

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 2084 OF 2018****IN****CRIMINAL APPEAL NO. 1557 OF 2018**

Akshay Dashrath Gade

.....Applicant

Vs.

The State of Maharashtra

....Respondent.

Mr. Vikas B. Shivarkar a/w Mr. Pravin Dabade for the Applicant.

Mr. V.V. Gangurde, APP for the Respondent-State.

CORAM : A. S. OKA, AND**A. S. GADKARI, JJ.****DATE : 25th FEBRUARY, 2019.****P.C.:-**

Heard the learned counsel appearing for the Applicant.

The Applicant is the real brother of the husband of the deceased. The Applicant is the accused No. 3 and Chetan, the husband of the deceased is the accused No.1. Both have been convicted for the offences punishable under Section 302 and 201 read with Section 34 of the Indian Penal Code. The Applicant has been sentenced to suffer imprisonment for life.

2 The learned counsel appearing for the Applicant submitted that in paragraph 55 of the impugned Judgment, the learned Trial Judge has himself held that the deceased committed suicide. The learned counsel appearing for the Applicant submitted that the Applicant's brother (husband of the deceased) had informed the father of the deceased at 12.00 noon on the same day that the deceased had committed suicide and that he was taking her to a doctor. He would submit that the Applicant has played no role. He also invited our attention to the evidence of Autopsy Surgeon and submitted that the possibility of deceased committing suicide is not ruled out.

3 We have considered the submissions. We have perused the notes of evidence. In paragraph 55, the learned Trial Judge has recorded a finding that the prosecution evidence does not prove harassment or cruelty met out to the deceased on account of demand of dowry. The last sentence of paragraph 55 cannot be read out of context in as much as in paragraph 56 onwards, the learned Trial Court has considered the defence of the accused that the deceased has committed suicide and by detailed reasons, she has discarded the said defence.

4 After detailed discussion from paragraph No.56 onwards, in paragraph 67, the learned Judge has recorded a clear finding that the death of the deceased is a homicidal death and has rejected the defence of suicide.

5 The opinion of the Autopsy Surgeon is that the death is due to strangulation. In fact, in cross-examination, he has denied the suggestion that at the time of doing postmortem there were no signs of strangulation.

6 Moreover, the evidence of P.W. No. 6 Dr. Amol Jadhav shows that on the date of the incident at 12.45 noon, the Applicant came to his clinic and informed him that there is one patient in the vehicle and requested Dr. Amol Jadhav to examine the patient. He deposed that he went outside the clinic and saw that one girl was sleeping on the backside of the rear seat of the vehicle. When he examined her, he found her to be dead. He stated that the Applicant had come to his clinic and he identified him in Court. In the cross-examination, he has stated that the Applicant's brother (the Accused No.1) was sitting on the driver's seat of the vehicle.

7 The examination-in-chief of Dr. Amol Jadhav reveals that the Applicant had not informed Dr. Amol Jadhav about the history of

suicide. This is very significant as the case of the Applicant is that the Accused No.1 at 12.00 noon had informed the father of the deceased about the alleged suicide. The Accused No.1 was found sitting in the car. Even in the cross-examination, a suggestion is not given that the Applicant had given history of suicide to Dr. Jadhav. Evidence of P.W. No. 9 Dr. Swapnil Mahajan indicates that it was the accused No.1-husband who took her to Radha Krishna Hospital at about 1.30 p.m. He stated that the lady was brought dead. Thus, the evidence of the prosecution witnesses indicate that it was the Applicant who entered the clinic of Dr. Amol Jadhav and wanted Dr. Jadhav to examine the deceased who was lying dead in the car.

8 We must note here that one of the defences was that a chit was written by the deceased in which she stated that she is responsible for her death. Even the said defence is taken into consideration by the Trial Court and in fact a finding has been recorded that the deceased has been forced to write the same.

9 Considering the evidence on record, the learned Trial Judge has recorded a finding about the complicity of the Applicant. *Prima facie*, we find no error in the approach of the Trial Court and *prima facie* there is sufficient evidence on record to show the

complicity of the Applicant.

10 Hence, no case is made out to release the Applicant on bail.

11 Application is rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)