

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3838 OF 2022
IN
CRIMINAL APPEAL NO.1139 OF 2022

Vikas Kalu Pawar & Anr. .. Applicants

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Siddharth Gawande for the Applicants/Appellants.

Ms.P.N.Dabholkar, A.P.P. for the State.

Mr.S.A.Quazi for the Respondent No.2.

PSI Sunil Ugale, attached to Shirur Police Station, Pune, present.

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CORAM: BHARATI DANGRE, J.

DATED : 02nd MAY, 2023

P.C:-

1. The two Applicants are the Appellants, who have instituted Appeal No.1139 of 2022, which is already admitted.

By the present Application, the Applicants seek suspension of sentence imposed upon them under the impugned judgment delivered by the Additional Sessions Judge, Pune in Sessions Case No.482 of 2019, when three Accused were tried for the offences punishable under Sections 304-B, 306, 323, 498-A, 504 read with Section 34 of IPC. Pertinent to note that Accused No.2 expired during the trial.

On conclusion of the trial, Accused No.1, the husband of the deceased and Accused No.3, her brother-in-law, came to be acquitted for the offences under Sections 306, 323 and 504 of IPC. They stand convicted for the offences under Sections 304-B and 498-A of IPC and are sentenced to undergo imprisonment for seven years under Section 304-B and on being convicted under Section 498-A of IPC, they are sentenced to undergo imprisonment of two years alongwith fine. Both the sentences are directed to run concurrently.

2. Heard the learned counsel for the Applicants, the learned A.P.P. for the State as well as the learned counsel for Respondent No.2.

The case of the prosecution, which surface through the judgment of the trial Court, reveal that the marriage of Accused No.1 was solemnized with Reshma, the daughter of PW 1 on 02/02/2016 and soon thereafter, they started residing at village Nhavra, Taluka Shirur, District Pune.

The prosecution allege that after one month of the marriage, the daughter of the complainant informed them that all the three accused asked her to bring a sum of Rs.Two Lakh for development of tyre remolding factory and for purchasing a Bolero jeep. According to the prosecution, this was also told by the deceased to her maternal uncle, who is examined as PW 4. The money was not given, but the Accused were convinced and the deceased was sent to her matrimonial house.

Another circumstance upon which the prosecution place reliance is that, on 25/04/2016, when the complainant made a phone call to his daughter, she informed that money was being

demanding and all the Accused are assaulting her and not giving her food. On the very same date, PW 1 received a phone call that his daughter was dead.

Pursuant to the said incident, subject C.R. was registered.

3. On hearing the learned counsel for the Applicants, I have perused the impugned judgment and the evidence that has brought on record through the key witnesses, being PW 1 and PW 3.

PW 1 in his cross-examination has categorically admitted that the demand of Rs.2,00,000/- through a phone call made by the deceased to his wife, is not mentioned in his statement given to the police. Apart from this, PW 3, the mother of the deceased also admitted in her cross-examination that the fact that her daughter was subjected to harassment and put to starvation for bringing the amount is not mentioned in the statement given to the police. This omission is proved through the Investigating Officer (PW 6).

4. The learned counsel for the Applicants would vehemently submit that these proved omissions have created a huge dent in the case of the prosecution, apart from the inconsistencies that have featured through evidence of PW 1 and PW 3.

Pertinent to note that the Applicants are acquitted for the offence punishable under Section 306 of IPC and in order to establish the offence under Section 304-B, it would be necessary to establish that before her death, the deceased was subjected to cruelty or harassment, for or in connection with any demand of dowry. It is only in these circumstances, Section 304-B can be

attracted. The prosecution attempted to bring on record the said aspect, but with the omissions and the inconsistencies in the version of the witnesses, it cannot be said that the charge under Section 304-B has been conclusively proved.

In any case, the evidence will have to be appreciated at the time, when the Appeal is being heard, as the emphasis of the learned counsel for the Applicants is upon the lacunae in the prosecution case, which had featured through the evidence of the key witnesses.

5. It is also submitted that the Applicants were on bail throughout the trial and it is not the case of the prosecution that they have ever misused their liberty. Since the Applicants have been arrested after pronouncement of the judgment and are presently incarcerated, in my considered opinion, the Appeal deserve expeditious hearing.

But till then, considering the fixed term sentence imposed upon the Applicants, sentence deserve to be suspended and they deserve their release on bail. Hence, the following order.

: ORDER :

1. Interim Application No.3838 of 2022 is allowed.
2. The sentence imposed upon the Applicants vide the impugned judgment stands suspended,.
3. During the pendency of the Appeal, they are directed to be released on bail on furnishing P.R.Bond to the extent of Rs.25,000/- each, with one or two sureties.

(SMT. BHARATI DANGRE, J.)