

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1110 OF 2014

Mr. Rajesh B. Soni,	...	Petitioner
vs.		
The State of Maharashtra & Ors.	...	Respondents

Mr.Ashok M. Bhatia, Advocate for the petitioner.
Ms. Archana Rupwate a/w ms. Anshu Singh i/b. Ms. Kranti L.C. For
respondent No.2.
Mr. Arfan Sait,, APP, for the State.
Mr. Ghodke, Head Coonstable Tardeo Police Stn. Mumbai present.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 19th October, 2015.

P.C.

Heard. Rule. Rule returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the original complainant in C.C.No.123/PW/2012. The petitioner had lodged a report at Jogeshwari Police Station on 25.11.2011 in Interlink Co-op. Housing Society, respondent No.2 i.e. accused Smt. Suman D. Soni had assaulted the complainant on the ground that she was not transferring the plot in her name That on the same day, the injured was taken to the Brihanmumbai Mahapalika Hospital. At the time of admission, she was unconscious. It

was noticed that large CLW on her head and face. She was admitted in the hospital. That on the basis of his report, Crime No.171 of 2011 was registered at Jogeshwari Police Station for the offence punishable under Section 326 of IPC. The accused i.e. respondent No.2 was arrested. Investigation was completed and charge-sheet was filed on 6.1.2012. The respondent No.2 is being tried as an under-trial prisoner. Charge was framed under Section 326 of IPC. The present petitioner had filed Criminal Application No. 744 of 2014. On 30.7.2014, the petition was heard. This Court (Coram Revati Mohite Dere, J.) had observed as follows :-

“If during the recording of the evidence, including the medical evidence, an offence under Section 307 of the Indian Penal Code is disclosed, the applicant shall be at liberty to mover an application seeking alteration of the charge from Section 326 to Section 307. Similarly, it is also open for the learned Judge, to alter the charge, if an offence under Section 307 is disclosed.”

3. In the course of recording of evidence, the prosecution had examined PW-7 Dr. Simit Dilip Vora, who was posted at Cooper Hospital in the Emergency Ward. He had examined the injured. He had deposed before the Court that the injured had sustained about 7 injuries. All the injuries were simple in nature. It is elicited in the cross-examination that the patient was about 65 years old. It is reiterated that the injuries mentioned in

Exh.15 were simple in nature.

4. Similarly, PW-8 Dr. Roshan Shambhu Shetty has observed that the patient had gone to CT Scan brain referred by Cooper Hospital. Dr. Shetty has deposed before the Court that he had observed an ill-defined hypodensity. In the cross-examination, he has admitted that in the certificate Exh.18, no mass effect is seen and that he had observed a pituitary oedema as an incidental finding. He has also admitted that he had received summons by the Court but his evidence was not recorded at that time.

5. Upon perusal of the injury certificate, it is clear that the injured had sustained simple injuries. It is pertinent to note that the injured had died 3 years after the incident and therefore, it cannot be said that the assault upon the injured had any proximity to her death. There was no proximity between time of assault and her death and therefore by no stretch of imagination it can be said that the respondent had committed an offence punishable under Section 307 of IPC. Upon perusal of the nature of injuries, it cannot be said that the accused-respondent had any intention to commit murder of the injured. In view of this, the prayer of the petitioner

does not deserve to be granted. The Sessions Court has recorded substantive evidence of all witnesses.

6. The learned APP, upon instructions, submits that the learned Magistrate has posted the matter for final arguments.

7. The application being sans merits, deserves to be rejected. Needless to say that the interim relief granted vide order dated 12.11.2014 is vacated. The learned Magistrate shall proceed with the further stages of the trial as expeditiously as possible.

Application stands dismissed. Rule discharged.

(SMT.SADHANA S.JADHAV, J.)