

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1094 OF 2016

IN

CRIMINAL APPEAL NO.591 OF 2016

SWAPNIL SHANKAR MADKAR & ORS.)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ritesh Thobde, Advocate for the Applicants.

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

CORAM : P N. DESHMUKH, J.

DATE : 2nd SEPTEMBER 2016.

P.C. :

1 This application is filed by husband and in-laws of deceased for suspension of sentence and for grant of bail, who are convicted by the learned Additional Sessions Judge – 5, Solapur, for the offences punishable under Section 489A and 306 of IPC. All the applicants are sentenced to suffer simple imprisonment for 3 years each

and to pay a fine of Rs.2,000/- each, in default, to suffer simple imprisonment for period of 3 months each for the offence punishable under Section 498A of the IPC, and under Section 306 of IPC to suffer simple imprisonment for 5 years each and to pay a fine of Rs.3,000/- each, in default, to suffer simple imprisonment for period of 3 months each.

Learned counsel for applicants had contended that all the applicants were on bail pending trial and had not misused liberty granted to them. It is further contended that even from the evidence on record it cannot be said that charge leveled against the applicants are duly established, as from the evidence it has come on record that marriage of deceased with applicant no.1 was without consent of their family members, and as such they were not on talking terms with her for a period of 3 years from her marriage, which was solemnized in the year 2009. It is, thus, submitted that since the incident of deceased committing suicide has occurred on 1st August 2014 and as she was not on talking terms as above, there is nothing to show that there was any kind of ill-treatment provided to deceased during the period from 2012 to 2014, by way of abetment or instigation by applicants to deceased, to commit suicide. It is, therefore, prayed that application be allowed.

2 Learned APP opposed the application and has referred to evidence of PW3 - aunt of deceased contending that from her evidence, it is established that immediately prior to deceased committing suicide, she was subjected to beating by applicants at night on 31st July 2014, as suicide is committed on the following day at about 11.00 a.m.

3 In the background of submissions as aforesaid, it has come in the evidence of PW1 – father of deceased that he was not on talking terms with deceased Puja, as she married without his consent with applicant no.1 and they were not on talking terms for a period of 3 to 4 years after the marriage. Marriage of deceased with applicant no.1, admittedly, has taken place in the year 2009, while the incident of deceased committing suicide is of 1st August 2014. In view of dates as aforesaid, it is material to note that after parents of deceased resumed talks with her, say since 2012/2013, there was no complaint made to them by their daughter with reference to ill-treatment of any kind provided to her by the applicants.

From the evidence of PW3 Bhagyashree though it has come on record that she since is residing opposite to the house of applicants and on 31st July 2014 at around 8.45 p.m. had seen Puja

being beaten up by applicants, her evidence reveals that she did not inform said fact on that night to any family members of deceased, though she is real aunt of deceased. She has admitted that she did not make phone call to her sister about said incident, which she alleged to have witnessed on 31st July 2014.

4 Similarly, though it has come in her evidence that on the following day at 8.00 a.m., she had met Puja near water tap where Puja had informed her that she was provided mental torture by applicants, PW3 Bhagyashree again admits that even this information provided by Puja to her was not informed by her to parents of Puja. Nothing is on record to establish as to what prevented this witness from not disclosing such information to the parents of Puja, inspite of she being real aunt. Infact, she has also admitted to have not disclosed such fact to the parents of deceased on the day of incident.

5 Similarly, though PW3 Bhagyashree further claims to have stated to police about alleged demand of Rs.1 Lakh by applicants, PW5 Investigating Officer, in his evidence, had denied fact of PW3 Bhagyashree stating as aforesaid in her statement recorded by police.

6 Having considering above evidence, and since the punishment imposed as aforesaid can termed to be short sentence, and as applicants were on bail pending trial, application is liable to be allowed by suspending substantive sentence imposed upon applicants and by granting bail to them, as per the order below :

- i) Applicants shall be released on bail on their executing PR.Bond in the sum of Rs.15,000/- each, with one surety each, in like amount.
- ii) While on bail, applicant no.1 shall mark his presence with Mohol Police Station, District Solapur, once in three months, pending appeal. Applicant nos.2 and 3 shall mark their presence once in six months, pending appeal.
- iii) Applicants shall produce proof of their residential address and shall intimate change in address, if any, to the concerned police station.

(P. N. DESHMUKH, J.)