

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1038 OF 2016

IN

CRIMINAL APPEAL NO.557 OF 2016

BHARAT BALARAM BHANDARI

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Hrishikesh Mundargi i/b. J.J.Bardeskar, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 8th SEPTEMBER 2016

P.C. :

1 Applicant having been convicted by the learned Additional Sessions Judge for the offences punishable under Section 306 of IPC and is sentenced to suffer simple imprisonment for 4 years and to pay a fine of Rs.500, in default, to suffer simple imprisonment for one month, has filed this application for suspension of substantive sentence of imprisonment and for grant of bail. Learned counsel for applicant had submitted that according to case of prosecution, applicant was having illicit relation with deceased Bhagyashree, who has committed suicide

in her own house which was occupied by her along with complainant – her husband namely Narendra. It is contended that the complainant, since six months prior to incident of deceased committing suicide on 24th December 2012, was residing separately. Learned counsel for applicant has submitted that from evidence of PW10 Kalpita, who is daughter of deceased and the alleged eye witness, no case establishing involvement of applicant as an abettor or instigator to commit suicide is found to be established.

2 Learned APP had opposed the application on the ground that evidence of PW10 Kalpita is fully corroborated by evidence of PW1 Narendra – her father, where from it is established that applicant is only responsible for suicide committed by deceased by setting her person on fire. Learned APP has thus, prayed for rejection of application. With the assistance of learned counsel for both the sides, I have perused the evidence on record.

3 In light of submissions advanced as aforesaid, evidence of PW10 Kalpita is that one day prior to the incident, in the evening at 6.00 p.m., applicant had arrived in their house and had indulged in quarrel with her deceased mother, after locking the room from inside.

She has further stated that after sometime both of them came out of the room in the hall, and has further stated that she then went towards the window of said room, and smelt kerosene and found her mother shouting “Bharat Bhandarine mazya sansarache vatole kele ahe” and also as “Bharat Bhandari mazya mrityus karnibhut aahe.” Her evidence further reveals that thereafter neighbour came and opened the door and then found that deceased was lying on the ground. At that time, neighbours namely Sindhubai and Sagunabai also arrived at the spot.

4 Her evidence further reveals that deceased was then carried to Indira Gandhi Memorial Hospital in ambulance and on the same night her mother died. Before considering other evidence on record, it is material to note that neither Sindhubai or Sagunabai nor neighbour who is referred by PW10 Kalpita are examined, though according to her evidence these independent witnesses had arrived at the spot immediately after the incident.

5 Evidence of complainant PW1 – Narendra on this aspect when considered reveals that one person i.e. Imam, who is resident of building situated opposite to their house, opened the door. This

person, appears to be the same who is referred by PW10 Kalpita as neighbour who had opened the door. Thus, prima facie, it is found that even this neighbour namely Imam who was present at the spot is also not examined. Infact, complainant appears to have improved his version by stating name of neighbour as Imam from opposite building who arrived on the spot and opened the door, as in his cross-examination, he has stated that though he has informed about such fact to police, he is unable to assign any reason why same does not find place in his report. Considering facts as aforesaid, there appears no corroboration to this material piece of evidence of PW10 Kalpita with reference to deceased allegedly shouting in the name of applicant, claiming him to be responsible for her to commit suicide.

6 Cross-examination of PW10 Kalpita when perused reveals that at the time of incident she along with her two sisters and deceased were residing in the house and since six months prior to incident, her father was residing separately. She admitted that at the time of incident, neither of her parents were working and had no source of survival and thus deceased was under tension. She has further admitted that they had no house of their own which was also one of the reasons of worry for deceased, and has also admitted that prior to

this incident, deceased had attempted to commit suicide and consumed poison and was shifted to hospital where she was provided medical aid by one of her relatives. It has also come in the evidence of PW10 Kalpita that deceased prior to the incident had lodged complaint against her husband and his relatives.

7 From admissions as aforesaid, thus, there is sufficient evidence to establish that deceased at the time of incident was under mental stress for the reasons stated as above. Even otherwise, I find much substance when it is contended that PW10 Kalpita might have been tutored by her father as in her further cross-examination, it has come on record that after the incident, she is residing with her father and had accompanied him to the court and her father had given her information with regards to cases pending against him in Bhiwandi court as well as other courts and infact she had attended Sessions court on the say of her father. In that view of the matter, there appears substance when it is suggested to Kalpita that she had deposed on the say of her father though she had denied this fact.

8 Case of applicant, of deceased being under mental stress, is further found substantiated from the evidence on record, as Kalpita, to

a specific question put to her appears to have denied fact of PW1 Narendra – the complainant obtaining loan of Rs.5 Lakh from applicant for construction of house and though complainant also appears to have denied said suggestion, PW4 Jivan Patale – brother of deceased, on this aspect has admitted that neither deceased or her husband had fixed source of income and as they had three daughters, deceased used to remain under mental stress. Though this witness has also denied fact of husband of deceased obtaining loan of Rs.5 Lakh for construction of house from applicant, has admitted that husband of deceased was working with applicant and at that time, deceased or her husband were not having their own house. It is material to point out that though PW4 Jivan has denied suggestion of deceased's husband obtaining loan as aforesaid, has admitted that applicant used to visit deceased and demand the loan amount and for that reason, deceased used to be in tension.

9 Similarly, PW4 Jivan has also admitted the fact of deceased attempting to commit suicide by consuming poison prior to the present incident.

10 Evidence of PW4 Jivan further reveals that he had accompanied deceased while she was shifted from house to Indira Gandhi Memorial Hospital in ambulance and was at that time conscious. He states that on his inquiry with her with regard to incident, deceased stated that “mala tension ale ahe mhanun mi angawar rokel takun petavun ghetale ahe.” From his evidence, thus, there appears no whisper of deceased informing him as to what is deposed by PW10 Kalpita. Had deceased uttered any such facts as deposed by Kalpita, apparently there is no reason for deceased to not to disclose said facts before PW4 Jivan, who admittedly is her real brother. On this count also, evidence of PW10 Kalpita does not appear to be convincing to be relied upon.

11 On considering further evidence of PW4 Jivan, it is found that he and PW10 Kalpita were in hospital, where deceased was under treatment, and has admitted that at that time, Kalpita did not disclose him anything as stated by her in her evidence as aforesaid. This piece of evidence of Jivan, thus, also creates doubt in the evidence of Kalpita.

12 On considering evidence of PW9 – Dr.Pradip Thakare – brother of complainant, fact of deceased attempting to commit suicide earlier is further found substantiated. Infact, it has also come in evidence that in a complaint lodged by deceased against her husband and his relatives she has referred applicant as one of her witnesses. Admittedly, such complaint is lodged by deceased against her husband about 2 to 3 months before the incident. Had relations between applicant and deceased would have been not cordial, she would have had not referred applicant as a witness in her complaint. Further evidence of PW9 also establish fact of husband of deceased having no regular source of income nor their own house. He has also admitted that husband of deceased was in habit of leaving his family and house.

13 Similarly, evidence of PW6 – Kanishra Patale, father of deceased, also corroborates fact of husband of deceased being in habit of leaving his family and house frequently and about deceased lodging complaint against her husband and his family members. He has also substantiated the fact of deceased attempting to commit suicide earlier. Though his evidence corroborates evidence of PW10 Kalpita, for the reasons as aforesaid, when evidence of Kalpita herself does not appear to be convincing to be acted upon, his evidence to that effect is also not found to be convincing.

14 Having considering above discussed evidence, and since the conviction imposed upon the applicant can termed to be short sentence and as applicant pending trial was on bail, and as it is no case of prosecution that applicant had misused the liberty granted to him earlier, and since has also paid the amount of fine, application is liable to be allowed by suspending substantive sentence imposed upon applicant and by releasing him on bail, as per the order below :

- i) Applicant shall be released on bail on his executing P.R.Bond in the sum of Rs.25,000/- with one surety, or two sureties in the sum of Rs.12,500 each.
- ii) While on bail, applicant shall mark his presence with Kongaon Police Station, Thane, once in three months on the first day of each month, pending appeal.
- iii) Applicant shall produce proof of his residence to Investigating Officer and is further directed to intimate change of address in future, if any, to the concerned police station.

(P. N. DESHMUKH, J.)