

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.497 OF 2016
IN
CRIMINAL APPEAL No.890 of 2015**

Gurunath Krishna Mali

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Rajiv Patil, Senior Advocate i/b. Mr. Omkar V. Warange for the
Applicant.

Mr. H.J. Dedia, APP for the Respondent -State.

**CORAM: SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.**

**RESERVED ON: 16th APRIL, 2016
PRONOUNCED ON: 27th APRIL, 2016**

ORAL ORDER [PER SMT. ANUJA PRABHUDESSAI, J.]

1. The Applicant, who has been convicted and sentenced in Sessions Case No.22 of 2013 for offences u/s 302 r/w. 34 of the IPC, has sought suspension of substantive sentence of imprisonment and his enlargement on bail pending the decision of appeal.

2. Heard, the learned Senior Counsel Mr. Rajiv Patil for the Applicant and Mr. H.J. Dedia, APP for the Respondent -State.

3. The Applicant herein is the father in law of the deceased Reshma. The Applicant alongwith the other co-accused

was tried for the offence under section 498 A and 302 r/w. 34 of the IPC. By judgment dated 24th August, 2015, the Applicant has been convicted for an offence u/s 302 IPC. The Applicant was not on bail during trial.

4. It is the case of the prosecution that Reshma was married on 4.3.2009 to Macchindra, son of the Applicant. The Applicant herein, his wife Shobha, Son-Macchindra and daughter-in-law Reshma were residing at Mankoli, Bhiwandi. On 6.9.2012 PW-1 Umesh, the brother of deceased Reshma received a phone call that Reshma had a fall and was taken to the hospital. The family of Reshma rushed to her matrimonial house at Mankoli. They saw strangulation marks and some injuries on the body of Reshma. The family members of Reshma were not satisfied with the cause of death as given by the accused. Hence, PW-1 lodged the FIR at Exh.22.

5. The body of Reshma was sent for post mortem, which was conducted by PW-8 Dr. Jayashree Mhaske. The testimony of PW-8 reveals that there were following external injuries on the body of the deceased Reshma:

“1. Dark Brown Parchment like contusion marked on left triangle of neck laterally 2x1 cm.

2. There are two contusion marks on right triangle of neck, one below another respectively of size 1] 2.5x 1 cm

2] 2x 1 cm.

3] Abrasion over right wrist of size 1 x 1 cm,

4] Contusion over right hypochondrium- 4x3 cm.

6. PW-8 Dr. Jayashree Mhaske, has deposed that the injury Nos.1 and 2, were caused by throttling by hand or cloth and the injury Nos.3 and 4 could be struggle marks. All injuries were ante mortam. On internal examination she had found that there was a fracture of T3, T4, Tracheral ring. She has stated that the cause of death was due to asphyxia due to compression of neck.

7. The testimony of PW-8 therefore, prima facie indicates that the death of Reshma was homicidal. The medical evidence prima facie falsifies the explanation given by the accused to the relatives of the deceased.

8. Mr. Rajiv Patil, the learned Senior counsel for the Applicant has submitted that the testimony of PW-10 reveals that he had seen Reshma hanging to the ceiling fan. He therefore, contends that the possibility of suicidal death cannot be ruled out. It is to be noted that PW-10 is a hostile witness. He has given two

different versions. In his examination in chief he has stated that he had seen the accused taking Reshma to the hospital and that the accused had told him that Reshma had fallen from the stair cases and was being taken to the hospital. In his cross examination he had given a different version. He had stated that on 6.9.2010 at about 8.00 p.m. he had been to the house of the accused and he had seen the body of Reshma hanging to the ceiling fan. He had stated that villagers had lifted the Reshma and the Applicant herein had cut the scarf and had kept the body on the mattress. This witness has not supported the case of the prosecution. This being the case prima facie death of Reshma cannot be considered to be suicidal based on the testimony of the hostile witness.

9. The evidence on record reveals that Reshma was residing in her matrimonial house alongwith her husband and his family members including the Applicant herein. She had expired in the matrimonial house. Her death is proved to be homicidal. The applicant and the other co-accused had given false information to the relative of the deceased as regards the cause of the death of the deceased.

10. In the light of the aforesaid circumstances we are not inclined to suspend the substantive sentence of imprisonment and direct the enlargement of the Applicant on bail.

11. Under the circumstances, the application stands rejected.

(SMT. ANUJA PRABHUDESSAI,J.) (SMT. V.K. TAHILRAMANI,J.)