



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 901 OF 2024
IN CRIMINAL APPEAL NO. 977 OF 2023

Raju Baban Shirwale

....Applicant

VERSUS

The State of Maharashtra

.....Respondent

.....
Mr. Ghanekar Nilesh S., Advocate for Applicant
Mr. A. D. Wange, APP for Respondent - State

.....
**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**
DATE : 19.06.2024

PER COURT :

1. This is an Application for suspension of substantive sentence imposed upon the Applicant / Appellant by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar, in Sessions Case No.45/2020 vide the Judgment and Order dated 05/09/2023 convicting the Applicant for the offence punishable under Sections 302 and 504 of the Indian Penal Code [for short 'IPC'].

2. Heard the learned Advocate for the Applicant / Appellant and the learned APP for the Respondent – State.

3. It is the Prosecutions case that on 20/07/2020 at about 3:00 p.m., the Applicant came with an axe in his hand to the house of the deceased. The Applicant asked the deceased to accompany him. The Applicant asked the deceased as to when the outlet of water-pipe of Kamlakar's field was broken and Kamlakar told him the name of deceased. Deceased replied that he did not know anything

about the same. However, the Applicant asked him to accompany him to get it confirmed from the said Kamlakar. Deceased told the Applicant that he would come later as his motorcycle was taken by his son. However, at the insistence of the Applicant, deceased accompanied the Applicant. Since the deceased did not return home, his son went for searching him. Since the son of deceased did not return home, the wife of deceased called him on phone and she came to know that her husband was murdered. The son of deceased lodged the report with the concerned Police Station against the Applicant. The Applicant came to be arrested and the axe was recovered at his instance from his house. The statement of witnesses were recorded and after completion of investigation, the Applicant came to be Charge-sheeted. The learned Trial Court convicted him on appreciation of the evidence on record.

4. It is submitted by the learned Advocate for the Applicant that though the Applicant had himself gone to the concerned Police Station and confessed about the crime, the Police did not record his statement. He submits that the body was discovered by the Police when they reached the spot along with the landlord, therefore, it cannot be the discovery under Section 27 of the Evidence Act. He submits that no motive to commit the Crime is brought on record. He submits that in the CA report, the blood group is shown as inconclusive and blood on the axe is shown as human blood and so it will not connect the Applicant with the crime. He submits that the Applicant is behind the bars sine last more than four (4) years and therefore, Application may be allowed.

5. The Application is opposed by the learned APP. He submits that the deceased had lastly accompanied the Applicant before he was found dead. He submits that the cause of death is '*due to*

neurogenic shock due to head injury in the assault'. He submits that the axe, which was used in the crime, is discovered/recovered at the instance of the Applicant. He submits that there is CCTV footage of the concerned Police Station, which show that the Applicant went to the concerned Police Station after the Crime. He submits that the case is based on the evidence of witnesses, who have lastly seen the deceased with the Applicant and the Charge has been established. He submits that this is not a fit case for suspending the sentence and therefore, Application may be rejected.

6. We have perused the evidence available on record. The relevant evidence is that of PW – 2 [Smt. Sunita Narendra Wabale], who is the wife of the deceased. The relevant part from her evidence is reproduced below:

“1] Deceased Narendra Wabale was my husband. On 20.07.2020 at about 10.00 a.m. myself and my son Vijay had gone to of one Jadhav for removing groundnut crop. My husband was staying in the house. Myself and my son worked up to 1.00 p.m. and we returned back to house at 1.00 p.m. because of rain. Thereafter, I prepared tea and myself and my husband and my younger son had taken tea. Thereafter, my younger son went to Shrigonda to bring cow food. At about 3.00 p.m. Raju Shirwale had come to our house possessing axe in his hand. Myself and my husband were eating peanuts. I saw accused was talking with my brother-in-law Shashikant Timrao Wabale. At that time, I asked my husband as to why accused had come to our house, whether he has any work with you. At that time, my husband told me that accused has no work with him. Thereafter, accused Raju Shirwale came in our house. He also eaten some peanuts with us. At that time, accused asked my husband when he had broken the outlet of water-pipe of Kamlakar in his field and Kamlakar told his name to him. My husband told accused that he do not know anything and he has not told the above said fact to Kamlakar. The above said fact was told twicely by my husband. Raju Shirwale asked my husband to come with him to get it confirmed from Kamlakar. My husband told that my motorcycle was taken by my son and I will come when my son will come back on motorcycle. At that time, accused told that let we will go by walk. When they were going, at that time, I was giving the mobile phone which was kept on the TV but accused told that within some time my husband will come back, therefore, there is no need to give mobile phone. Thereafter, my husband and accused left my house by walk.

2] After fifteen minutes, I asked my son Vijay where he was ? My son told me that he was in Shrigonda. I told my son that accused had come to the house and he has taken my husband towards Bhairavnath temple to get confirmed who has broken the outlet of water of Kamlakar Wabale. After some time my son returned back to house. Thereafter, he went outside the house to search his father. My son did not returned back to the house up to 6.00 p.m., therefore, I made phone call to my son Vijay then he told me that accused Raju Shirwale committed murder of my husband. Thereafter, my son came in Shrigonda police station and registered the crime against the accused Raju Shirwale. Police recorded my statement and made inquiry about the incident. My statement has been recorded in the Court on 11th August, 2020. My statement is now shown to me. It bears my signature. Contents are true and correct. It is marked as **Exh.21.**”

7. The station diary entry which is at Exhibit - 73 reads as under:

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6. G.D. Brief (ठाणे दैनंदिनी संक्षिप्त):

यावेळी राजु बबन शिरवाळे रा. म्हातारपिंप्री ता. श्रीगोंदा जि. अ नगर याने पोलिस स्टेशन ला येवुन समक्ष कळविले की माझे पत्नीचे अनैतिक संबंध नरु वाबळे रा. म्हातारपींप्री याचेशी असल्याने मी त्यास उसाचे शेतात कु-हाड डोक्यात मारुन जिवे मारले आहे असे येवून समक्ष कळविल्याने सदर ठिकाणी खात्री करणेकामी सपोनि श्री गावित सो स्टाफसह रवाना झाले आहेत म्हणून नोंद.

7.
8. ”

8. The evidence on record show that the Applicant took the Police at the spot where the offence was committed and it would fall within the ambit of discovery/recovery under Section 27 of the Evidence Act. The evidence of Medical Officer show that the injuries were possible by axe and blood found on the axe was that of human. There is no evidence to show that the deceased was seen with some other person after he left the house with the Applicant. There is close proximity of time between his death and the time when he left his house in the company of Applicant. In this view of the

matter in our considered view, this is not the fit case to suspend the sentence. Hence, we proceed to pass the following order:

ORDER

- (i) Criminal Application is rejected.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer