

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1630 OF 2017

IN

CRIMINAL APPEAL NO.876 OF 2017

Shashikant Shantaram Tavare.] ... Applicant / Appellant
Versus
The State of Maharashtra.] ... Respondent

ALONG WITH

CRIMINAL APPLICATION NO.1658 OF 2017

IN

CRIMINAL APPLICATION NO.1630 OF 2017

Sau. Kusum Sudam Thete.] ... Applicant / Intervener

In the matter between :

Shashikant Shantaram Tavare.] ... Applicant / Appellant
Versus
The State of Maharashtra.] ... Respondent

Mr. Ashok Mundargi, Senior Advocate a/w Mr. Amol Wagh i/b Mr. Sagar Kasar for Applicant / Appellant in Criminal Application No.1630 of 2017.

Mr. H. J. Dedhia APP for State.

Mr. Rajiv Patil, Senior Advocate, for Complainant – First Informant / Intervener in Criminal Application No.1658 of 2017.

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.

DATE :- 13 JUNE, 2018

P. C. :-

1. The Applicant has preferred Criminal Application No.1630 of 2017 for bail and suspension of sentence during the pendency of the Appeal.
2. The Appellant has been convicted for the offences punishable under Sections 302 and 309 of the IPC. Admittedly, the Applicant was having a love relationship with deceased Jyoti. However, there was opposition to the marriage from the family and though they had applied for registration of marriage, the same was withdrawn.
3. On the date of the incident i.e. 18/05/2016, the deceased was in her house along with her mother PW 1 Kusum. When PW 1 was in the house, deceased Jyoti went inside to answer the call on the mobile of her sister-in-law. Since the deceased did not return for a considerable period, PW 1 Kusum went for her search in a school which is behind the house of the PW 1. In one room, the deceased was seen lying idle in a pool of blood and the Applicant was also lying

beside her. According to her, when his friends were trying to move the Applicant, he said, “Don't move me. I have killed Jyoti. I also want to die.” On the basis of the evidence, the learned trial Judge has convicted the Appellant.

4. Mr. Ashok Mundargi, learned Senior Advocate for the Applicant, submitted that the evidence of PW 1 Kusum, would show that insofar as the extra-judicial confession is concerned, that part is by way of an omission and the same is stated for the first time in Court. He submitted that taking into consideration the nature of the evidence, it cannot be said that the prosecution has proved the case beyond reasonable doubt.

5. Mr. H. J. Dedhia, learned APP for State and Mr. Rajiv Patil, learned Senior Advocate appearing for the first informant, vehemently opposed the Application.

6. In view of the law laid down in by the Apex Court in the case of *Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others*¹, a detailed elaboration of the evidence will have to be avoided at this stage.

¹ (1980) 2 SCC 559

7. Undisputedly, from the evidence of PW 1 Kusum and PW 11 Ganesh, it is proved beyond reasonable doubt that both the deceased and the Appellant were found in an injured condition in a room of a school. The said incident is also not disputed by the Appellant as can be seen from his specific statement under Section 313 of the Cr.P.C. Though he admits that the deceased had told him that she cannot live without him and shall not have any other option than to commit suicide, he further stated that at that time, he took a cutter from the hand of Jyoti and cut his wrist and thereafter he became unconscious.

8. No doubt, that a false explanation or non-explanation cannot be taken as a circumstance to prove the case beyond reasonable doubt. However, in view of the law laid down by the Apex Court in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra*², a false explanation or non-explanation in a 313 statement can always be taken into consideration as a factor to fortify the offence or guilt already recorded.

² AIR 1984 SC 1622

9. Since it is not disputed that the Appellant and the deceased were found together in an injured condition, it will have to be examined as to whether, *prima-facie*, the defence of the Appellant that he does not know after he became unconscious, as to what happened to the deceased, is plausible or not. It will be relevant to refer to the evidence of PW 6 Dr. Anand Pawar, who has conducted the post-mortem on the dead body of the deceased. We do not wish to further burden the order with the details of the injuries, suffice it to say that the deceased has received 18 injuries. It is highly improbable that such injuries could be self-inflicted.

10. In that view of the matter, we are not inclined to entertain the present Application. The Application is, therefore, rejected.

11. In view of disposal of Criminal Application No.1630 of 2017, Criminal Application No.1658 of 2017 for intervention does not survive and the same is accordingly disposed of.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)