

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.874/2019 IN
CRIMINAL APPEAL NO.661/2019

Pritam s/o Radhelal Katre and anr. vs. State of Maharashtra through PSO
P.S. Amgaon, Dist. Gondia

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R. D. Lilhare, Advocate for applicants.
Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : NOVEMBER 26, 2019

This is an application under Section 389 of the Code of Criminal Procedure for suspension of substantive jail sentence and for grant of bail. The appeal was admitted on 04.10.2019. On the said day, it was observed by this Court that the present application will be considered after receipt of the record and proceedings. Consequently, record and proceedings were called and those are placed before this Court at the time of consideration of this application today.

Heard Mr. Lilhare, learned counsel for applicants and Mr. Thakare, learned A.P.P. for non applicant-State. Also perused the entire record and proceedings.

The applicants are convicted by learned Sessions Judge, Gondia in Sessions Case No.80/2015 on 17.09.2019. By the said judgment and order of conviction, the applicants are convicted for an offence punishable under Section 306 read with Section 34 of the Indian Penal Code and are

directed to suffer rigorous imprisonment for ten years and to pay a fine of Rs.50,000/- by each of them.

Applicant no.1 is son of applicant no.2. Deceased was Seema alias Dulanbai. Her marriage was performed with applicant no.1 on 23.02.2012. Wife of applicant no.1 has committed suicide on 09.06.2015 by consuming poison. Learned A.P.P. submitted that since the death has occurred within a span of seven years, there is a presumption in favour of the prosecution in view of Section 113A of the Indian Evidence Act. Though 17 witnesses were examined during the trial, for consideration of the present application for bail, evidence of of Dakchand (PW2), Yadolal (PW7), Kavita (PW8), Gajanan (PW12), Dr. Shraddha (PW14), Chhannilal (PW16) and Nandram (PW17), would be relevant.

From opinion (Exh.-47) and post mortem report (Exh.-48) given by Dr. Shraddha (PW14), there is no doubt that death of Dulanbai was unnatural. Law on presumption as available in favour of the prosecution under Section 113A of the Evidence Act is well crystallized by various judicial pronouncements. Merely because death has occurred within a span of seven years, presumption does not get activated in favour of the prosecution. However, for that, the prosecution must demonstrate that there was cruelty at the hands of the accused persons and only thereafter same will get activated.

In the light of the aforesaid, now let us examine evidence cursorily since this is only an application for suspension of substantive jail sentence and for grant of bail.

Dhakchand (PW2) is brother of deceased. His evidence would show that there was a family dispute in his sister's house. According to his evidence, applicant no.2 used to misbehave with his sister. His evidence would show that on 09.06.2015, applicant no.1-Pritam made a phone call to him and called him at village Navegaon. However, since he was not feeling well, he told him that he will visit Navegaon later on. On the same day, at 5.30 p.m., Pritam again called him and informed that his sister is taken to KTS General Hospital, Gondia. Therefore, he came to hospital to notice that she was dead.

Yadolal (PW7) is father of deceased. His evidence would show that in absence of applicant no.1, father in law of his daughter i.e. applicant no.2 used to misbehave with her. After getting information on 09.06.2015, Yadolal's son Dhakchand went to Gondia on the same day at 08.00 p.m.

Another witness is Kavita (PW8). She is close relative of deceased. Her evidence would show that on 09.06.2015, when deceased was not keeping good health, she was taken to hospital and she has accompanied with the deceased. If her evidence is to be believed, during the said travel journey, deceased made an oral dying declaration to Kavita that she is murdered by the accused persons.

Evidence of Gajanan (PW12) would show that one month prior to the incident when he had gone to the house of deceased that time she disclosed that in absence of her husband, her father in law caught hold of her hand and misbehaved with her.

Chhannilal (PW16) and Nandram (PW17) are the independent witnesses. They were examined to point out the ill treatment of the deceased. However, both have turned hostile.

From the evidence of the prosecution witnesses, it is clear that on 09.06.2015 Dhakchand (PW2) was present in KTS Hospital, Gondia itself. Not only that, as per the evidence of Kavita, deceased made oral dying declaration to her that she is murdered.

In spite of this, the First Information Report came to be lodged on 12.06.2015 i.e. after period of six days. The FIR would show that there is no explanation offered by the first informant as to why report is lodged at belated stage. The prosecution was also entitled to offer an explanation during the course of trial. Evidence of Dhakchand (PW2) does not show that he could offer any explanation as to why the FIR is lodged belatedly. Kavita (PW8) is the person examined by the prosecution to claim that there was an oral dying declaration to her that applicants have murdered Dulanbai. When such a serious allegation was made against the applicants, it is really unthinkable that close relative will not lodge a report immediately.

In that view of the matter, prima facie, lodgment of the FIR belatedly without there being any explanation has an adverse impact on the prosecution case.

Evidence of the aforesaid witnesses, prima facie, does not show what type of misbehaviour was done by applicant no.2 with the deceased. Only general statements are there in their evidence.

Both applicants were on bail during trial and at no point of time, they have misused liberty granted to them.

Learned counsel for the applicants submits that the applicants have already deposited the fine amount.

Looking to the nature of the evidence as brought on record and the discussions made above, prima facie, I am of the view that the applicants have made out a case for grant of bail. That leads me to pass the following order.

ORDER.

- (i) The application is allowed.
- (ii) Substantive jail sentence imposed upon the applicants in Sessions Case No.80/2015 by learned Sessions Judge, Gondia on 17.09.2019, shall remain suspended during the pendency of the present appeal.
- (iii) Applicant no.1-Pritam s/o Radhelal Katre and applicant no.2-Radhelal s/o Adkan Katre, shall be released on bail on they executing P.R. Bond in the sum of Rs.15,000/- each with one solvent surety each in the like amount.
- (iv) The learned Judge, before whom the bail bonds will be executed, shall ensure that fine amount is deposited by the applicants, prior to the accepting their bail bonds.

(v) After release on bail, the applicants are directed to attend Police Station, Amgaon, Dist. Gondia once in six months during the pendency of the present appeal.

(vi) The applicants shall remain personally present before this Court at the time of final hearing of this appeal.

The application is disposed of.

JUDGE

kahale