

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

**CRIMINAL BAIL APPLICATION NO.661 OF 2016
IN
CRIMINAL APPEAL NO. 378 OF 2016**

Sandeep Shriram Gupta .. Applicant

V/s.

The State of Maharashtra .. Respondent

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Mr. P. G. Pandey, Advocate for the Applicant.
Mrs. S.D. Shinde, APP for the Respondent - State.
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**CORAM : NARESH H. PATIL AND
P.D. NAIK, JJ.**

DATED : JUNE 14, 2016.

P.C. :

The applicant was convicted and sentenced for the offences punishable under Section 302 of the Indian Penal Code (for short "IPC") by the Additional Sessions Judge, City Civil & Sessions Court at Greater Mumbai in Sessions Case Nos. 602 of 2014 and 99 of 2016 by judgment and order dated 16th March, 2016. The applicant prays for grant of bail pending the hearing and final disposal of this Appeal. The applicant Sandeep Gupta was married to deceased Sapna in the year 2004. One son and

daughter was born out of the said wedlock. The prosecution case is that applicant Sandeep was rickshaw driver and his brother was running Mahesh Kirana Store. On 25th April, 2014 at 4.00 p.m. deceased Sapna made a phone call to her mother and informed that she was not keeping good health. She asked her mother to take her for few days to her matrimonial home. On receiving the said phone call Suraj and Kiran went to Sapna's house situated at Mulund area at Mumbai at about 4.30 p.m. They interacted with the accused. The accused persons were reluctant to listen to them. They demanded Rs.50,000/- for purchasing articles for running a shop. Suraj and Kiran tried to convince the inmates of the house and thereafter they left.

2 It is the prosecution case that at about 9.30 p.m. on the same day, Pushpa sister-in-law of the deceased made a phone call to Suraj, brother of the deceased and informed him that the deceased had fallen from the ladder in the house. Suraj and his friend Kiran immediately left Kalyan and they reached residence of Sapna at Mulund at 22.45 p.m. Nobody was found there. Neighbours informed that Sapna was taken to Mulund General Hospital. Thereafter they proceeded to the hospital where they learnt that Sapna was declared dead.

3 On 26th April, 2014 Suraj lodged police report stating therein that on demand of dowry and ill-treatment, his sister Sapna committed suicide. Trial Court framed charges for an offence punishable under Section 498-A, 306 read with Section 34 of the IPC against the applicant on 28th October, 2014. The accused pleaded not guilty and claimed to be tried.

4 It is submitted by the learned counsel appearing for the applicant that around eight witnesses were examined and there after the prosecutor filed an application for adding charge of Section 302 of the IPC on 11th September, 2015. Accordingly, additional charge vide order below Exhibit - 41 was framed by the Additional Sessions Judge under Section 302 of IPC on 11th September, 2015. It is submitted by the learned counsel for the applicant that thereafter PW 1 the brother of the deceased, PW 2 mother of the deceased and PW 6 Doctor who conducted the Postmortem of the deceased Sapna were recalled as witnesses and they were examined and cross-examined.

5 The trial Court acquitted the mother-in-law and sister-in-law from all the charges. The trial Court acquitted the

applicant from the charge of the offences punishable under Section 306 and 498-A of the IPC but, convicted and sentenced to the applicant for the offence punishable under Section 302 of the IPC.

6 Learned counsel appearing for the applicant submits that framing of charge under Sections 302 and 306 of IPC is contrary to the established principles. It has caused prejudice to the applicant. None of the prosecution witnesses have supported the prosecution case including the close relatives of the deceased PW 1 and PW 2 who have been declared hostile. He submitted that the applicant was not in the house when the alleged incident took place. There is no evidence to established guilt of the accused beyond reasonable doubt.

7 Learned APP submits that there are several injuries on the person of deceased noticed by the medical officer who conducted the postmortem. There were multiple hematomas i.e. multiple swellings in occipital region. Brain was profusely congested. There was massive intracranial bleeding. This itself shows that the deceased was assaulted on the head and due to which she succumbed to the injuries. Learned APP submitted

that the theory that the injuries on occipital region might have been caused while the deceased was brought from the mezzanine floor, cannot be believed. It is further submitted that in the evidence of the medical officer the head injury appearing on the occipital region of the person is caused by hard and blunt object.

8 We have perused the entire record, deposition, postmortem report and reasoning of the learned Judge. The close relatives of the deceased PW 1 and PW 2 brother and mother, respectively have not supported the prosecution case. In the evidence of PW 1 Suraj Gupta, he has deposed before the Court that when they were at the home, accused had left for his work. They thought that the dispute was resolved and thereafter they also left. The witness is referring the incident of 25th April, 2014, on which day deceased Sapna was declared dead. PW 2 Kiran Gupta, mother of the deceased stated that Sapna did not complain about the ill-treatment on demand of money by the accused. She was recalled as witness. To a question, the witness answered as under :

“Q. Did you come to know on 12.07.2014, that Sapna had died out of head injury ?

Ans. NO she died out of committing suicide.”

In paragraph 13 of her deposition she stated that Sapna had two children and she desired that Sandeep, the accused should get acquittal. To a question the witness stated that it is correct to say that Sapna had hanged herself.

9 PW 6 is Dr. Ganesh J. Dhumal has stated in paragraph 4 of his deposition as under:

“4 There were multiple hematomas i.e. swellings seen in occipital region. The injuries which are mentioned in column no.19 are internal findings after opening the dead body. Brain was profusely congested. There was massive intracranial bleeding. Sub-dural and sub arachnoid-bleeding was seen. Multiple hematoma in the scalp. Meninges and Cerebrospinal fluid were blood stained. In Column no.20 Larynx, trachea and bronchi show massive exudation and congestion. Both the lungs show massive congestion and oedema.”

10 We find substance in the submission of the learned counsel appearing for the applicant. The addition of charge of Section 302 of the IPC to the already existing charge of 306, 498-A of the IPC would cause prejudice to the applicant in taking

appropriate defence in the trial. Whether the applicant abated of the commission of suicide or committed murder of the deceased is a question. The crucial question was that whether the applicant was present soon before the incident in the house or left the house soon after the incident. We do not find any convincing evidence on the record to show that at the relevant time the accused/applicant was present in the house. There is absolutely no material to show that somebody has witnessed the deceased and the applicant quarreling, abuses or any other circumstances by which inference could be drawn that the applicant must have been in the house at the relevant time. It cannot be forgotten that the inmates of their house including accused mother-in-law and sister-in-law were acquitted by the trial Court whereas the applicant who was not seen to be in the house at the relevant time was convicted for the offence punishable under Section 302 of the IPC.

11 We find that the applicant has raised convincing ground for releasing him on bail pending the hearing and final disposal of this Appeal.

12 Hence, we pass the following order:

:: ORDER ::

- (i) The application is allowed.
- (ii) The substantive sentence awarded against the applicant by the trial Court stands suspended. The applicant Sandeep Shriram Gupta is directed to be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one surety in the like amount.

13 The observations made as above in the application are *prima facie* in nature, the same shall not affect the final disposal of the Appeal.

(P.D. NAIK, J.)

(NARESH H. PATIL, J.)