

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 349 OF 2018
IN
CRIMINAL APPEAL NO. 1124 OF 2018

Suresh Mallayya Annaldas. ... Applicant.
V/s.
The State of Maharashtra. ... Respondents.

Mr.Anchan Gangadhar S. for the applicant.

Mr.J.P.Yagnik, APP for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 4th February 2019.

P.C. :

Heard the learned counsel appearing for the applicant. The applicant has been convicted for the offence punishable under section 302 and 498A of Indian Penal Code. For the offence punishable under section 498A, he has been convicted to undergo rigorous imprisonment for three years. The applicant was arrested on 31st March 2015. Therefore, he has undergone sentence for 3 years and 10 months.

2. The applicant is the husband of the deceased. The prosecution is mainly relying upon the evidence of PW4- Laxmi Channa. She has stated that on 12th March 2015, the applicant, the father of the deceased and the brother of the deceased had taken a room in her

building on leave and licence basis. On 13th March 2015, she visited their room as the deceased had called her for a cup of tea. She deposed that she had met deceased on 15th March 2015 at 8.30 p.m. when she was rolling Bidi. According to her, the deceased was rolling Bidi till 10.30 p.m. and her husband was in the room. She noticed that on the next day morning, there was a lock put on the room of the applicant. When, on 17th March 2015, it was found that bad smell was coming out of the room, the brother of the deceased took hammer from her and broke open the lock when dead body of the deceased was found inside. However, PW No.3- Jayshree who is autopsy surgeon has not disclosed the possible time of date of death. The other evidence against the applicant is in the form of CDR of cell phone of the applicant which discloses that on night of 15th March 2015, the location of cell phone was in the same area where the applicant was residing. That cell phone was not working thereafter and his another cell phone was showing that he was in Andhra Pradesh. The applicant was apprehended from Andhra Pradesh on 31st March 2015. According to the prosecution case, there was sufficient evidence of demand being made by the applicant and harassment made by the applicant of the deceased for not complying with the demand.

3. Taking the case of the prosecution as correct, PW4 found that the applicant and the deceased were together till 10.30 p.m. on 15th March 2015. No prosecution witness has deposed that he or she had seen the applicant leaving the room. The evidence of PW6- Rajan Saste, the Investing Officer reveals that on 25th March 2015, he recorded the statement of Devraj Channa, the husband of PW4. He deposed that the

said Devraj was the landlord from whom the applicant had taken the room. However, the prosecution has not examined the said Devraj. His evidence further discloses that on 30th March 2015, the applicant's friend Shriniwas informed the police that the applicant had come to his house at Nijamabad in Andhra Pradesh for lunch. Accordingly, the police squad was dispatched and eventually the applicant was arrested from the house of the said Shriniwas on 31st March 2015. Though PW6 claims that the statement of said Shriniwas was recorded, the said person has not been examined as witness. There is nothing placed on record to show that after 17th March 2015 till 31st March 2015, the applicant was informed about the death of his wife and still he remained away and did not come back.

4. In view of aforesaid circumstances, in our view, a case is made out by the applicant for enlarging him on bail and, accordingly, we pass the following order:

ORDER

- (i) The substantive sentence imposed upon the applicant- Suresh Mallayya Annaldas, under the impugned judgment and order dated 17th July 2017 passed by the learned Additional Sessions Judge, Thane in Sessions Case No.250/2015 shall stand suspended and the applicant shall be enlarged on bail in the sum of Rs.25,000/-. He shall furnish one or two solvent local sureties to make the said amount;

- (ii) The bail is granted subject to condition that the applicant will report to the learned Trial Judge on first Monday of every January and July of the calendar year at 11.00 a.m. till the disposal of the appeal;
- (iii) In the event the applicant fails to report, the learned Trial Judge shall forthwith submit a report to that effect to the Registrar (Judicial-I) who shall place the same before the appropriate Bench for necessary orders;
- (iv) Application is disposed of on above terms.

(A.S.GADKARI, J.)

(A.S.OKA, J.)