

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1352 OF 2023
IN
CRIMINAL APPEAL NO. 425 OF 2023

Anita Vijay Bhoi	.. Applicant
<u>In the matter between</u>	
Sakhrabai Shivaji Mallav and Anr	.. Appellants
Versus	
State of Maharashtra	.. Respondent

...

Mr.Ritesh Thobde with Ankita Pramod Rai for the applicant.
Ms.A.A. Takalkar, A.P.P. for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 13th JUNE, 2024

P.C:-

1 Heard learned counsel Mr.Ritesh Thobde for the applicant/accused no.2, Anita who is convicted by the Addl. Sessions Judge, Solapur in Sessions Case No.89/2021 along with her mother Sakhrabai, who face charge under Section 302, 307, 452, 504, 506 read with Section 34 of the IPC, for causing death of Sakhrabai's sister, Housabai, on the pretext that she maintained illicit relations with the husband of Sakhrabai.

2 Mr.Thobde has invited our attention to the evidence placed before the trial Judge in the Sessions Case.

The Doctor (PW 15) who conducted post mortem on the dead body of Hausabai has noticed six injuries; two on the abdomen, one on the dorsum of left hand and one surgical suture incised wound of length 42 cm, present vertically on mid-line above xiphisternum to umbilicus, 32 sutures in situ suggestive of laparotomy wound.

PW 15 specifically deposed that the injury to the intestine and liver of the dead body was due to stabbing and he issued the provisional cause of death certificate.

3 The prosecution has rested its case on the testimony of PW 8, the son of deceased Hausabai, who deposed about the relation maintained between Hausabai and Sakhrabai's husband Shivaji.

PW 8 has deposed that on 12/12/2020, he received a phone call, and he was informed that Sakhrabai had beaten Hausabai and therefore, he was requested to come on the spot to take her to the hospital. On reaching home, he took Hausabai to the Civil Hospital and as per PW 8, at the relevant time, she was conscious and told him that Sakhrabai, Anita and Suresh visited her house, and Sakhrabai questioned her why she had given food to her husband, and abused her and assaulted her by knife.

According to PW 8, Hausabai gave statement to the police in Civil Hospital and she remained as an indoor patient for about one month, as she had sustained four blows on the chest and one on back and she succumbed to those injuries. He categorically deposed that Hausabai died due to assault by accused Sakhrabai.

In the cross-examination, he was confronted with the statement given to the police and the aforesaid version has surfaced, as the omission which is proved through the Investigating Officer.

4 PW 7, the API has proved the last statement of Hausabai recorded on 12/12/2020 which was recorded on being certified by the Doctor that she was in a conscious oriented state.

When this statement (Exhibit 31) is carefully read, even as per the deceased, on 12/12/2020, three persons along with her sister Sakhrabai entered her house, which included her daughter Anita and her daughter-in-law Sunita and it is Sakhrabai who abused her. She attribute role to Anita, when she stated that she held her by right hand and Sunita pulled her hair and Sakhrabai assaulted her with a knife. When the persons in the locality surrounded the house, it is Sakhrabai who threatened them and she continued to assault her by means of a knife and also continued to abuse.

After locking the door, as per Hausabai, Sakhrabai continued her assault with the knife and one blow landed on her hand and she was threatful in saying that she would eliminate her.

It is this statement which is accepted by the learned trial Judge as the statement under Section 32 of the Evidence Act, and by relying upon the same along with the statement of Samadhan Lavte recorded under section 164 of Cr.P.C, concluded that in furtherance of the common intention, Accused Anita caught hold of Hausabai and accused Sakhrabai gave blows on stomach, chest and hand and back with intent to commit her murder.

5 From reading of the impugned judgment, it is evident that the role attributed limited to Anita is holding hands of Hausabai and she stand convicted along with Sakhrabai with the aid of Section 34 of IPC. Since the role of Anita has clearly surfaced and her conviction under Section 302 of the IPC is with the aid of Section 34 and she has been sentenced to suffer Rigorous Imprisonment for life and fine of Rs.1,000/-. Considering the evidence on record, the point on which the Appeal filed by her is admitted as to whether, with the clear role being attributed to her by the deceased herself and PW 8, her son, which has come by way of an omission, she could have been convicted under Section 302 of the IPC, and since on the perusal of the entire evidence, it is evident that the role which is

attributed to her is of holding Hausabai by her hand and in fact, Sunita came to be acquitted on a subsequent statement of Hausabai being recorded, where she had clearly absolved Sunita.

6 The appellant immediately came to be arrested and since the year 2020, she remain incarcerated. She being a woman of 38 years old, in the wake of the material on record, deserve release on bail, as in the wake of the finding recorded by the learned Judge, in light of the evidence that has come on record, the sentence imposed on her needs to be suspended, as the Appeal will take time for final hearing.

7 Interim Application is allowed by suspending the sentence imposed on the appellant under the impugned judgment and she is also directed to be released on bail on the following stipulations :-

ORDER

- (a) Application is allowed.
- (b) Applicant Anita Vijay Bhoi shall be released on bail in Sessions Case No.89/2021 registered with Solapur Taluka Police Station, Mumbai on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark her attendance to the concerned police station on first Monday of every trimester between 2.00 p.m to 4.00 p.m. and make herself available as and when required by the Investigating Officer.

(d) The applicant shall provide her current address, telephone number, place of residence and intimate about the change if any, to the concerned police station.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)