

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 CRIMINAL APPLICATION NO.1359 OF 2021
IN
CRIMINAL APPEAL NO.320 OF 2021

RAMDAS KERUBA SALVE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Bobde Sopan G.
APP for Respondent : Mr. R D Sanap

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CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.
Dated : September 07, 2021

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PER COURT :-

1. Pending criminal appeal no.320 of 2021 preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Aurangabad dated 20.5.2021 in Sessions Case No.36 of 2015, convicting thereby the applicant/accused for the offence punishable under section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.3,000/-, in default of payment of fine, to suffer S.I. for six months, the applicant/accused has filed this application for suspension of the substantive part of the sentence and bail.

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2. Learned counsel for the applicant/accused submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that, on the other hand, the applicant/accused had given intimation about missing of his wife. However, his original missing complaint was not produced before the court and only xerox copy was produced. Learned counsel submits that deceased Jyoti was residing alone alongwith her son in Arbar colony and the applicant/accused though residing with her, thereafter shifted his household articles from the residence of Arbar colony to Rajivnagar area. Deceased Jyoti was thus residing alone with her son in the rented room. Learned counsel submits that there is no chain of circumstantial evidence and PW 14 Sunil Jagtap, who has deposed on the circumstances of last seen together is not a reliable witness. Learned counsel submits that the applicant/accused is in jail since the date of his arrest. He was not on bail during the trial. Thus, considering the evidence led by the prosecution, the

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applicant may be released on bail by suspending substantive part of the sentence.

3. Learned APP has strongly resisted the application on the ground that, though, the prosecution case rests upon the circumstantial evidence, there is satisfactory evidence about the motive and the prosecution has established the chain of circumstantial evidence. The applicant/accused has tried to mislead the police by filing missing report. Though, dead body of his wife was found in the rented room situated in Rajivnagar area where the applicant/accused was residing, the applicant/accused has failed to give any explanation about death of deceased Jyoti in his residential house situated in Rajivnagar area. Learned APP submits that the prosecution has proved homicidal death in this case and since it was a custodial death, it was incumbent upon the applicant/accused to give some reasonable explanation about death of deceased Jyoti. There is no substance in this application. The application is liable to be rejected.

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4. PW 1 Ashabai Deelip Dhanraj is the real sister of the deceased Jyoti. On 15.11.2014 at about 11.00 hours her brother Sunil Jagtap had informed to her on mobile phone that on that day at about 10.00 am accused and their sister deceased Jyoti went to his room at Rajivnagar. At that time, son of the deceased Jyoti was with the parents of PW 1 Ashabai, however. Applicant/accused took away said son from her parents. Thus, PW 1 Ashabai alongwith other family members went to the residence of applicant/accused at Rajivnagar in search of deceased Jyoti. At that time, the room was found locked. There was one curtain of clothes, from which they looked inside the said room. In the said room, they saw deceased Jyoti was lying on the floor and blood was oozing from her nostrils and ears. Accordingly, husband of PW 1 Ashabai informed to the police and police arrived on the spot.

5. We have also gone through the evidence of PW 14 Sunil Jagtap. He is brother of deceased Jyoti. On 15.11.2014 he had come to the house of his parents. He

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was standing on the Terrace and at that time he saw Jyoti and Ramdas going towards Rajivnagar. Thus, PW 14 Sunil Jagtap has lastly seen the deceased Jyoti in the company of the applicant/accused Ramdas.

6. It has come in the prosecution evidence that the applicant/accused was suspecting about character of deceased Jyoti. In consequence thereof, the applicant/accused started residing in Rajivnagar area and deceased Jyoti was residing alongwith her son in Arbar colony.

7. Prosecution has also examined PW 10 Dr. Sachin Darandale, Medical Officer, who has conducted postmortem examination on the dead body of deceased Jyoti. In his opinion, probable cause of death of deceased Jyoti is "manual strangulation with head injury." Thus, there is evidence about homicidal death. Prima facie, it appears that though dead body of deceased Jyoti was lying in the room possessed by the applicant/accused in Rajivnagar area, he had mislead the police by filing missing report about his wife.

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Further, after the commission of the crime, the applicant/accused took custody of his son from the parents of deceased Jyoti. Prosecution has also established the motive. Prima facie, there is evidence against the applicant/accused. Moreover, the applicant was not on bail during the trial. We are thus not inclined to release the applicant on bail by suspending the substantive part of the sentence. Thus, considering the entire aspect of the case, we proceed to pass the following order.

O R D E R

Criminal application is hereby rejected.

(SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)

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