

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1032 OF 2016
IN
CRIMINAL APPEAL NO.567 OF 2016**

Parag Vasudev Sawant)...Applicant

v/s.

State of Maharashtra)...Respondent

Mr. Rohan P. Surve, Advocate for the Applicant.

Mrs. M.R.Tidke, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 18th OCTOBER 2016.

P.C. :

This is an application for bail pending appeal by applicant who came to be convicted by the learned Sessions Judge, Thane for the offences punishable under Sections 304-B and 498-A of the I.P.C. and was sentenced to suffer R.I. for 10 years for the offence punishable under Section 304-B and R.I. for a term of three years and fine of Rs.5,000/- under Section 498-A of I.P.C. in default to suffer S.I. for six months. Learned counsel for applicant has contended that there is no evidence which can said to be relied and in fact, submitted that there is

no complaint lodged by complainant nor has produced on record any document establishing injuries, if any, sustained by the deceased prior to the incident which aspect itself suggests that the deceased was never subjected to beating earlier and as such, there is nothing to infer that the deceased was subjected to cruelty for non-fulfillment of monetary demand. By referring to evidence of complainant-father, brother-in-law and brother of the deceased, it is submitted that their evidence establishes material improvements on the point of demand. It is, therefore, contended that applicant was on bail pending trial and has no criminal antecedents and as at the time of incident, was working in private firm, having roots in the society be released on bail by imposing suitable conditions.

2 Prosecution has opposed the application stating that there is direct evidence establishing involvement of applicant and has also contended that evidence of P.W.1-Complainant is corroborated from the documents Exhibits 41 and 42, which are withdrawal receipts showing amount of Rs.40,000/- was withdrawn by Complainant. Learned APP on this evidence has contended that this document establishes that complainant has withdrawn the said amount for satisfying monetary demand of applicant and his family members. By referring to evidence of P.W.5-Dr. Bhavana Narayan Telang, it is submitted that said medical

evidence establishes and creates doubt if deceased has committed suicide or otherwise.

3 It is, therefore, contended that having considered evidence of witnesses as it establishes that deceased was subjected to cruelty for non-fulfillment of dowry demand, she committed suicide by hanging on 28.7.2008 within 7 years of her marriage with applicant which has solemnised on 22.5.2003.

4 In the background of submissions advanced as aforesaid, on perusing documents filed along with application and the impugned judgment, it is noted that applicant came to be acquitted of the offences punishable under Sections 302 and 316 of IPC and is convicted under Section 304-B and 498-A of IPC as aforesaid. Evidence of complainant, father of deceased reveals that after his daughter's marriage with applicant on 22.5.2003 when she was residing with applicant at Andheri, she was subjected to beating by applicant, 8-9 months thereafter on the count of demand of dowry which fact was informed to him by deceased on phone and also on her visit to house of complainant when she was pregnant that she was being harassed by applicant on the count of monetary demand of dowry.

5 From his further evidence, it is found that even after deceased gave birth to female child, she was subjected to ill treatment and she used to convey such ill treatment to complainant on phone. He has further stated that applicant has demanded Rs.40,000/- from deceased to be brought from him as he wanted to hire separate room and for non-fulfilment of said demand, drove deceased out of house along with child when deceased in midnight went to complainant's house and had informed that she was driven out of house for non payment of the said amount. Thereafter, deceased continued to stay with complainant at Turbhe, New Bombay. He has further deposed that after six months, on his paying Rs.40,000/- to applicant on his arriving to house of complainant, he took deceased along with him. From this evidence, it has come on record that before applicant's reaching to complainant's house to fetch his deceased wife, he had obtained room on rent prior to 8-9 months before. However, amount of Rs.40,000/- was paid by him on withdrawing the same from Shivkrupa Sahakari Patpedhi Ltd. and on obtaining loan. Money receipts were supplied by him to Investigating Officer during the course of investigation.

6 Further evidence of complainant reveals that about one month prior to the incident, i.e. on 20.6.2008, deceased Dipali on phone informed that applicant is demanding Rs.1 Lakh, however, he

could not satisfy said demand. It has also come in his evidence that two days prior to the incident, i.e. on 25.7.2008, he had visited the house of deceased for birthday of his grand daughter, however, applicant did not speak to him on that occasion.

7 In the cross-examination, it has come on record that when Dipali had come with her child and had stayed for a period of six months with complainant, complainant had noticed injury marks over her person, however, he has not obtained medical certificate about such injuries. Though no medical certificate of this fact is brought on record, there is no challenge to said piece of evidence of complainant of his noticing injuries on the person of his daughter. Similarly, learned counsel for applicant on going through the evidence of Investigating Officer has fairly conceded that omissions in the evidence of complainant with regard to police recording his supplementary statement on 1.8.2008 and of his stating about his paying Rs.40,000/- and 7,000/- to applicant as well as demand of Rs.1 Lakh, has not been duly proved from the evidence of Investigating Officer.

In that view of the matter, evidence of PW.1 does not create any doubt to rely the same.

8 Evidence of PW.2-Manoj Chiman Salande, son-in-law of complainant reveals about quarrel between applicant and deceased on

account of money prior to incident as applicant was insisting his wife to bring money from her parents for purchasing house. His evidence corroborates evidence of complainant when he has deposed that complainant has paid Rs.40,000/- to applicant and also on the count of applicant's demanding Rs.1 Lakh for purchasing room. This demand could not be satisfied by complainant. It has also come in his evidence that deceased died within 5 years and 3 months of her marriage. Learned counsel for applicant by referring to evidence of P.W.2 about his inability to state if applicant has demanded money from complainant, submitted that this piece of evidence, falsifies his earlier evidence of applicant demanding Rs.40,000/- and thereafter Rs.1 Lakh . However, there is no substance in the submissions made as this evidence of P.W.2 having no knowledge of any monetary demand by applicant from complainant was with reference to purchasing some flat at Gitganga Society while demand of Rs.40,000/- as stated by complainant made by applicant was with reference to his hiring room in Himalaya Complex, Golden Nest.

9 It is material to point out that P.W.2 Manoj claims to have stated to the Police that applicant stated to deceased that he has lost his job and was thus, demanding money from her parents and further claims to have stated in his statement that complainant had paid

Rs.40,000/- to applicant, however, is unable to assign any reason why no such facts are mentioned in his statement. Learned counsel for applicant, however, by referring to evidence of Investigating Officer has fairly conceded that no such omissions are brought on record by the defence. In that view of the matter, above evidence, goes unchallenged, which prima-facie established involvement of applicant to have demanded dowry from deceased and for non-fulfilment of same, she committed suicide.

10 Involvement of applicant is further found substantiated from the evidence of P.W.-3-Jitendra Chandrakant Shelke, brother of the deceased who corroborates evidence of complainant stating that applicant has demanded Rs.40,000/- for purchase of room from his father which demand was satisfied. He further stated that in spite of same, applicant continued ill treatment and demanded further amount of Rs.1 Lakh for purchase of new house, which demand could not be satisfied. Evidence of P.W.-3-Jitendra, however, appears to have materially improved the case so as to suite the case of the prosecution and omissions are found to be duly proved from the evidence of P.W.7-Vasant Sampat Giri, Investigating Officer. However, having considered available evidence as aforesaid and particularly considering evidence of P.W.5-Dr. Bhavana, who has performed autopsy on the dead body of the

deceased and has deposed that at the time of death, deceased was pregnant carrying 7-8 months of her pregnancy. It is to be noted that no female would end her life unless she is compelled to commit suicide by instigation or by ill treatment or by torturing her mentally for monetary demand. Having considered evidence as aforesaid and the fact of deceased committing suicide within 7 years of her marriage in spite of her having pregnant, applicant who is convicted for the offence punishable under Section 304-B and is sentenced to suffer R.I. for 10 years cannot said to be liable to be released on bail by suspending his sentence. Application is, therefore, rejected.

(P N. DESHMUKH, J.)