

CRIMINAL APPLICATION NO.1430 OF 2017
IN
CRIMINAL APPEAL NO. 184 OF 2016

Mr. Archit Sakhalkar I/by Nihar Ghag for the Applicant.
Ms. M.H. Mhatre, APP. for the State.

**CORAM : B.P.DHARMADHIKARI &
SMT. SWAPNA S. JOSHI, JJ.
DATE : 28th June, 2019**

1. Applicant husband of deceased is presently aged about 70 years and in Jail since the date of incident i.e. 19.9.2014. The applicant claims that the trial court has erroneously resorted to Section 106 of the Evidence Act as besides the son, a carpenter was also then present in the house and his presence is brought on record by P.W.6 who happens to be the son of deceased and present applicant. It is further submitted that P.W.10 examined as first person to visit the spot, in fact is the third person because she followed one Snehalata who was informed by P.W.10 after getting

information from one Roshani. Neither Roshani nor Snehalata are examined. Carpenter is also not examined. It is further submitted that so called previous strained relationship of applicant with deceased wife is not useful to show that he has murdered his wife. The alleged relationship is also not brought on record by satisfactory evidence. The conduct after alleged murder has also not been fully looked into by the trial court inasmuch as the Investigating officer states that applicant husband was then trying to get an ambulance for shifting his wife to some hospital.

2. It is submitted that Investigating Officer has admitted that he has visited the spot twice and then taken search of entire house and surrounding area. The alleged weapon used for murder was then not found. However, surprisingly on 21.9.2014 at the instance of accused it is recorded that an iron rod used to hang ceiling fan has been discovered in bushes behind the house of accused. It is submitted that though C.A. report shows human blood on that rod, the blood group could not be determined. Human hair found at the place of incident did not match with the hair of the deceased. Submission is that this material on record is sufficient to implicate the accused.

3. Our attention is also invited to cross examination of P.W.10 to

demonstrate that he has never told police that she saw accused sitting or standing near the body of deceased when she reached there.

4. Learned APP on the other hand has invited our attention to deposition of son P.W.6 and submits that it brings on record phone call made by deceased to son Prashant complaining of harassment and ill treatment under the influence of alcohol and her decision to leave village and to come to her son Prashant at Mumbai. In this back drop, our attention is invited to evidence of police patil who was contacted by Prashant as his mother did not respond to several calls made by him. Learned APP submits that P.W.1 found accused sitting in drawing room and when he questioned him he told to P.W.1 that as P.W.1 arrived at spot he should do whatever is necessary.

5. During hearing we found that defence of accused is of total denial. He has not claimed that at the relevant time he was out and returned back to house when his wife lying in court yard in injured condition. He even does not say that carpenter who was present in the house has injured her. He has avoided to take definite stand in this respect. The trial court has therefore found that provisions of Section 106 of the Evidence Act required explanation from applicant in this respect. The cross examination of P.W.10 does not show that when P.W.1 visited the spot, accused was not present at

all and he came to house thereafter. Evidence of P.W.1 Police Patil shows that accused was sitting unconcerned in drawing room. The evidence of P.W.6 Prashant and information given to him by his friend cannot bring on record anything to help accused.

6. C.A. report shows the human blood on iron rod used as weapon and on clothes of accused. The rod was hidden in some bushes and was taken out by accused.

7. Taking over all view of the matter, we find that no case is made out for grant of bail. Application is rejected.

8. Liberty to move for fixed date of hearing after four months.

(SMT. SWAPNA S. JOSHI, J.)

(B.P.DHARMADHIKARI, J.)