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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1627 OF 2018
IN
CRIMINAL APPEAL NO. 175 OF 2013**

Mangesh Dhaku Aalim

..Applicant

Vs

The State of Maharashtra

..Respondent

Mr. Manish Mazgaonkar for Applicant.

Ms. P.P. Shinde, APP for Respondent-State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 22nd January 2019.

P.C.:

Heard the learned counsel for the applicant.

2] The applicant has been convicted for committing murder of his wife. The learned counsel for the applicant is not disputing the case of the prosecution that at the time of when deceased wife sustained injuries, the applicant and deceased were residing together under one roof. The applicant is also not disputing the final opinion given by the Medical Officer about the cause of death as “Violent Asphyxial Death due to smothering

with Manual Strangulation”.

3] The submission of the learned counsel for the applicant is that notwithstanding aforestated facts, the burden is on the prosecution to show that an offence under Section 302 of Indian Penal Code is attracted and not Section 304. He relied upon a decision of the Apex Court in the case of Shambu Nath Mehra Vs. State of Ajmer¹ as well as Mahendra Singh Vs. State of Uttaranchal²

4] We have considered the submissions. In the case of Shambu Nath Mehra (supra), the Apex Court held that use of the word “especially” does not mean that burden lies on the accused person to show that he did not commit murder for which he is being tried.

5] In the present case, prima facie, the Trial Court has not applied Section 106 for putting the burden on the applicant to prove that he is not guilty. In view Section 106, the burden was on the applicant to show how his wife sustained injuries which resulted into her death and that burden has not been discharged. Therefore, appropriate inferences have been drawn by the Trial Court.

6] Hence, no case is made out to enlarge the applicant on bail.

1 1956 SCR 199 : AIR 1956 SC 404 : 1956 Cri L.J 794

2 (2011) 14 SCC 113

Accordingly, the Application is rejected.

7] However, we find tha the applicant has undergone sentence of seven years and five months. We therefore direct that the appeal be listed on weekly board of the week commencing from 11th February 2019 by categorizing the case of the applicant on the footing that the applicant has undergone seven years and five months of sentence.

(A.S.GADKARI, J.)

(A.S.OKA, J.)