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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.137 OF
2020

The State of Maharashtra

APPLICANT

VERSUS

Sandeep Kalyan Thore and Others

RESPONDENTS

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Mr. R. D. Raut, APP for the applicant - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th OCTOBER, 2024

ORDER :

1. This application, filed by the State under section 378 (1) (b) of the Criminal Procedure Code, challenges judgment and order of acquittal passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 55 of 2014.

2. Respondents - accused, were charged for offence punishable under sections 306, 504, 506 read with 34 of the Indian Penal Code. It is the prosecution case that, accused persons abetted suicide of wife of informant, Sangita Kailas Thore. On 2nd May, 2013, there was quarrel between informant Kailas Thore and accused Badrinath Bhausaheb Thore, Bhausaheb Pandurang Thore, Radha Badrinath Thore and Padmabai Bhausaheb Thore. On 3rd May, 2013, Radhabai filed report against informant about outraging of her modesty. On the

basis of the said report, informant was arrested and was subsequently released on bail. On this count, the four accused persons abused and insulted Sangita and threatened her that they will commit rape on her. Due to their constant harassment, Sangita committed suicide, by setting herself ablaze.

3. According to the prosecution during her treatment, Sangita handed over suicide note (Exhibit-94) to informant. Her dying declaration (Exhibit-130) was recorded by the Executive Magistrate.

4. Trial Court, after appreciating evidence on record, acquitted the respondents – accused. Hence, this application for leave to file appeal against the acquittal.

5. Heard learned APP for the applicant – State. Perused the notes of evidence made available by the learned APP, the grounds raised in the application and the impugned judgment and order of acquittal.

6. It appears from the record that the prosecution has failed to prove the suicide note (Exhibit-94), as the report of the handwriting expert is adverse to the prosecution. Panchas, in whose presence the said suicide note (Exhibit-94) was seized by the police, have not supported the prosecution case. The

Executive Magistrate has admitted in his evidence that while recording dying declaration (Exhibit-130), he has not mentioned about examination of the deceased by doctor, prior to or after recording of the dying declaration. He has also deposed that he is not in a position to state which questions were asked by him to the deceased and what were the answers given by her. He also admitted that the entire body of the lady was burnt and her face was also burnt. There is no endorsement on the dying declaration about examination of the deceased by the doctor. Considering the fact that the entire body was burnt, it is difficult to believe that the deceased was in a fit mental condition to give dying declaration. In the facts of the present case possibility of tutoring also cannot be ruled out.

7. There is no evidence on record to prove ingredients of sections 306 and 107 of the Indian Penal Code. The Trial Court has properly appreciated the evidence on record and has taken a possible view, while acquitting the respondents – accused. No case is made out by the prosecution to interfere in the impugned judgment and order of acquittal. The application being devoid of merit, is dismissed. Leave refused.

**[NITIN B. SURYAWANSHI]
JUDGE**