

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 986 OF 2018
IN
CRIMINAL APPEAL NO. 1411 OF 2018

Balu Bhimaji Supnar

... Petitioner

Versus

The State of Maharashtra

... Respondents

Mr. Lakshyaved Odhekar for the petitioner.

Mr. H.J. Dedhia, APP for the State.

CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.
DATE : JULY 17, 2019

P.C.:

The applicant/accused no. 1 (husband of deceased) seeks bail. He has been convicted by the Additional Sessions Judge, Malegaon in Sessions Case No. 122 of 2013 under section 302 IPC for committing murder of his wife as also under section 201 IPC. He has been acquitted under section 498-A IPC. His co-accused persons namely accused nos. 2 to 4 have been acquitted of the offence punishable under section 498-A, 302, 201 read with section 34 IPC.

2. The body of the deceased Savita was found in a well

located about 125 mtrs away from the residence. PW 3 is the person who reached that well after learning about the incident when the body was being taken out of the well. A rope was tied to her hands and she was hanging inside. PW 2 has reached the spot when the body was already taken out and placed on a cot. Thus there is no witness who has seen the body floating in the well. The evidence of PW 10 Dr. Shaikh shows that the death was due to asphyxia and he has explained that the asphyxia was on account of cerebral injuries. These injuries are possible by sickle. He has explained that the asphyxia was not due to strangulation or drowning.

3. Accused no. 1 was arrested on the same day. PW 2 who has acted as a panch of the spot and on recoveries including the recovery under section 27 has stated that on the next day, the accused made a disclosure statement and then he took the police to the spot from where sickle hidden in the wooden logs was taken out. He also states that after this recovery, he took the police to his home and informed that he killed his wife there and removed the blood stains by washing the floor. The IO has recorded panchanama of that house at Exh. 56. However, there is no recovery from it.

4. The sequence in which these events have occurred appear

to be not brought on record by any cogent or convincing evidence. The material demonstrates that the first spot where the wife was killed was shown and thereafter the sickle was taken out. In deposition, this sequence is reversed by the witness. Not only this, even if one goes by the days mentioned by him, again there is some inconsistency in the date mentioned on the documents and his deposition.

5. Learned counsel for the applicant in this backdrop has submitted that there is no cogent and convincing material to link the applicant with crime. The accused was arrested on the same day and blood of group "A" is found on his shirt. His own blood group is "B". The blood group of deceased could not be determined. However, in the above facts, the trial court has concluded that the blood on the shirt of the accused was of the deceased.

6. It is further submitted that the use of section 106 of the Evidence Act in this situation is misconceived as the body was not found in the house and nobody has seen the accused with the deceased near the well or in the vicinity.

7. The contention is thus by drawing that inference on account of the alleged recovery under section 27 and the provisions of section 106, the applicant has been punished.

8. Learned APP points out that the body was ultimately taken out of the well by inserting a cot below the body in the well. Witnesses PW 2 and PW 3 support this. According to him, it appears that the body was drowned in the well with a long rope tied to hands. It is also submitted that in this situation, when there were allegations under section 498-A, recourse to section 106 has been rightly taken. The accused was the only person who could have thrown light and hence, burden is put upon him. The blood on his shirt and discovery of sickle at his instance clinched the controversy.

9. After hearing respective counsel, we find that according to IO, one Dada Bhaga Yamger had seen the body first but the said person has not been examined by the prosecution. Thus the position in which Dada Yamger saw the body initially has not come on record. Even the alleged rope spoken of by PW 3 tied to the hands of the deceased has not been seized by the IO. Though there is panchanama of spot where the accused allegedly assaulted the deceased, there is no recovery from that spot.

10. The facts therefore show that the body of wife of accused was found in the well situated about 125 mtrs away from his house with some injuries. Nobody has seen the accused and the deceased together near that well. Though the allegations under

section 498-A IPC were levelled, accused no. 1 and his relatives, co-accused have been exonerated thereof.

11. The deposition of PW 2 because of the confusion which he has created, creates some doubt. The sickle used for injuring the deceased and the recovery thereof under section 27 at the instance of the accused, has not shown to be having any blood stains or human blood.

12. In this situation, we are inclined to release the applicant on bail during the pendency of the appeal on the following terms and conditions :

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount.

(b) He shall give address at which he shall always be available during the pendency of this appeal along with his contact numbers.

(c) Similar details in relation to his sureties shall also be furnished.

(d) He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter.

- (e) He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing.
- (f) He shall report to the Superintendent/Registrar of Sessions Court, Malegaon on first working Monday in every two months as a condition of his release.
- (g) His failure to observe any of the terms and conditions shall entitle the respondent State to take him in custody forthwith.
- (h) Application is accordingly allowed and disposed of.

(MRS.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)