

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 858 OF 2019
IN
CRIMINAL APPEAL NO. 375 OF 2018

Vaishali Kailas Pawar ... Applicant

Versus

State of Maharashtra ... Respondent

Adv Payoshi Roy i/by Dr. Yug Mohit Chaudhary for the applicant.

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

**CORAM : B.P. DHARMADHIKARI &
SWAPNA JOSHI, JJ.**
DATE : JUNE 13, 2019

P.C.:

The applicant widow has been convicted vide judgment and order dated 4/2/2017 delivered by the Sessions Judge, Sangli in Sessions Case No. 208 of 2014 for committing murder of her husband in the night between 14/6/2014 and 15/06/2014.

2. The incident was reported by the applicant to police and at that time after due enquiry in terms of section 172(2) Cr.P.C., accidental death was recorded. The last rites were performed and it is the case of the applicant that the brothers and sisters of the deceased, instead of proceeding to their respective houses/villages, came to her village. There talks about the

distribution of the property left behind by the deceased took place and on account of differences with the accused, false case was then prepared and the complaint was lodged.

3. Learned counsel for the applicant states that the accused was sleeping with her husband in varandah by the side of the cattle shed and on the roof of the cattle shed there was a tarpoline sheet. To keep that sheet at place, stones were put on it and one of the stone slipped down and fall on the body of the deceased. This version was accepted and accordingly the prosecution permitted cremation to take place. Because of the property dispute, the step daughter of the accused gave wrong/false statement. She claims that she and her step brothers were sleeping in the room behind varandah. The door and windows of the room opening in the varandah used to be open but on that day, (in the night between 14/06/2014 and 15/06/2014), the same were shut from outside. Because of the commotion she got up and found it was locked from outside. Her mother then opened the door and she found the saree on the person of the mother (accused) with blood stains. The accused then informed her about the incident. Then she (step daughter) opened the door of varandah and went out and called the neighbours.

4. Submission is when on the basis of this statement, the offence was registered, no effort has been made to find out whether the stone which fall on the deceased was on the roof of cattle shed or not and only because of the finding that there was no rain or storm on that day and therefore, the stone could not have slipped down, the theory of accident has been discarded. It is further submitted that though the doctor on post mortem has deposed that the fall of the seized stone from the height of about 6 ft on the head of the deceased would have resulted in more serious injuries, that stone was never shown to him. It is pointed out that all injuries are on one side and therefore, support the story of the accused.

5. Learned APP submits that after the complaint of murder was received, investigation was done and statement of PW 4 (neighbour) reveal that the stone was not on the roof. It is claimed that Dr. who conducted the post mortem has deposed that fall of the seized stone from the height of 1 and 1.1/2 ft would have caused the injuries noticed in the post mortem. It is further submitted that the trial court has found that the accused could have lifted that stone and inflicted the injuries on the deceased. Frequent quarrels between the couple, threat to kill husband are the circumstances relied upon by the learned APP to

show the motive.

6. We have perused the evidence. The material on record shows that the spot panchanama was conducted at 9.00 am on 15/6/2014. Then theory that the stone fell down from the roof of tin shed (cattle shed) and killed the deceased was accepted. Thereafter, the body was taken to native place where last rites were performed and after about 6 days i.e. on 20/6/2014, relatives came back to the house where the incident occurred. The accused has claimed that the cattle belonging to her husband were taken away by his brothers.

7. In the light of the earlier investigation and acceptance of accidental death by State, the burden was heavy and the investigating agency therefore, should have come up with positive material to show that the stone did not slip down or then had it hit the deceased from the height of about 6 ft. it would have resulted in more grievous injuries. Paragraph 8 in the examination-in-chief of PW 13 Dr. Jadhav shows that all injuries were possible by the said stone. He has however, stated that had the stone fell from the height of 1.1/2 ft these injuries were possible. Thus single fall of stone could have resulted in these injuries even according to the prosecution. The material on record does not show that the stone was shown to doctor at any

time before recording his evidence. Even in paragraph 8, it is not expressly stated that the stone was shown to him.

8. The question therefore, is whether the stone slipped in the night and killed the deceased. We find the material on record insufficient to show that the stone could not have fallen down from the roof accidentally. In the light of earlier acceptance of accidental death, the latter change in the stance by the prosecution has not been explained by cogent and convincing evidence.

9. As on today, the applicant/accused has already completed about 5 years of imprisonment. Hearing of this appeal may require considerable time. Hence, we are inclined to release her on bail on the following terms and conditions :

(a) She shall execute personal bond in the sum of Rs.25,000/- and shall also give two independent sureties in the same amount for her attendance and due prosecution of the present appeal.

(b) She shall also place on affidavit the address at which she shall always be available during the pendency of the appeal and her contact numbers. Similar details in relation to her sureties shall also be furnished.

(c) She shall attend the office of the Registrar/Superintendent of Sessions Court, Sangli on first working Monday once after

every two months.

(d) The vakalatnama of her advocate in the present appeal shall be kept alive and valid till its disposal and she shall not claim fresh notice for final hearing.

(e) The appropriate undertakings on the above lines shall be filed within two weeks from today.

(f) Failure to observe any of the terms and conditions hereinabove, shall entitle the respondent State to take her in custody.

(g) Application is accordingly allowed and disposed of.

(SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)