

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1705 OF 2018**

Siddheshwar Suresh Shete.

..Applicant.

V/s.

The State of Maharashtra.

..Respondent.

Mr. Prabhakar Manohar Jadhav, advocate for applicant.

Mr. Rajan Salvi, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 24, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1908. The applicant herein is arrested on 3/5/2017 in Crime No. 78 of 2017 registered at Mohol Police Station initially for offence punishable under section 307 of the Indian Penal Code. The injured had succumbed to the injury on 16/2/2017. Hence, Section 302 of the Indian Penal Code was added.

3 It is the case of the prosecution that on 2/2/2017 Mainabai Dilip Shete had lodged a report at the police station. In her village there

Talwalkar

were minor quarrel between boys, who were playing cricket. Her son was also playing cricket at that time. The altercation had taken a violent turn and therefore, she went to the spot and pacified them and had taken her son back home. It is alleged that the present applicant was also one of person, who had participated in that quarrel. Ever since that day, the applicant herein had held grudge against her, so much that he did not allow his wife to have any acquaintance or association with the complainant i.e. Mainabai Shete.

4 That her nephew was to get married on 5/2/2017. Therefore, she had been to her nephew to extend invitation to the families. It is pertinent to note that the applicant happens to be one of the distant relative of the complainant. On 2/2/2017 when she was in front of the house of one Anita Pawar and was waiting for her nephew Mahesh, she suddenly felt blow on her head. She turned back and saw the present applicant armed with an axe. He was about to give second blow, when she rescued herself with her hand and sustained injury on her hand. In the meanwhile, Mahesh reached the spot. Upon seeing Mahesh, the applicant had thrown an axe on the spot and fled away. She was taken by the villagers to the hospital at Angad. Since it was medico legal case, her statement was recorded, which was treated as FIR, as a cognisable offence was made up. She was discharged from hospital on 14/2/2017.

Talwalkar

She was re-admitted on 17/2/2017 and she succumbed to the injury on the same day in the hospital. The cause of death is head injury.

5 The post mortem notes indicates that there was a suture wound of length 15 cm with approximately 17 stitches were given. Injury extended over head in midline from mid parietal region to vertex. There were other minor injuries on her person. Column No. 19 shows that there was under-scalp haematoma of size 9 cm. X 4 cm. Present over mid parietal region and a cut fracture of 9 cm. X 3 cm. There were hemorrhages, contusions in the mid parietal region. The cause of death is head injury.

6 The learned Counsel for the applicant vehemently submits that there is no eye witness to the incident and that Mahesh had reached the spot subsequently. It is submitted that the applicant is falsely implicated by the complainant. It is also submitted that now the deceased is not available for recording of evidence and therefore, further incarceration will not be imperative.

7 As against this, the learned APP submits that the statement of victim dated 2/2/2017 could be treated as dying declaration since the cause of death was the result of the head injury which she sustained at

the hands of the present applicant. It is pertinent to note that the statement of Mahesh is also recorded under section 164 of the Code of Criminal Procedure, 1973. He has specifically stated that after assaulting, the deceased Mainabai had caught hold of the hands of the applicant and was trying to retaliate. He reached on the spot and upon seeing him, he had thrown the axe on the ground and had fled on his motor cycle. The villagers had helped them to admit her in the hospital. This is a case of direct evidence. In view of the above fact, no case of bail is made out. The application being sans merits stands rejected and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]