

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1496 OF 2020
IN
CRIMINAL APPEAL NO. 331 OF 2020

Sharad @ Dattu Namdeo Lagad,
Age : 34 years, Occupation : Serving in Military,
R/o: Hivra, Tq. Ashti, District Beed.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Appearance :

Shri. Joydeep Chatterji, Advocate for the applicant
Shri. S. G. Sangle, APP for respondent/State

.....

CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.

DATE OF RESERVING THE ORDER : 10th December, 2020
DATE OF PRONOUNCING THE ORDER : 18th December, 2020

ORDER (*Per : B. U. Debadwar, J.*) : -

1. This is an application under Section 389 of the Code of Criminal Procedure for suspension of sentence and bail.

2. The applicant has been convicted by the learned Additional Sessions Judge-4, Beed, vide Judgment and Order dated 03.03.2020 passed in Sessions Case No. 43 of 2018, for the offence

punishable under Sections 302 and 201 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and pay a fine of Rs. 10,000/-, in default, to suffer further rigorous imprisonment for six months on first count and to suffer rigorous imprisonment for seven years and pay a fine of Rs. 10,000/-, in default to suffer further rigorous imprisonment for six months on second count. Both the sentences shall run concurrently.

3. Being aggrieved by the aforesaid Judgment and Order of conviction, the applicant has preferred an appeal and moved this application.

4. Heard Shri. Joydeep Chatterji, the learned Counsel for the applicant and Shri. S. G. Sangle, learned APP for State.

5. Case of the prosecution, in short, is that, between 07:00 pm of 29.12.2017 and 08:00 am of 30.12.2017, the applicant/appellant in his field situated at village Mandve, Post Sandve, Tq. & Dist. Ahmednagar, locally known as 'Pimpalyacha Mala', killed his wife Gitanjali by hitting with stone and burnt her by keeping her dead body on the heap of dried plants of cotton, arranged near embankment of the field and setting it on fire and thereby

committed an offence of murder and causing disappearance of evidence for screening himself from legal punishment.

6. Shri. Joydeep Chatterji, the learned Counsel for the applicant vehemently argued that, the marriage of the applicant and the deceased was solemnized in the year 2007. From the wedlock with the applicant, Gitanjali gave birth to a daughter namely Shalan. At the time of alleged incident, Shalan was nine years old. After getting married, the applicant got job in Defence Services. The *inter se* relations between the applicant-accused and Gitanjali-deceased were cordial. During the period when the incident took place, the applicant was on leave and had come to his native place from the place of posting.

7. To prove the charge, prosecution has examined as many as 11 witnesses.

8. The case is based on circumstantial evidence. As per the Post-mortem report, the cause of death is “death due to burns”. Dr. Vitthal Karad (PW7), who conducted the autopsy on the dead body of Gitanjali stated that, I cannot definitely say whether the burn injuries suffered by Gitanjali were accidental, suicidal or homicidal. When medical evidence is of such nature, in any case, Gitanjali cannot

be said to have met a homicidal death. The learned Additional Sessions Judge failed to appreciate medical evidence and wrongly held that, Gitanjali met a homicidal death.

9. He further states that, evidence of Sampat Nimse (PW1), father of Gitanjali, is not at all supported by any other oral or documentary evidence on the aspects of motive and complicity of applicant in the incident. Nana Lagad (PW2) and Murlidhar Lagad (PW3) are the witnesses on the point of 'last seen together' theory. They both have not supported the prosecution. Nothing could be elicited from their cross-examination conducted by APP. Ganesh Ghodeswar (PW5) alleged to be a person who was accompanied with the applicant when he visited the house of father-in-law. He too has not supported the case of the prosecution. In the absence of corroborative evidence, only on the basis of vague testimony of Sampat Nimse, the afterthought case of the prosecution that on 29.12.2017 at about 10:30 pm, the applicant had visited his house with his friend and told him that, "the quarrel took place between him and Gitanjali in their field locally known as 'Pimpalyacha Mala' and during that quarrel, he assaulted Gitanjali with a small stone and thereupon Gitanjali left the field and since then her whereabouts are not known", can never be accepted.

10. According to Shri. Joydeep Chatterji, the Inquest Panchanama (Exh.28) only demonstrates that Gitanjali found in a completely burnt condition at their field and Sampat Nimse, identified that the burnt dead body was of his daughter – Gitanjali. Spot panchanama (Exh.27) gives description and existing situation of the spot. Merely for the reason that silver and gold ornaments and footwear of Gitanjali and two country liquor bottles were found at the spot, inference cannot be drawn that the applicant first killed his wife Gitanjali and then burnt her, when there is no cogent evidence as to the nature of death of Gitanjali and nexus of applicant with her death.

11. He further states that, Santosh Sonawane (PW6) was the carrier, who alleged to have carried viscera and DNA kits to the Forensic Lab for chemical examination and DNA examination, respectively. DNA report is positive but only for the reason that the burnt person proved to be Gitanjali - the deceased, the applicant cannot be presumed to have committed her murder. Yeshwant Baravkar (PW8), Sudam Sirsath (PW9), Mirza Wahab (PW10) and Ashok Powar (PW11) are the Police Officers who have conducted the investigation and their evidence noway helps the prosecution to prove the charges framed against the applicant. The learned Additional

Sessions Judge, Beed, totally failed in appreciating the aforesaid evidence on record and wrongly held the applicant guilty for both the charges. The applicant has every hope of success in appeal. He has deposited the fine amount. He is ready to furnish the bail and abide by the conditions that shall be imposed.

12. Per contra, Shri. S. G. Sangle, learned APP vehemently argued that, Gitanjali, daughter of Sampat Nimse (PW1) and wife of appellant met a homicidal death. Though the medical evidence only states that she died of burns, after going through the post-mortem findings and ocular evidence of material witnesses including Sampat Nimse (PW1), it is clear enough that Gitanjali has not suffered accidental or suicidal death, but only homicidal death. According to Shri. Sangle, the case is based on circumstantial evidence including the circumstances of motive, conduct of the appellant after the death of Gitanjali, theory of last seen together, confirmation of the spot of incident at the instance of appellant and recovery of stone, which was used for killing Gitanjali, u/s 27 of the Evidence Act. Sampat Nimse (PW1) categorically testified on the aspects of motive, conduct of the appellant after the death of Gitanjali and situation at the spot of incident. Though Nana Lagad (PW2) and Murlidhar Lagad (PW3) have turned hostile, from the portion marked in their statements

before the police which were proved in the evidence of Investigating Officer, are admissible u/s 162(2) of the Cr.P.C. It can be very well gathered that they had lastly seen appellant and his wife Gitanjali together in their field. Burden was on the Convict to explain as to how she suffered death since Gitanjali was in exclusive custody of appellant when the incident took place. The appellant has stated nothing about the same in his statement u/s 313 of the Cr.P.C. He has come with a defence of total denial. The evidence of Bapu Gavhane (PW4) establishes that, the appellant showed the spot where the incident of burning Gitanjali to death took place. The place shown by the appellant is the same from where the burnt body of Gitanjali was shifted to hospital after drawing spot panchanama which confirms the nexus between the appellant and the death of Gitanjali. Two empty bottles of country liquor found at the spot points out finger towards the appellant. Thus the evidence on record is *prima facie* sufficient to prove not only nature of the death of Gitanjali but also the complicity of the appellant in the incident of her death. The evidence adduced by the prosecution is *prima facie* cogent and sufficient to complete the chain of aforesaid circumstances implicating the appellant. Therefore, the appellant not at all deserves for bail.

13. In the light of the aforesaid submissions made at bar by both the sides, we have minutely and carefully gone through the evidence on record.

14. It is true that, Dr. Vitthal Kadad (PW7) who conducted the autopsy on the dead body of Gitanjali only speaks that, she died due to burns and expressed his inability to state about nature of death i.e. homicidal, suicidal or accidental. However, column no. 12 of PM report (Exh.46) proved in his evidence clearly indicates that, at the time of post-mortem, both lower legs of Gitanjali were missing from lower 1/3rd of femur. This finding of Autopsy Surgeon is *prima facie* enough to rule out possibility of death of Gitanjali either due to suicide or due to accident. In both these eventualities, lower limb/legs from lower 1/3rd of femur would not have disappeared.

15. Moreover, the appellant has not come with any specific defence about the nature of death of Gitanjali. Neither suggestions to the effect of nature of death of Gitanjali were given to the witnesses nor he has stated about the same during the course of the statement recorded u/s 313 of the Cr.P.C. In such circumstances, merely for the reason that, Dr. Vitthal Karad (PW7), the Autopsy Surgeon, during the course of his evidence could not state about the nature of burns

suffered by Gitanjali, his aforesaid finding given in PM report, confirms that Gitanjali met a homicidal death, which cannot be overlooked.

16. DNA report, which is not disputed by the appellant, makes it clear that the dead body found in the field of appellant in burnt condition was the dead body of his wife Gitanjali.

17. Once it is established that Gitanjali died of extensive burns and her death was homicidal death, the next question arises about the complicity of the appellant in the homicidal death of his wife Gitanjali.

18. Evidence of Sampat Nimse (PW1) clearly evidences that, on 29.12.2017 at about 10:30 p.m., the appellant visited his house and disclosed to him that Gitanjali left the house when he assaulted her by hitting a small stone. This *extra-judicial* confession to some extent made by appellant before his father-in-law corroborates the case of prosecution about his complicity in crime.

19. PW2 (Nana Lagad) and PW3 (Murlidhar Lagad) are the witnesses, who had seen appellant and Gitanjali together in their field

locally known as 'Pimplyacha Mala' during morning and afternoon of 29.12.2017. It is true that, they both have not supported the prosecution, however, material portions in their statements recorded u/s 161 of the Cr.P.C., proved in the evidence of Mirza Wahab (PW10), the Investigating Officer, corroborates to that extent to the evidence of Sampat Nimse (PW1), the father of Gitanjali. In the case of **Bhagwan Dass versus State (NCT of Delhi)** reported in (2011) 6 **SCC 396**, the Hon'ble Supreme Court ruled that, the statements of the witnesses to the police can be taken into consideration in view of the proviso to Section 162(1) of the Cr.P.C.

20. In view of aforesaid ratio laid down by the Hon'ble Supreme Court, statements of PW2 (Nana Lagad) and PW3 (Murlidhar Lagad) in respect of their seeing appellant and Gitanjali together during morning and afternoon respectively on 29.12.2017, being admissible in evidence, can be considered as a corroborative evidence, as discussed above.

21. The testimony of Sampat Nimse (PW1), the father of Gitanjali, is clear enough to show that the appellant was suspecting the character of his wife – Gitanjali and used to quarrel with her out

of that suspicion. This clear evidence on motive speaks volumes about his intention behind commission of crime.

22. It is a matter of record that, spot panchanama (Exh.27) and Inquest panchanama (Exh.28) were drawn prior to lodging of FIR (Exh.20) by Sampat Nimse (PW1). After lodging FIR and registration of crime on 30.12.2017, the appellant was arrested on very same day and after two days of the arrest i.e. on 02.01.2018, while in police custody he made a disclosure statement and in pursuance of that disclosure statement, he has shown the place where the crime was committed. The place shown by the appellant and the place described in spot panchanama (Exh.27) are one and the same. The evidence of Bapu Gavhane (PW4) on the aforesaid aspect cannot be discarded.

23. Totality of the evidence adduced by the prosecution, *prima facie*, proves that the incident of burning of deceased Gitanjali took place in their field locally known as 'Pimpalyacha Mala' situated at Sandve, at evening time on 29.12.2017. At that time, except appellant and Gitanjali, nobody was present in their field. After the incident, appellant met his father-in-law Sampat Nimse (PW1) by visiting his house and confessed before Sampat Nimse about his assaulting Gitanjali by hitting her with a stone and the aforesaid

conduct of the appellant after the incident. Therefore, at this stage, the conclusion drawn by the learned Additional Sessions Judge-4, Beed, holding the appellant guilty, cannot be said to be incorrect.

24. Looking to the nature of the crime and overall conduct of the appellant before and after the incident, it would not be legal and justifiable to release the applicant-appellant on bail by suspending his sentence of life imprisonment awarded by the learned Additional Sessions Judge-4, Beed vide the Judgment and Order dated 03.03.2020 passed in Sessions Case No. 43 of 2018. The application is, therefore, rejected.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE