

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.5764 OF 2015
IN
CRIMINAL APPEAL NO.824 OF 2015.**

**Anil S/o Vishwanath Pathave and others Vs. The State of
Maharashtra.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
--	---------------------------

Mr.V.D.Sapkal, advocate for the Applicants.
Mr.S.G.Karlekar, A.P.P for the State.

**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.
Date : 22.12.2015.**

PER COURT :

1. Heard.
2. The present applicants are prosecuted and convicted for offence punishable U/s 302 read with Section 34 of the I.P.C. The appeal filed by the applicants is admitted. The present applicant is for suspension of substantive sentence.
3. Mr.Sapkal, learned counsel submits that the case of the prosecution is totally based on circumstantial evidence. The circumstances on record does not lead to the conclusion about the involvement of the present applicants in the death of the deceased.

Even the prosecution has failed to prove the homicidal death. The evidence of two Doctors examined is inconsistent with each other. Initially the report was that the death of deceased is due to drowning. The aspect of fracture and throttling is subsequently added. The learned counsel further submits that the deceased was missing on 13.11.2005. The Sessions Judge has considered that the missing report was not filed immediately and the said circumstance is considered against the applicants. There is evidence on record to suggest that the deceased was in habit of leaving the house without informing. The applicant No.1 has already spent about ten (10) years in jail. The applicant Nos.2 and 3 have undergone surgery. There is no direct evidence against the applicants.

4. Mr.Karlekar, learned A.P.P supports the judgment and submits that the chain of circumstances is complete. The circumstances lead to irresistible conclusion about the act of the applicants in causing homicidal death of the deceased.

5. The case is totally based on circumstantial evidence, so also the conduct. The body of the deceased was found in the well situated in the land which was under cultivation of the accused. The post-mortem report also suggest of throttling. Of-course, the entire evidence will have to be reappreciated at the time of final hearing of the appeal. Considering the judgment passed, we are not inclined to consider the application to the extent of present

applicant No.1. The applicant Nos.2 and 3 are old aged persons. They have also undergone surgery. The circumstantial evidence is not the same in case of applicant Nos.2 and 2. The applicant Nos.2 and 3 were on bail during the trial.

6. In light of the above, we pass the following order :

- a) The application so far as applicant No.1 Anil S/o Vishwanath Pathave, is concerned, is rejected.
- b) The substantive sentence awarded to applicant Nos.2 and 3 i.e. Savitrabai W/o Vishwanath Pathave and Vishwanath S/o Laxman Pathave, in Sessions Case No.6/2006 is suspended. Pending hearing and final disposal of appeal, the applicant Nos.2 and 3 i.e. Savitrabai W/o Vishwanath Pathave and Vishwanath S/o Laxman Pathave are released on bail on furnishing a PR bond of Rs.10,000/- (Rupees ten thousand) each with one surety each of the like amount.
- c) The Criminal Application is accordingly disposed of.

(V . K . JADHAV , J .)

(S . V . GANGAPURWALA , J .)

Dt.22.12.2015.
asp/office/Criapp5764.15

