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

914 CRIMINAL APPLICATION NO.2964 OF 2019
IN APEAL/942/2019 WITH APEAL/942/2019

FARID S/O. AHAMAD SHAIKH
VERSUS
THE STATE OF MAHARASHTRA

...
Mr R. S. Shinde, Advocate for applicant;
Mr S. G. Sangle, A.P.P. for respondent

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 17th March, 2021

PER COURT:

1. By this application, the applicant – convict prays for suspension of substantive sentence, awarded to him vide the impugned Judgment dated 11/04/2019. The learned Sessions Judge, Latur has concluded in Sessions Case No.85 of 2016 that the applicant – accused is guilty of having murdered his wife. He has been sentenced for life imprisonment. He has also been convicted under Section 498-A of the Indian Penal Code. The appeal has been admitted on 06/09/2019.

2. We have considered the strenuous submissions of the learned Advocate for the applicant. We have referred to all the documents and the testimonies that he has relied upon. His submissions can be summarized as under :-

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- a) He has denied of having beaten his wife.
- b) He has denied of strangulating her.
- c) She committed suicide.
- d) He was not inside the home when the incident occurred.
- e) The testimony of his son, P.W.5, who is a 13 years old boy, is a tutored testimony.
- f) If his son had seen the applicant strangulating his mother and creating a picture of suicide by hanging, did he immediately narrate the relatives about the said acts ?
- g) If the applicant strangulated the wife and created a picture of suicide by hanging, there would have been injuries on the body of the wife, as she would have struggled.
- h) If there was no evidence of resistance by the wife when the accused allegedly strangulated her, it would indicate that the accused had never strangulated her.
- i) The informant has stated in the first information report that his sister, i.e. the wife of the accused, had committed suicide.
- j) After the son of the accused was interrogated almost two and half months after the incident occurred, he has come up with a tutored version that the accused strangulated his wife.
- k) The testimony of a tutored witness should be disbelieved.
- l) The testimony of P.W.6, daughter of the accused is again tutored testimony.

3. The learned Prosecutor has strenuously supported the conviction and he has relied upon the testimony of the son, P.W.5, and the daughter, P.W.6, to support the conviction.

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4. It is undisputed that the informant had purchased a ticket for the accused to travel from Latur to Aurangabad by 5.30 bus on 25/07/2016. Since he had purchased the ticket, he had mentioned his cell phone number with the bus operator. He received a call at about 4.30 a.m. that the passenger i.e. the accused, had not reached the bus stand. He tried to call the accused and his sister on their cell phone. As there was no response, he reached the house of the accused at about 5.30 a.m. and noticed that his sister was in a lifeless condition. Her legs were bent knee downward and her knees were resting on a cot. There was a sari tied around her neck, which was tied to a hook. The body of his sister was not hanging, but appeared to have been placed on a cot with knees bent and resting on the cot with the head in a loop of sari.

5. P.W.5 – Taufiq is the son of the accused. There is no evidence on record that the in-laws of the accused had any object or motive to implicate the accused. Taufiq has recorded his statement under Section 164 of the Code of Criminal Procedure and has also deposed before the Court in Sessions Case No.85 of 2016. He has stated that his paternal grandmother i.e. mother of the accused had put him under an oath that he would not say a word to the police as having seen his father strangulating his mother. He was threatened that if he divulges this fact to the police, the police would pick him up and he would be in

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big trouble. Subsequently, while staying with his maternal uncle, he came out of the spell of his paternal grandmother and when he was put to an oath in the name of “Allah”, that he spoke out the truth while recording his statement under Section 164 of the Code of Criminal Procedure. He has stated the entire story before the Court when his testimony was recorded.

6. P.W.6 – Sana, is the daughter of the accused. She has also deposed that the accused had a habit of beating her mother after returning home from his contractual duties. Being a drunkard, he used to beat her mother mercilessly. He used to make allegations against her mother and sometimes beat her by suspecting her character. Once he had beaten her mother by asking her whether she wears jeans and whether any person meets her when he goes on his contractual duties. She had also deposed that, frequently the accused used to tell her mother that, it would be better that she hung herself and by not doing so, it indicates that she is shameless. She has then stated that her brother – P.W.5, Taufiq, told her as to how the accused had killed his mother and had also told her that he had not divulged the said fact earlier, as his paternal grandmother had warned him against such disclosure, as the police would take him away if he told the truth.

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7. The learned Advocate for the accused submits that there are several discrepancies, which can be considered.

8. Considering the evidence before us, at this stage, we do not find it appropriate to exercise our discretion and stay the substantive sentence.

9. As such, this application, seeking suspension of substantive sentence, being devoid of merit is, therefore, rejected.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

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