

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1227 OF 2017

IN

CRIMINAL APPEAL NO.728 OF 2017

Sambhaji Nivrutti Gawade & Ors. ... **Applicants**
V/s.

The State of Maharashtra ... **Respondent**

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Mr.Aniket Nikam with Mr.Piyush Toshniwal i/b. Mr.Aashish Satpute, Advocate for the Applicants.

Mr.S.R.Shinde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 8th September 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant Nos.1 and 2 on bail during pendency of the appeal filed by them. By the impugned Judgment and Order dated 19th August 2017 in Sessions Case No. 502 of 2014, both applicants along with a co-accused came to be convicted of offences punishable under Sections 498-A, 306 and 304-B of the Indian Penal Code (hereinafter referred to as "IPC" for the sake of brevity). Sentences against them are directed to run concurrently and the highest sentence is that of seven years for the offence punishable under Section 304-B of the IPC.

2 Heard the learned Advocate appearing for the applicant/accused Nos.1 and 2. He submitted that though the FIR came to be lodged on 14/08/2009, allegations about the offence punishable under Section 304-B of the IPC surfaced only on 26/11/2009 when the supplementary statement of P.W.No.1 and P.W.No.2 i.e. mother and father of the deceased came to be recorded. He further argued that applicants, who are in-laws of the deceased were residing separately from the deceased. The cause of alleged ill-treatment stated by P.W.No.2 – mother of the deceased is separation of son of applicants from in-laws of the deceased at the instance of the deceased.

3 The learned APP opposed the application by contending that star witnesses for the prosecution, who are parents of the deceased, are supporting the prosecution case.

4 I have considered the rival submissions and perused the copies of depositions, as well as the impugned Judgment.

5 Undisputedly, both applicants were on bail during pendency of the trial. Short sentence of seven years is imposed on both of them. On 13/08/2009, Shital who is daughter of P.W.No.1 Ram and P.W.No.2 Shobha consumed insecticide and died at the house of her husband i.e. accused No.3 Pradeep. Chief examination of PW.No.2 Shobha shows that her daughter Shital

(since deceased) was residing separately from her in-laws i.e. present applicants. This fact is also elicited from cross-examination of P.W.No.1 Ram. On this backdrop, in chief examination itself, P.W.No.2 Shobha has stated that in-laws of Shital used to ill-treat her by making allegations against her to the effect that she had separated their son and grand-son from them. Earlier, present applicants and their son accused No.3 were joint in residence, but subsequently, accused No.3 along with his wife i.e. Shital starting residing separately. The cause stated by P.W.No.2 Shobha for ill-treatment to the deceased does not fall under purview of Section 304-B of the IPC.

6 Other allegations in respect of subjecting a married woman to cruelty soon before her unnatural death within seven years of her marriage are to the effect that in-laws of the deceased used to demand Rs.15,000/- from her parents and on this count, they used to assault and abuse her. On this aspect cross-examination of P.W.No.4 Ratansing Rajput, Investigating Officer reveals that these averments are stated by parents of the deceased at the time of their supplementary statements recorded on 26/11/2009.

7 In the wake of this nature of evidence against both applicants, they deserve liberty, as there is no likelihood of deciding their appeal in near future. As such, the order :

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on both applicants is suspended and they are directed to be released on bail on executing P.R.bond of Rs.15,000/- and on furnishing surety in like amount by each of them.

(A.M.BADAR J.)