

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2286 OF 2016

Chipemsang Matthew Luikham ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Mr. Bhavesh Parmar i/b. Roy's Law Firm, Advocate for the applicant.
Mrs. Veera Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 3rd March, 2017.

P.C.

The applicant herein is arrested on 3.5.2016 in C.R. No.230 of 2016 registered at Khar Police Station, Mumbai. The investigation is completed and charge-sheet is filed against the applicant for the offence punishable under Section 306 of the Indian Penal Code. The case is committed to the Court of Sessions and registered as Sessions Case No.606 of 2016.

2. The learned counsel for the applicant, upon instructions, submits that in Sessions Case No.606 of 2016, charge is framed against the applicant under Section 306 of IPC.

3. It is the case of the prosecution that the applicant herein was in love with one Ms. Arin. They were in a live-in relationship. It is the case of the prosecution that a fortnight prior to 3.5.2016, Arin had started residing with the present applicant. It is also the case of the prosecution

that the applicant as well as the deceased were in the habit of consuming alcohol. That in the intervening night of 2nd May and 3rd May, 2016, Arin was taken to the hospital by the applicant as she had sustained certain injuries and had probably attempted to commit suicide. She was declared dead at the hospital. On 3.5.2016, the statement of one Mrs. Asinath Khorai was recorded. That she happens to be the cousin of deceased Arin. She has disclosed to the police that she had met Arin. It was disclosed to her by Arin. That The present applicant used to harass her and assault under the influence of alcohol. That he was jobless. That on 3.5.2016 at about 3.30 a.m., the applicant had called upon the first informant and had informed her that Arin is admitted in Asha Parekh Hospital. The first informant had rushed to the hospital. Upon enquiry, she was told that on the previous night, there was a quarrel between the applicant and Arin and they both were under the influence of alcohol and that Arin had slipped and fallen down when she was going to bathroom and therefore she had sustained an injury to her head. She was further informed that Arin had locked herself in the room and had committed suicide by hanging.

4. Initially, A.D. No.22 of 2016 was registered. The Inquest panchnama and the scene of offence panchnama were conducted in A.D. enquiry. While conducting Inquest panchnama, it was noticed that the

deceased had sustained a deep wound on her forehead. Her lips were swollen. There was an incomplete ligature mark on her neck. In the scene of offence panchnama, blood stains were noticed on the pillow cover as well as on the mattress in the bedroom. Similarly, there were blood stains on the wall as well as on the ground. The police was informed that deceased Arin had hanged herself to the ceiling fan.

5. Autopsy was conducted on the dead body of deceased Arin.

Column No.17 of the post-mortem notes is as under :-

“1. Pressure abrasion in the form of ligature mark present over anterior-lateral part of upper neck, above the level of thyroid cartilage extending posteriorly and upwards towards nape of neck. Reddish brown in colour, dry, hard, parchmentlike in consistency. While glistening band of areolar tissue present beneath the ligature mark. Ligature mark absent over nape of neck.

- Neck circumference 36 cm.
- Ligature length – 28 cm.
- Breadth – Right side – 1.5 cm. middle – 1 cm and left side 2 cm.
- Distance below chin – 3.5 cm.
- Distance above sternal notch – 8 cm.
- Distance below right mastoid – 1 cm.
- Distance below left mastoid – 1 cm. Knot over left side behind ear.
- Hyoid bone cornue - intact.
- Thyroid cartilage – intact.

2) Contused lacerated wound of horizontal V shaped of size 3.5 cm.,

x 1.5 c.m. x bone deep over right fore head, 2.5 c.m. above right eyebrow, reddish brownish.

3) Abrasion of size 0.5 cm. x 0.2 cm. over right nostril, reddish brownish.

4) Contusion over right forearm of size 2 cm. x 1 cm. reddish. It is 6 cm above wrist.

5) Abrasion of size 0.2 cm. x 0.2 cm. over dorsum of right hand reddish.

6) Two abrasions of size 0.2 cm x 0.2 cm each.”

Similarly, column No.19 would also indicate that there was a under scalp contusion over right frontal and lateral to injury No.1. There was a under scalp contusion over right parietal protuberance. Brain substance – Petechiae seen in cerebral white matter; congested edematous. The cause of death as shown in the post-mortem is “Evidence of Asphyxia due to hanging with evidence of CLW and contusion under the Scalp”.

6. This is a peculiar case that despite having noticed external and internal injuries on the head, the investigating agency has relied upon the statement of the accused and his family members that deceased Arin had committed suicide.

7. The learned counsel for the applicant submits that as on today, the case cannot be stretched beyond Section 306 of IPC as the learned Sessions Judge has framed the charge under Section 306 of IPC. This

Court is of the opinion that the possibility that it could be a case under Section 302 of IPC cannot be ruled out. It is a case of accidental death. At the outset, the applicant had informed the relatives that she had slipped and fallen down. Upon seeing the injuries in column Nos. 17 and 19, it cannot be simply said that these were accidental injuries. Moreover, there were blood stains on the mattress as well as the pillow in the bedroom where she had allegedly committed suicide. However, at this stage, it will not be appropriate for this Court to substitute its opinion for the medical evidence. However, at the time of recording of evidence the learned Sessions Judge, upon perusing the post-mortem notes as well after recording the evidence of the medical officer, would be at liberty to frame additional charge, if any. This would be necessary because the ligature mark is also not a complete ligature which would clearly indicate a case of hanging. Be that as it may, taking into consideration the papers of investigation, this Court is of the opinion that the applicant does not deserve to be enlarged on bail.

8. Hence, the application seeking enlargement on bail stands rejected.

(SMT. SADHANA S.JADHAV, J.)