

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2606 OF 2014

Yeshwant Kmalu Hidola

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Vinayak Indrale for Applicant

Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : MARCH 2, 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 20/02/2014 in crime no. 16 of 2014 registered at Neral Police Station for offence punishable under section 302 of Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of prosecution that on 20/02/2014, one Ananta Balu Dumbhela lodged a report at the police station alleging therein that he is the brother of Harishchandra Dumbhela. According to the complainant, on 15/02/2014, Namdev Padir had requested Harishchandra to give him loan for

ism

constructing the house. Namdev & Harishchandra had been to agricultural land to see the spot, however, the lady residing in the said agricultural land namely Asibai Hindola had objected the said construction. On 17/12/2014, at about 8.00 pm, Harishchandra had been to agricultural land and had informed Asibai that he would give the land to Namdev Padir. There was verbal altercation between them. At that time, complainant was in the house of Harishchandra. At about 9.30 pm, complainant had heard of some hue and cry. When he went out of the house, he saw Harishchandra lying on the ground and Asibai's son was holding an iron pipe. The relatives and villagers at the said place. Harishchandra could not breathe properly. Upon inquiry by the informant, Harishchandra disclosed that Yeshwant i.e. present applicant had assaulted him with iron pipe on his stomach. Informant had seen black marks on the abdomen of his brother. He took his brother indoors and asked him to rest. On 18/02/2014, Harishchandra was taken to a private hospital. Doctor had advised them to take him to Shivaji Hospital, Kalva. On 19/02/2014, at about 1.30 pm, Harishchandra was taken to Shivaji Hospital, Kalva. Doctor had referred him to Sion Hospital. Accordingly Harishchandra was taken to Sion Hospital in an ambulance. On the same day, at about 8.00

am, Harishchandra had died. On the basis of the said statement, crime was registered.

3) Initially, on 19/02/2014, A. D. No. 8 of was registered. Investigation was carried out in A. D. Enquiry. Post mortem notes were received on 19/02/2014. Deceased Harishchandra had abrasions on his back and right leg, however, coloumn no. 20 of the post mortem notes would show that 7th rib on left side was fractured on posterior aspect, lateral to spine with inward displacement of fractured segments. Cause of death was “Perforation of peritonitis associated with blunt trauma to chest.” It is apparent on the face of record that deceased Harishchandra had died due to the assault mounted by present applicant.

4) Learned counsel for the applicant submits that deceased had not sustained any external injuries. According to learned counsel, offence would fall under section 304 (II) of Indian Penal Code as applicant had no intention to cause homicidal death. It is a matter of record that there is evidence that applicant had rather assaulted the deceased. The delay in lodging F.I.R. would

not be a good ground to reject the case of prosecution. In fact, nature of the offence would be determined only at the conclusion of the trial i.e. after adducing substantive evidence.

5) Be that as it may, intention or knowledge cannot be considered as one life is lost over a trifling issue. The fact that applicant had gone to the house of the deceased at night and had assaulted him with an iron pipe on his stomach is sufficient to hold that he had rather caused the death of Harishchandra Dumbhela. Hence, following order.

ORDER

- (i) Application, being sans merits, stands rejected.
- (ii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)