

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1010 OF 2019
IN
CRIMINAL APPEAL NO. 698 OF 2019

Suryakant Maruti Kadam .. Appellant

Versus

The State of Maharashtra .. Respondent

...

Mr. Jayant Bardeskar for the Appellant.

Mrs. Jyoti Lohokare, APP for the Respondent/State.

CORAM: P. N. DESHMUKH, J.

DATED : 17th OCTOBER, 2019.

P.C:-

This application is for suspension of sentence and for bail by the appellant who is convicted for the offence punishable under Section 498 of Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs.2,000/-, in default, Rigorous Imprisonment for one month and is further convicted for the offence punishable under Section 306 of Indian Penal Code and is sentenced to suffer Rigorous

Imprisonment for five years and to pay fine of Rs.3,000/-, in default, Rigorous Imprisonment for two months.

2. Learned Counsel for the applicant submits that appellant who is husband of deceased, is falsely involved and even from the evidence on record, his involvement cannot be established and it contended that though evidence of PW-3 mother, PW-4 brother of deceased Sujata is involving appellant as well as original co-accused Nos.2 to 4, said accused are acquitted while appellant alone came to be convicted as aforesaid. It is, therefore, contended that application be allowed even on this ground.

3. Learned APP opposed the application on the count that there is nothing to disbelieve the version of witnesses merely because they are related witnesses to deceased and has submitted that application be dismissed.

4. It appears from the case of prosecution that deceased Sujata was married to appellant in April, 2010 and after she co-habited for sometime in the joint family alongwith appellant and co-accused persons, about three months after her marriage, on

instigation of her mother-in-law and brothers of appellant, appellant used to assault her by kick and fist blows and used to keep her starving and therefore, on 9th September, 2015, deceased committed suicide by consuming poisonous substance, on the basis of report lodged by PW-3 mother of deceased on 10th September, 2014 after the death on 9th September, 2014.

5. In the background of case of prosecution as aforesaid, evidence of informant, mother of deceased is to the effect that after marriage with appellant, Sujata was residing in the joint family consisting of appellant and other three co-accused persons. Admittedly, mother-in-law and two brothers of appellant are acquitted on trial. This needs to be specifically stated as from the evidence of PW-3, it has come on record that after marriage, appellant was instigated by his mother and brothers to provide beating and to harass the deceased. It has also come on record that co-accused persons used to instigate appellant to keep deceased starving. It has further come in her evidence that her mother-in-law also used to not provide her food and used to taunt her on account of household work while brothers of appellant used to abuse her in filthy language. Considering the evidence as aforesaid, which is

similar to the evidence of PW-4, brother of appellant and considering fact that in the same set of circumstances, original accused Nos.2,3 and 4 are acquitted, there is no reason to deny the bail to applicant as prima facie, his case finds to be on the same footing with that of acquitted accused persons.

6. Similarly, with regard to application of Section 306 of Indian Penal Code, from the evidence of complainant, it has come on record that when deceased was residing separately with appellant at Shahu Nagar, Chandur, about six months before the incident, accused had kept her starving alongwith her children and therefore, on 9th September, 2019, she committed suicide. In view of above evidence, prima facie, it cannot be said that appellant, at any point of time, was instrumental and had instigated deceased to commit suicide by consuming poison.

7. In the background of above evidence and on considering further evidence of PW-4 brother of deceased since same appears to be with full of material omissions, his evidence is not convincing to be acted upon as though he has deposed that while deceased was residing with appellant at Rajwada Chowk, she

was subjected to abuses and beating by appellant as he was instigated by co-accused persons which fact was informed to him by landlord of the property, said evidence is by way of omission as this witness is admitted that he has not stated said facts to Police when his statement is recorded. Even landlord is examined as PW-5, has not supported the case of prosecution. Hence, application is liable to be allowed as per order below :

ORDER

- (a) Applicant shall be released on bail on his executing PR.Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand only) with one surety in the like amount.
- (b) Applicant shall mark his presence with Shivaji Nagar Police Station, Ichalkaranji, quarterly on the first day of such month, pending appeal.

(P. N. DESHMUKH, J.)