

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.907 OF 2018

IN

CRIMINAL APPEAL NO.708 OF 2018

Khalil Ahmad Shaikh & Ors. ... **Applicants**

V/s.

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

.....

Mr.Nitin Sejpal, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 20th JULY 2018.

P.C. :

1 At the outset, the learned Counsel appearing for the applicants submits that he is not pressing the application so far as the applicant Nos.1 and 2 namely Khalil Shaikh and Salima Shaikh are concerned. Thus, the application in respect of both these applicants is disposed of as withdrawn.

2 Now the application is confined to release of applicant Jahir Abdul Shakur Khan – accused No.4. He is convicted of the offence punishable under Sections 304-B and 498 read with

Section 34 of the Indian Penal Code by the learned trial Court and is sentenced to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.2000/- on first count and rigorous imprisonment for one year and payment of fine of Rs.1000/- on another count. Default sentences are also imposed on him.

3 Heard the learned Counsel appearing for the applicant Jahir Abdul Shakur Khan. He argued that Jahir Abdul Shakur Khan was just a mediator in settlement of marriage between Afroz and her husband Javed. No act of cruelty can be attributed to him and he was not even residing in the matrimonial house of the Afroz. Allegations against the applicant are vague and he was on bail throughout the trial. He has not misused his liberty. The learned Counsel further argued that initially, the offence punishable under Section 306 of the Indian Penal Code was registered against the accused persons and later on provisions of Section 304-B of the Indian Penal Code added to the case diary of the crime.

4 The learned Additional Public Prosecutor opposed the application by contending that Afroz died unnatural death within two months from her marriage with accused Javed and there is evidence of harassment and cruelty on account of demand of dowry against the present applicant also.

5 I have carefully considered the rival submissions and also perused the record made available.

6 Afroz married with accused No.1 Javed on 12/05/2011. She died because of asphyxia caused due to hanging on 08/07/2011 i.e. within the period of two months from her marriage in her matrimonial house. Apart from ligature mark, during autopsy it was found that she had suffered contusions on her back and right arm apart from multiple small abrasions over her body. Suicide note came to be recovered from the spot which is to the effect that nobody should be held responsible for her death.

7 Deceased Afroz and her two sisters were abandoned by their parents and they were maintained by their maternal uncle. P.W.No.1 Shabana Shaikh is sister of deceased Afroz. She narrated about woos and sufferings of Afroz soon after her marriage. She is the person who has visited the matrimonial house of Afroz on 12/06/2011.

8 In order to make the offence punishable under Section 304-B of the Indian Penal Code, the prosecution is enjoined to establish that :

(a) the death of a married woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

- (b) such death is occurred within seven years of her marriage;
- (c) the deceased was subjected to cruelty or harassment by her husband or relatives of her husband;
- (d) such cruelty or harassment was for and in connection with demand of dowry; and
- (e) such cruelty or harassment to the deceased was soon before her death.

9 So far as case of the applicant is concerned, he is relative of the husband and parent-in-laws of deceased Afroz. P.W.No.1 Shabana Shaikh is not specifically referring applicant Jahir Abdul Shakur Khan as a person, who had subjected deceased Afroz to cruelty for and on account of demand of dowry soon before her death. His role appears to be that of a mediator in the marriage. Therefore, considering the nature of evidence against the applicant Jahir Abdul Shakur Khan, his liberty needs to be restored to him during pendency of the appeal. As such, the Order:

ORDER

- (i) Application of applicant Nos.1 and 2 is disposed of as withdrawn.
- (ii) Substantive sentence of imprisonment imposed on the applicant/accused Jahir Abdul Shakur Khan is suspended

and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount during pendency of the appeal filed by him.

(iii) The application is disposed of accordingly.

Raju
Dattatraya
Gaikwad

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(A.M.BADAR J.)