and set herself on fire. While she was burning, her husband/accused No.1 extinguished the fire. Accused No.2 and 3 were abusing her in the name of her mother since the marriage.

7. In the second dying declaration recorded on 02.12.2021, she has stated that accused No.2 and 3 always abused her, and therefore, in the heat of anger, she has set herself on fire. Both the accused are frequently abusing her. Her husband/accused No.1 has not given any ill treatment.

8. Considering dying declarations on record, it is clear that in the heat of anger, deceased has set herself on fire. It is thus clear that merely because abuses were given by accused No.2 and 3 in the name of mother, that cannot be by itself said

to be an abetment within the meaning under section 107 of the Indian Penal Code. It appears that the informant has improved his version while lodging FIR and has casted allegations against all the accused persons that they were harassing deceased.

9. The appellate Court is justified in relying on *Mahendra Singh and Anr. Vs. State of Madhya Pradesh, 1999 Cri.L.J. 894*, in coming to a conclusion that for the purpose of abetment of suicide, necessary ingredients of section 107 of the Indian Penal Code are not proved in the present case. From the evidence on record, it appears that deceased herself was of very short tempered nature, accused No.2 and 3 used to reside at Sailu and till September 2012, there was no complaint against accused No.2 and 3 about abuses, this material is properly appreciated by the appellate Court while recording the order of acquittal. View taken by the trial Court is a possible view, which is not liable to be interfered with in the facts of the present case. No case is made out by the appellant to interfere in the impugned judgment and order of acquittal. Application being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE