

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1002 OF 2016

IN

CRIMINAL APPEAL NO.549 OF 2016

Kashinath Revappa Umbarje and ors .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr.Ritesh Thobde, Advocate for the applicants.

Mr.A.R.Kapadnis, APP for the Respondent State.

CORAM : PN. DESHMUKH, J

DATED : 1st SEPTEMBER 2016

P.C. :

1 This application is filed by accused nos.1,2, and 3 who came to be convicted by the learned Addl. Sessions Judge, Solapur for the offence punishable under section 304-B IPC r/w Section 34 IPC and is sentenced to undergo RI for 7 years for the offence u/s.304-B IPC r/w Section 34 IPC. No separate sentence is imposed for the offence u/s.498A IPC.

2 Learned counsel for the applicants had submitted that all the three witnesses examined by prosecution are closely related to deceased who was wife of applicant no.1 and has committed suicide on 4th June 2014. It is further submitted that from the evidence of witnesses on record, it can clearly be established that they have made material improvements so as to falsely involve the

applicants and has thus submitted that application be allowed by suspending substantive sentence and by granting bail to the applicants. It is also contended that applicants were on bail, pending trial, and has not misused liberty granted to them.

3 Learned APP, while opposing the application has submitted that there is direct evidence of PW no.1 – father of deceased establishing involvement of applicants, and as such opposed for grant of bail.

4 Evidence of PW 1 complainant who is father of deceased when perused involves applicants for having made demand of dowry of Rs.81,000/- at the time of marriage which has taken place in the year 2013 between deceased and applicant no.1 when he has stated that said amount was agreed to be paid out of which Rs.59,000/- was paid, and for non-payment of balance amount, deceased was subjected to ill-treatment. He further states that he used to visit matrimonial home of deceased to bring her during the yearly fair to her parental home, during which period she used to complain of the ill-treatment provided to her, and further claims that applicants had informed deceased to not to return back unless she brings the unpaid dowry amount.

5 Complainant has further deposed that on 29th May 2014, i.e. about 5 days prior to incident, he had paid Rs.22,000/- to Anita Hirne, sister of applicant no.1 and her husband Rajkumar when they visited house of complainant.

6 In the background of evidence of complainant as aforesaid, on perusal of cross-examination, he has admitted that there is nothing to establish that amount of Rs.81,000/- was agreed to be paid in the marriage or to establish that part payment of Rs.59,999/- was made. He further expresses his inability to state the dates on which there was demand of balance amount of dowry. It is further admitted that deceased had visited her parental home even prior to the fair, and during the yearly fair, had visited along with applicants.

7 Complainant's further evidence also appears to be in the form of material improvements, made by him when he claims to have stated to police about accused demanding remaining amount of dowry, and of informing to deceased to not to come back unless said amount is paid to her and also claims to have stated to police of accused demanding balance of dowry amount. Similar is the evidence of PW 2 Kashish – brother of deceased, PW 3 – Ashok – uncle of the deceased. Evidence of Investigating Officer establishes that complainant has made all such material improvements.

8 It further appears that specific question was put to PW 4 Prakash – API – Investigating Officer that during the course of investigation, he had not inquired about receipt of Rs.22,000/- by Anita and her husband Rajkumar as alleged by Informant which he admits and further agrees that it did not reveal during the investigation that amount of Rs.81,000/- was agreed to be paid as dowry with 2 ½ tolas of gold or that amount of Rs.59,000/- was paid as part of dowry amount.

9 Similarly, to a specific question put to Investigating Officer if it so happened that PW Nos.1 to 3 had deposed facts of incident, with regards to harassment to deceased by the accused persons and other incidents at his instance had specifically denied the same.

10 Having considering the evidence as aforesaid, application is liable to be allowed as per order below.

ORDER

Applicant shall be released on bail on their furnishing PR. Bond in the sum of Rs.15,000/- each with one surety each in like amount.

While on bail, applicant shall mark their presence with Mandrup Police Station, District Solapur once in six months, pending Appeal.

(PN. DESHMUKH, J)