

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1226 OF 2016

Govardhan Lahanu Sahare	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket U. Nikam, Advocate for the applicant.
Mr. S.S. Pednekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 14th September, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is charge-sheeted for the offences punishable under Sections 302, 498A read with Section 34 of the IPC in Crime No.2/2015 registered at Peth Police Station, Nashik on 1.1.2015. The investigation is completed and charge-sheet is filed on 12.6.2015.

2. It is the case of the prosecution that the applicant herein was married to Archana on 16.4.2014. On 1.1.2015, Jijibai Chaudhary, who happens to be the mother-in-law of the present applicant, lodged a report at the police station, that her daughter who was pregnant was forced to undergo abortion by administering certain tablets. On 20.12.2014, one of the relatives of the first informant informed her that Archana had sustained burn injuries and was admitted in the Civil Hospital at Nashik. On

21.12.2014, the first informant visited her daughter in the hospital. Upon enquiry, Archana had disclosed to her that on 17.12.2014, she was brutally assaulted by her husband. That on 18.12.2014, her father-in-law had poured kerosene on her person. She had rushed to the house of the Police Patil. Her father-in-law disapproved of her visiting the house of the Police Patil and, therefore, as soon as she returned, she was set ablaze. The father-in-law then extinguished the burn injuries and had taken her to the Hospital. While in transit, i.e. on the way to the hospital, she was specifically instructed by her husband and father-in-law that she should disclose to the Police that a burning chimney had fallen on her person and she had sustained accidental burns. On 27.12.2014, Archana had succumbed to the burn injuries. On 29.12.2014, they had been to Harsul Police Station and then lodged a report.

3. The papers of investigation would indicate that Archana was admitted in the hospital by the applicant and his father on 19.12.2014. At about 1.50 p.m., her statement was recorded in the hospital in the printed proforma by the Entertainment Tax Officer. She had disclosed that while she was sitting in the room, a burning chimney had fallen on her person and that she had sustained burn injuries. Needless to say that she had disclosed accidental burns.

4. The compilation of the charge-sheet includes the medical case papers which clearly indicate that the victim Archana had sustained head injury, which was a blunt injury and that she was being treated for the same. Column No.17 of the post-mortem notes do not indicate any head injury. In fact, it shows that the burn injuries were found all over the body except the left leg, scalp, upper face, lower 1/2 of abdomen, left side of chest, etc. Column No.19 indicates that the brain was congested. There was yellowish traces all over the brain. The cause of death is septicemic shock due to burn injuries. The Investigating officer had sought the opinion of the medical officer, Dr.D.N.Dhuri, had by a letter dated 3.2.2015 replied to the investigating officer that “Archana had succumbed to the burn injuries on 27.12.2014. On P.M. examination, there is no any evidence of head injury seen.” The medical case papers specifically indicate that she was being treated for head injury also. Needless to say that the Doctor has either been negligent while giving medical opinion as he had not seen the remarks in column No.19 of the post mortem notes or that he had been influenced by the accused.

5. The learned counsel for the applicant submits that the case of the prosecution rests mainly upon the dying declaration of the victim which clearly indicate that it is a case of accidental burns. According to the

learned counsel, the victim herself had disclosed that the cause of burn injuries was falling of the chimney on her head. According to the learned counsel, the statement of the wife of the Police Patil was recorded in the course of investigation and at that time, she had not disclosed that when the victim visited her house, her clothes were trenced in kerosene and therefore, according to the learned counsel, the applicants have been falsely implicated and deserves to be enlarged on bail as it is a case of accidental burns.

6. The scene of offence panchnama would show that a shelf was carved out in the wall for keeping chimney and therefore there was no reason for the hanging chimney to fall on her head. It is further pertinent to note that the time of incident is not reflected in the papers of investigation. The statement of the first informant is recorded under Section 164 of the Cr.P.C. in which she has specifically informed the learned Magistrate that when she visited her daughter in the hospital, initially her daughter had disclosed that it is a case of accidental burns, however, she had probed into it and at that time, the victim had specifically disclosed that she was set ablaze by her father-in-law, that her husband and her father-in-law had asked her to inform the police that she had sustained accidental burns. There is an oral dying declaration. It further appears that

there has been tampering of evidence.

7. Taking into consideration the nature of allegations, the papers of investigation and the fact that prima facie case of homicidal death is made out, the applicant does not deserve to be enlarged on bail. Moreover, it is a case of custodial death. The applicant who happens to be the custodian of the victim is bound to explain the circumstances in which Archana suffered injuries as contemplated under Section 106 of the Indian Evidence Act. It is a matter of trial. Hence, the application being sans merits, deserves to be rejected.

8. However, the learned Sessions Court shall not be influenced by the observations made hereinabove since they are restricted to an application under Section 439 of Cr.P.C. The Application stands rejected.

(SMT.SADHANA S.JADHAV, J.)