



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.1219 OF 2024

IN

CRIMINAL APPEAL NO.710 OF 2024

[Sharda Muneshwar Pardhi ..vs.. State of Maharashtra through P.S.O., P.S.
Dawaniwada, District Gondia]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri. R. M. Daga, Advocate for Appellant.
Shri. S. V. Narale, Addl. P. P. for Respondent/State.

CORAM : URMILA JOSHI-PHALKE AND RAJ D. WAKODE, JJ.

DATE : 11th SEPTEMBER, 2026.

1. By this application, the applicant/appellant is seeking suspension of sentence and release her on bail.
2. The appellant was prosecuted for the offence punishable under Section 302 of the Indian Penal Code, 1860, and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, and in default of payment of fine of Rs.5,000/-, she shall further undergo rigorous imprisonment for four months.
3. As per the prosecution case, on 21.11.2021, at about 03:00 a.m. to 03:30 a.m., the informant - Pradip Babulal Baghele, received a phone call from the mobile phone number of his cousin, namely, Munna. He immediately picked-up a call. At that time, the wife of his cousin Munna, i.e. the present accused Sharda, was speaking and she was crying. On enquiry, she disclosed that Munna fell out from a motorcycle prior to some days, received some injuries and his health got worsened and succumbed to the death. He immediately rushed to the house of the present accused. Munna was found lying in an injured

condition in a bedroom. He had injury on his head and blood was oozing from it. He made an enquiry with the present appellant Sharda, but she did not utter anything. Thereafter, the police were informed. The deceased was examined by the Medical Officer, and it reveals that deceased Munna died due to the injury on his head. Thereafter, the First Information Report came to be lodged. On the basis of the FIR, the crime came to be registered. During the investigation, the involvement of the present appellant was revealed, and therefore, she was charge-sheeted.

4. The learned Trial Court, after appreciating the evidence, held the present appellant guilty as aforestated.

5. As per the prosecution case, there was an illicit relationship between the present appellant and the co-accused Kunal and, in order to get rid of the deceased Muneshwar, she committed the murder of deceased by means of an axe in his house when he was asleep. Admittedly, the entire case is rested on circumstantial evidence. The prosecution has examined as many as 14 witnesses. PW-1 - Pradip Baghele is the informant, whereas PW-2 - Dr. Surtial Bhagat was a medical practitioner practicing at Paraswada. He testified that before 10 to 15 days of the incident, the deceased had been to him as he fell down from his motorcycle and has sustained an abrasion on the left side of his head. He applied a bandage to him. He stated that his health was good. The cross-examination of this witness shows that, as the deceased was fallen from the motorcycle, he was brought to the hospital. His further evidence shows that when the said deceased was lying on the bed in an injured condition, he examined him and found that he was dead and died due to the head injury.

6. The material witness on which the prosecution placed reliance is PW-6 - Sayatra Baghele, whose evidence shows that on 21.11.2021, at about 03:30 a.m., accused Sharda made a phone call to her son Pradip. She was crying on the phone. The mattress and pillow on the Diwan were soaked in blood. Beneath the Diwan, one axe was lying. Thereafter, they brought Muneshwar in the shade in front of the house. The police came. Accused Sharda and Kunal assaulted Muneshwar by means of an axe and committed his murder. Thus, the entire case is based on circumstantial evidence. Admittedly, at the relevant time, the deceased and the present accused were in the house and at the early morning, the deceased was found dead. Thus, considering the aspect under Section 106 of the Indian Evidence Act, 1872, the Trial Court appreciated the evidence and convicted the present appellant.

7. Heard learned counsel Shri. Daga for the appellant, who submitted that though the prosecution relied upon circumstantial evidence, on the same set of evidence, the other co-accused is acquitted, whereas the present appellant is convicted. Thus, he submitted that, considering that there is no change in the complete chain of circumstantial evidence, the entire conviction is erroneous. The appellant is having every chance of success in the present appeal; however, the appeal would take its own time for final disposal.

8. Per contra, learned Additional Public Prosecutor submitted that, considering that only the deceased and the accused were inside the house and the deceased was found dead, therefore the burden was on the accused to explain the circumstances, which she has not explained. He has also invited our attention to the evidence of the

Medical Officer to show that there was an injury on the left fronto parietal area of scalp with an under line fracture of skull with exposed brain content and also an injury on the left parieto-temporal area of scalp with under neath scalp fracture with exposed brain content. He submitted that the accused has given a false explanation that the deceased had fallen from the motorcycle 10 to 15 days prior and that, as a result of the said injuries, he died. However, the evidence of the Medical Officer, PW-2, shows that there was only an abrasion when the deceased had fallen from the motorcycle and that he has examined him at the relevant time. Thus, the evidence of the Medical Officer, i.e. PW-2, nowhere shows that the deceased has sustained any injury which resulted in a fracture of skull due to the accident.

9. He further submitted that another circumstance is that a blood-stained axe was seen by PW-6 beneath the bed and only the present accused was present in the house. There was an extra-marital relationship between the present accused and the other co-accused. The explanation which was required to be given by the present appellant is not given and therefore, an adverse inference can be drawn. In view of that, the learned Trial Court has drawn an adverse inference under Section 106 of the Indian Evidence Act, as the appellant could not give an explanation as to in what circumstances the death of the deceased caused and thereby held her guilty. Thus, he submitted that, at this stage, the appellant could not point out the circumstances under which the alleged incident has taken place or the death of the deceased is caused. He submitted that, at this stage, re-appreciation of the evidence is not permissible. In view of that, the application deserves to be rejected.

10. On hearing both the sides and on perusal of the entire record, in view of the fact that the deceased and the present accused were in the house, thereafter the Investigating Officer collected the blood-stained axe from the house of the accused, and the seizure of the mobile phones, CDR and SDR reports are proved by the prosecution, which show the phone calls between the present accused and the other co-accused, and the circumstances in view of Section 106 of the Indian Evidence Act are not explained by the present accused, the accused came to be convicted.

11. Admittedly, at this stage, re-appreciation of the evidence is not permissible. What is only to be looked into is whether the accused is succeeded in showing that there is any ground which will show that there are chances of acquittal of the accused.

12. This aspect is considered by the Hon'ble Apex Court in the case of **Omprakash Sahni .vs. Jai Shankar Chaudhary and another in Criminal Appeal Nos.1331-1332/2023**, decided on 02.05.2023, wherein it is observed in para 33 as under :

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should

not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

13. In view of the above observations of the Hon’ble Apex Court, at this stage, we are not satisfied with the submissions made by the learned counsel for the appellant that there is any chance of acquittal on the basis of the evidence recorded during the trial. In view of that, the present application for suspension of sentence deserves to be rejected. Accordingly, it is **rejected**.

CRIMINAL APPEAL NO.710 OF 2024

14. Appeal is of the year 2024. Record and proceedings is already received. Office to prepare the paper-book expeditiously and on preparation of paper-book, appeal be listed for final disposal.

(RAJ D. WAKODE, J.)

(URMILA JOSHI-PHALKE, J.)

TAMBE.