

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1873 OF 2018
IN
CRIMINAL APPEAL NO. 120 OF 2017

Usha Sanjay Mali ... Applicant

Versus

The State of Maharashtra ... Respondent

Adv Mamata Paradkar i/by Sukhman Rait for the applicant.

Mrs. M.H. Mhatre, APP for the State.

CORAM : B.P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.
DATE : SEPTEMBER 17, 2019

P.C.:

Heard.

2. Step mother convicted for murder of daughter aged about 7 years by name Sakshi and attempted murder of son aged 6 years by name Akash is seeking release on bail.

3. The contention is story of prosecution does not inspire confidence. Father PW 1 was not found to be sleeping in the cattle shed as claimed by Akash and police have recorded his statement after the delay of about eight to nine days. Father after lodging the police report was searching for the children but then in the field did not give call in the name of daughter but was

calling out name of Akash only. This shows that the father was aware of the death of Sakshi. Akash though taken out of the well, had surfaced on without scratch though he had fall of about 38 ft.

4. The applicant was not absconding but was present in the house only.

5. Learned APP points out that both the children were pushed into the well at the same time in the afternoon but Akash could sit on the heap of mud holding a wire and therefore, survived. Sakshi could not catch hold of anything and therefore drowned. When the children did not return back, missing report was lodged and the villagers as also the father were searching for them. In the process, they reached the field and when call was given near the well, Akash responded from inside. He was taken out and then he explained everything. He pointed out that body of Sakshi was in the well.

6. Counsel for the applicant in reply states that Akash did not shout for help if he was in the well since afternoon. He was thus sitting in the well silently and he was not traumatized by the experience. This therefore, shows that somebody has used Akash to fabricate the case against the applicant.

7. After perusal of the record, at this stage, we find ourselves

unable to intervene in the matter. Child Akash has immediately after coming out of the well, informed the police about the role of his mother and he has explained how he could climb on the heap of mud and sat there with the help of wire. If he had fall in the water and could climb on the heap of mud, he might not have any injuries. His sitting silently inside the well also cannot be capitalized as circumstance in favour of the accused at this stage. We do not find anything on record to explain why child Akash should depose against his step mother.

8. Hence, application is rejected.

(SANDEEP KASHINATH SHINDE, J.)

(B.P. DHARMADHIKARI, J.)