

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 30 OF 2018**

Mr. Ashok Pandurang Patil

.....Applicant

Vs.

The State of Maharashtra & Anr.

....Respondents.

Ms. Sandhya Nanavare for the Applicant.

Mr. S.S. Hulke APP, for the Respondent-State.

Mr. S.R. Phanse I/by Mr. Parth P. Shah for Respondent No.2.

Mr. Amol M. Mali, PSI, Investigating Officer.

CORAM : A. S. GADKARI, J.

DATE : 14th SEPTEMBER, 2018.

P.C.:-

The Applicant, father of deceased Ms. Supriya Patil, by the present Application under Section 482 of the Code of Criminal Procedure, has impugned the Order dated 10th November 2017, passed by the learned Additional Sessions Judge, Greater Mumbai, below Exhibit-5 in Sessions Case No. 393 of 2016, arising out of Crime No. 261 of 2015 dated 11th June, 2015, registered with Worli Police Station, Mumbai, thereby rejecting the Application preferred by the State of Maharashtra for adding Sections 376, 312 and 313 of the Indian Penal Code.

2 Heard the learned counsel for the Applicant, learned

counsel for Respondent No.2 and the learned APP. Perused the record and examined the Investigating Officer, PSI Shri Amol Mali.

3 The Applicant herein, is the first informant in the aforesaid Crime. The name of the deceased is Ms. Supriya Patil, daughter of the Applicant.

That, on 21st May, 2015 at about 4.00 p.m. Ms. Supriya Patil consumed insecticide, which fact was noticed by the first informant and thereafter, she was immediately admitted to Nair Hospital. During the course of treatment, Ms. Supriya Patil expired. ADR No. 46 of 2015 was initially registered by the police and during the course of inquiry of the said ADR, statements of some of the witnesses were recorded.

The record indicates that, the statements of wife of the accused/Respondent No.2 Smt. Sarika J. Gurav and witness Smt. Tulsa A. Jadhav, were recorded during the course of the said inquiry. A plain reading of the statement of Smt. Tulsa A. Jadhav dated 24th May, 2015 would *prima facie* disclose that, an offence as contemplated under Section 376 of the Indian Penal Code against the Applicant was made out.

4 It is the case of the prosecution that, when the relations of

Respondent No.2 and Ms. Supriya Patil came into light or rather came to the knowledge of the wife of the Respondent No.2, the family members tried to explain its ultimate repercussion to the Respondent No.2, which he did not accept and persisted to marry with Ms. Supriya Patil.

Smt. Sarika Jadhav, wife of the Respondent No. 2 in her statement has stated that, when the situation went beyond control and the Respondent No.2 realized that it was difficult for him to marry with Ms. Supriya Patil, he on 21st May, 2015 in the morning consumed large number of sleeping pills with a view to commit suicide however, the said attempt was a futile attempt. After hearing the said news of consumption of sleeping pills by the Respondent No.2, Ms. Supriya Patil consumed poison at her residential house and during the course of medical treatment, she expired.

After completion of investigation, the Investigating Officer has submitted charge sheet under Section 306 of the Indian Penal code. The Respondent No. 2 is the sole accused in the present crime.

5 During the course of arguments of the present Application, certain disturbing facts came to the notice of this Court, which are noted herein below:-

- (i) That, during the course of inquiry of the said ADR No. 46 of 2015 dated 21st May, 2015, though *prima facie* an offence under Sections 306 and 376 of the Indian Penal Code was revealed to the Investigating Officer, much belatedly on 11th June 2015, the present crime is registered by the police.
- (ii) The record indicates that, the statement of Smt. Tulsa A. Jadhav and Smt. Sarika J. Gurav though are part of the charge-sheet, Section 376 of the Indian Penal Code has not been applied to the present crime.

6 In the circumstances, the Respondent No. 2 preferred an Application under Section 227 of the Code of Criminal Procedure for his discharge. At that relevant time, the State of Maharashtra i.e. Respondent No.1 herein preferred an Application below Exhibit-5 for adding Sections 376, 312 and 313 of the Indian Penal Code to the present crime, which has been rejected by the impugned Order dated 10th November 2017.

7 The statement of Smt. Tulsa Jadhav clearly mentions that, deceased Ms. Supriya Patil on 20th May, 2015 after 5.30 p.m. made a

statement to her that, when she was in 10th Standard, the Respondent No.2 used to follow her and subsequently committed rape on her. That, due to fear, Ms. Supriya Patil did not disclose the said fact to anybody. That, when Ms. Supriya Patil was 17 years of age, she became pregnant and therefore, the Respondent No.2 caused her abortion. It is further stated that, she did not disclose this fact due to fear of Respondent No.2. As noted earlier, a *prima facie* case for adding Section 376 of the Indian Penal Code was made out from the statements of the afore-stated witnesses.

8 It is to be further noted here that, Ms. Supriya Patil committed suicide by consuming insecticide in the afternoon of 21st May, 2015. The statement made by Ms. Supriya Patil before Smt. Tulsa Jadhav after 5.30 p.m. on 20th May, 2015 would certainly fall within the ambit of Section 32(1) of the Indian Evidence Act. Undoubtedly, there is proximity between making of said statement on 20th May, 2015 after 5.30 p.m. and commission of suicide by Ms. Supriya Patil on 21st May, 2015 in the afternoon and therefore also the statement of Ms. Supriya Patil given to Smt. Tulsa Jadhav is relevant for taking into consideration the necessary aspects, and therefore, at the stage of adding of Section 376 of the Indian Penal

Code, it does not require further corroboration.

The statement dated 23rd May, 2015 of Smt. Sarika Gurav, wife of Respondent No.2 is also relevant. In her said statement, she has stated that on 20th May, 2015 in the morning she found her husband i.e. Respondent No.2 in the house of deceased Ms. Supriya Patil and when confronted with Ms. Supriya Patil, she admitted the fact that she is having illicit relations with Respondent No.2.

Thus, *prima facie*, it appears that there is some corroboration to the version of Smt. Tulsa Jadhav in that behalf.

As the said Ms. Supriya Patil had made such a disclosure to Smt. Tulsa Jadhav just prior to commission of her suicide, the said statement given to Smt. Tulsa Jadhav would fall within the purview of Section 32 (1) of the Indian Evidence Act.

9 During the course of the arguments of the present Application, when this Court expressed its displeasure about non-application of Section 376 of the Indian Penal Code to the present crime at the time of filing of the charge-sheet itself, it was submitted by the Investigating Officer Mr. Amol M. Mali, PSI that, no evidence for application of Section 376 of the Indian Penal Code could be gathered at the time of submission of final report/charge sheet.

This Court, therefore, had doubt about the bonafide of the Investigating Officer about his investigation and submission of final report in the present case.

10 In view thereof, this Court was initially inclined to refer the entire file of investigation either to the Director General of Police or to the Additional Chief Secretary, Home Department, Government of Maharashtra, with a view to apprise them about the mode and manner of investigation and submission of final reports, being causally done by the Police and particularly in this case. On a query, put to the Investigating Officer by this Court, he through the learned APP initially submitted that the present matter may be sent for inquiry to the Commissioner of Police, Mumbai or to any other Competent Authority.

11 In view of the callous and stubborn stand taken by the Investigating Officer, this Court thought it fit to examine the Investigating Officer itself and therefore, the Investigating Officer is put into the witness box.

The statement of the Investigating Officer is recorded by this Court, which is reproduced hereunder:-

“My name is Amol Madhav Mali. I am in Police

Department since last 5 years.

When the investigation of the present crime was handed over to me, I had completed probation period and also 6 months in service.

The statement of Smt. Tulsa Ananda Jadhav, dated 24th May, 2015, which is annexed at page No.31 to the present Application, was recorded by me during the course of inquiry of ADR No. 46 of 2015. It is true that, the concerned witness had stated to me that, Ms. Supriya Patil was sexually assaulted by Respondent No.2 Mr. Jyotiba Narayan Gurav, the accused in the present crime i.e. CR No. 261 of 2015, registered with Worli Police Station, Mumbai.

After concluding the inquiry in ADR No.46 of 2015, the present crime was registered on 11th June, 2015, on the basis of the statement made by the Applicant herein i.e. the first informant.

Question by the Court- Perusal of statements of Smt. Tulsa Ananda Jadhav and Mr. Ashok Pandurang Patil, the first informant, prima facie discloses that, an offence under Section 376 of the Indian Penal Code has been made out and

despite this fact, why Section 376 of the Indian Penal Code was not added to the crime while submitting the final report/charge-sheet under Section 173(2) of the Code of Criminal Procedure?

Answer:- *There is no evidence that a rape was committed on the deceased except these two statements and therefore, Section 376 of the Indian Penal Code was not applied to the present crime.*

Question by the Court:- *Do you want to say anything further?*

Answer:- *I do not want to say anything further.”*

[The original Statement of Mr. Amol Mali duly signed by him is kept in the record of the present matter.]

12 It is thus apparent that, the Investigating Officer is either oblivious about the basic tenets of investigation and/or the fundamentals of the Criminal Jurisprudence. It further *prima facie* appears that, the entire exercise undertaken by the Investigating Officer is only with a view to favour the Respondent No.2 for the reasons best known to him and therefore, he has not applied Section 376 of the Indian Penal Code to the present crime.

13 It is to be noted here that, the victim in the present crime has already expired. The record indicates that, the corpus of the victim was already cremated by the relatives after conduction of the *post-mortem*. It is the expectation of the Investigating Officer that, Ms. Supriya Patil should depose about the sexual assault on her for corroboration, which is undoubtedly preposterous and shows lack of sensitivity about the investigation of a crime. It need not be further elaborated that, after the death of a person, it is only the statements of the witnesses, which would elaborate and/or point out a crime committed by the accused against the said person. The Investigating Officer cannot expect that the deceased Ms. Supriya Patil to give her statement after her death and therefore, her statement to the witness Smt. Tulsa Jadhav would fall within the purview of Section 32(1) of the Indian Evidence Act.

14 The afore-stated deliberation would lead for an irresistible conclusion that *prima facie* an offence under Section 376 of the Indian Penal Code is made out from the record of investigation. However, the ingredients for applying Section 313 of the Indian Penal Code are lacking as the alleged incident of causing miscarriage by the Respondent No.2 had taken place approximately four years prior to

the date of commission of the present offence and there is no material on record to that effect.

15 The Trial Court has also committed serious error in seeking corroboration to the statement of the deceased Ms. Supriya Patil given to witness Smt. Tulsa Jadhav for adding Section 376 of the Indian Penal Code to the present crime at this stage.

In view thereof, the impugned order dated 10th November 2017, is hereby quashed and set aside and the Application preferred by the State below Exh.5 is partly allowed.

The Trial Court is directed to add Section 376 of the Indian Penal Code to the present crime.

Application is allowed in the aforesaid terms.

16 As far as the observations made by this Court against the Investigating Officer are concerned, this Court is pensive in noting these observations out of anguish and due to the total lack of sensitivity of the Investigating Officer in investigating an offence of such a serious nature. It is only because of the Investigating Officer, the hapless father (Applicant) of the deceased has to approach this Court. The Director General of Police being the appointing authority is hereby directed to take serious note of the same and adopt

appropriate remedial measures in that behalf.

17 The learned Additional Public Prosecutor, High Court, Mumbai is hereby directed to communicate copy of this Order to the Director General of Police, Maharashtra State by all possible modes.

(A.S. GADKARI, J.)

**S S
Mashalkar**

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