

REKHA
PRAKASH
PATIL

Digitally
signed by
REKHA
PRAKASH
PATIL
Date:
2021.11.29
14:10:21
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1960 OF 2021

Sakarabai Shivaji Mallav ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Vikrant V. Phatate, for the Applicant.

Mrs. Anamika Malhotra, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 22nd November, 2021.

PRONOUNCED ON : 29th November, 2021.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 753 of 2020 registered with Solapur Taluka Police Station, District- Solapur for the offences punishable under Sections 302, 452, 504, 506 r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that the applicant is a real sister of Hausabai Mahadev Mallav ('deceased' for short) and resides adjacent to the house of deceased. It is alleged that the husband of applicant had

Rekha Patil

been to the house of deceased as per say of applicant. It is further alleged that there used to be frequent quarrels between the applicant and the deceased due to relation of deceased with husband of applicant.

3 On 12/12/2020 at about 1-00 p.m. when the deceased was sleeping in her house, applicant along with co-accused entered in the house of deceased. The applicant asked deceased as to why she had taken her husband to Pune and started abusing her. Co-accused Anita and Suresh caught hold hands of deceased and applicant assaulted her by means of a knife. Due to noise the public gathered. However, the applicant and co-accused threatened the public and therefore, they ran away from the spot. It is further alleged that the applicant and co-accused again entered the house of deceased and locked the door of the house from inside and applicant assaulted the deceased by means of knife in her abdomen and on hands. The informant then raised commotion and villagers, namely, Suraj Tanaji Patil, Samadhan Lawate, Ritesh Mallav, Mangesh Mallav and others came and the son of deceased was summoned telephonically. Deceased was then shifted where her statement came to be recorded. It appears that during the course of investigation deceased expired on 06/01/2021 and therefore, Section 302 came to be added.

4 Mr. Phatate, learned Counsel for the applicant, submits that there is no eye witness to say that the applicant had assaulted the deceased in the abdomen. The alleged incident took place on 12/12/2020 and deceased expired on 06/01/2021 i.e. after lapse of 25 days and it can not be said that due to alleged incident deceased died. Learned Counsel then submits that the applicant has been arrested on 12/12/2020 and since then she is behind the bar. Investigation is completed and charge-sheet has also been filed. In such circumstances, further custody of the applicant is unnecessary. Having regard to the age of applicant, she deserves to be released on bail, argued learned Counsel.

5 Ms. Malhotra, learned APP, on the other hand, opposed the submissions, firstly, by inviting my attention to the statement dated 12/12/2020 recorded in the hospital and then supplementary statement recorded on 29/12/2020 again given in the hospital. Besides, the learned APP also invited my attention to the statements of prosecution witnesses, namely, Suraj Tanaji Patil and Samadhan Nagnath Lawate and would submit that not only the statement and supplementary statement are consistent with each other and the fact that the deceased succumbed to the injury during the course of treatment, those statements are treated as dying declarations. The learned APP also invited my attention

to the postmortem report wherein opinion as to the cause of death is, “stab injury to abdomen (unnatural)”.

6 Perused investigation papers. I have gone through the statement and supplementary statement of deceased and as also statements of prosecution witnesses as pointed out by learned APP.

7 From the first statement dated 12/12/2020, it is clear that the applicant was suspecting the deceased, who was none other than her own sister, of having illicit relations with her husband and, therefore, was in habit of abusing the applicant and picking up quarrels.

8 It is then seen that on 12/12/2020 the applicant along with other co-accused entered into the house of deceased and with the help of co-accused, assaulted her by means of knife. When the people gathered outside even the applicant rushed on their person by brandishing a knife at them and they again entered into the house, closed the door and then applicant gave a blow of knife in her abdomen. Similar is the supplementary statement dated 29/12/2020 except with a difference where deceased fairly states that in her earlier statement she had given the name of daughter-in-law of applicant namely Chhaya @ Sunita

deliberately and that she was not present at that time. Rest of the contents of the supplementary statement is in consonance with the earlier statement.

9 The statement of Suraj Tanaji Patil recorded under Section 164 of the Code of Criminal Procedure ('Cr.PC.' for short) by learned 3rd Judicial Magistrate, First Class, Solapur shows that on 12/12/2020 in between 12-00 to 1-00 p.m. two women were assaulting a woman. One woman had caught hold of hands while another was assaulting by means of a knife. Thereafter, they confined the injured in the house and went away.

10 Similar is the statement of Samadhan Nagnath Lawate recorded under Section 164 of the Cr.PC. by the 3rd Judicial Magistrate, First Class, Solapur which shows that the mother of Anita i.e. applicant had assaulted the deceased on her chest and abdomen by means of a knife and when he and others had been to the rescue of Hausabai they were abused and threatened by means of a knife by the applicant and therefore, they retracted.

11 This brings me to the postmortem report which clearly shows that the injuries on left hand, right side of the abdomen, on hand and waist

and other various injuries. Thus the findings of the postmortem report is also consistent with the statements of deceased. The cause of death as given by Autopsy Surgeon is, “stab injury to abdomen (unnatural)”.

12 It may be that the the deceased died 25 days but the fact remains that the death was due to stab injury to abdomen.

13 In view of above, I hold that there is overwhelming evidence. It is also pertinent to note that the conduct of the applicant who was bent upon to teach a lesson to her own sister and it becomes more clear when not only she first assaulted by deceased by means of knife but when on account of commotion the neighbours came, she rushed on their person, threatening with knife only to come back again, to give a blow of knife in the abdomen of the deceased. There are statements of witnesses which I have already referred to, who support statement of deceased. In such circumstances, it can not be said that there is no evidence to show the complicity of the applicant in the offence.

14 For the aforesaid reasons, I am not inclined to admit the applicant on bail. Hence, the following order.

ORDER

1. Application is rejected.
2. The learned trial Court is, however, directed to expedite the trial.

(V. G. BISHT, J.)