

(1)

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

**901 CRIMINAL APPLICATION NO.4238 OF 2019
IN APEAL/91/2020 WITH APEAL/91/2020**

**ASHOK S/O. SUKRAM DABHADE
VERSUS
STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr Ram B. Deshpande (appointed Through
Legal Aid)
APP for Respondent: Mr K. S. Patil

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

DATE : 4th February, 2021

PER COURT:

1. By this application, the applicant/appellant prays for suspending the substantive sentence of life imprisonment, awarded to him by the learned Additional Sessions Judge, Shahada, Dist. Nandurbar, vide Judgment dated 18/08/2017, delivered in Sessions Case No.57 of 2015. The appellant has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code.

2. The learned Counsel, who is holding the brief for the appellant through the High Court Legal Services Sub-Committee, Aurangabad, has strenuously contended that, though the prosecution claimed to have two eye-witnesses, none of the eye-witnesses are believable. There is no evidence against the appellant. The Police Head Constable

(2)

Shri. Govind Jadhav, PW1, was the informant and there was no complaint filed by any independent person or a relative of the deceased. He further submits that the deceased was the wife of the appellant. There was no reason or motive to kill her. The appellant has a very good case and has every hope of acquittal. He relied upon the appeal paper-book and drew our attention to the deposition of the various witnesses.

3. The learned Prosecutor has strenuously opposed this application. He submits that the evidence on record clearly establishes the guilt of the accused. Quality of the evidence is material and not the quantity of the witnesses. The quality of the evidence in this case will clearly indicate the guilt of appellant. He is a habitual offender and there are cases registered against him. Due to his terror, not a single villager was willing to come forward to lodge the first information report. Police Head Constable Shri Govind Jadhav, PW1, mustered courage and lodged the first information report, vide which, the investigation was set into motion.

4. We find from the record that the prosecution has examined eleven witnesses. PW1, Police Constable Govind Jadhav was the person, who had lodged the first information report. PW2, Kailas Punju Dabhade, a witness to the 'last seen together alive' theory, has

(3)

deposed that on 12/07/2015, in between 1.30 pm to 2.00 pm (noon), the accused dragged his wife Hirkanbai by holding her shoulder from the courtyard and took her inside the house. Both were together and there was no other person inside the house. When she was assaulted and she started screaming, he heard her screams along with other persons.

5. The deceased was a physically challenged person. Her one leg was amputated and she used to use crutches. There were multiple injuries on her body, right from her head till her legs. On account of a telephone call received at 4.00 pm in the Police Station, the ASI Mr Bagale, PSI Nikam, Head Constable Kantilal Patil and the police staff reached the house of the accused at village Hingani. After entering the house, they found the accused in his house and the deceased was lying on the ground motionless with a blanket covered over her. Upon removing the blanket, these persons saw the dead body of Hirkanbai and saw fresh bleeding injuries. Since no villager dared to register the complaint, PW1, Police Head Constable Govind became an informant.

6. The panch witnesses have supported the Inquest Panchnama and the Spot Panchnama. The clothes of the appellant were seized on 14/07/2015 and an axe and a spade was discovered and seized on 15/07/2015 and the Seizure Panchnama was drawn.

(4)

7. Two witnesses i.e. PW4, Chandrakant Ashok Patil and PW7, Sunil Bhagwan Patil deposed that when they were seated in the house of PW7 at around 4.00 pm on 12/07/2015, the accused had come there and had told them that his wife had died due to injuries sustained by her while cutting wood and asked them to come to his house. Both of them visited the house of the appellant and found Hirkanbai lying motionless with several injuries and blood was oozing from the injuries on her forehead. The accused and one Shantaram Koli had dug one pit right in front of his house to bury the dead body of Hirkanbai. Naturally, Shantaram, PW6, did not support the case of the prosecution.

8. There are several other witnesses, who have deposed before the Trial Court. Their testimony has been analyzed by the Trial Court, in details, in the impugned Judgment.

9. PW9, the Doctor, who performed the post mortem on the body of the deceased, has mentioned several injuries right from the forehead of the deceased till her legs. Her ribs were fractured. The liver had ruptured and the left lung and abdomen were congested with blood. In the post mortem report, he has noted the cause of death as being cardio respiratory arrest, hypo volamic shock due to hemorrhage and

(5)

multiple injuries. He deposed that several injuries noticed can be caused by the use of an axe, and the wooden handle of the axe could also lead to some other injuries, noted by him.

10. Another eye-witness, PW8, Bhikubai, has deposed that she was seated in front of her house below the neem tree. When she heard screams in between 1.00 p.m to 1.30 pm, she turned around and on her backside, she saw the accused assaulting Hirkanbai in his courtyard with an axe. He then dragged her inside the house and continued beating her which led to the death of Hirkanbai.

11. Considering the above, at this stage, we do not find that the application preferred by the applicant, deserves consideration. The same, being devoid of merits, is therefore rejected.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

sjk