

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 665 OF 2022
IN APEAL/142/2022 WITH APEAL/142/2022

MAHALAPA BABU BANDICHODE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicants : Mr. G.A. Kulkarni
APP for Respondent : Mr. K.N. Lokhande
Advocate for Assist to APP : Mr. S.D. Takwad
h/f. Mr. S.B. Rajebhosale

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : 22 JUNE, 2022.

ORDER :

This is an application for suspension of sentence. The applicants along with two others were prosecuted for the offence punishable under Section 302, 498-A read with Section 34 of the Indian Penal Code, for having intentionally caused death of Sujata, wife of applicant No. 1 (accused No. 1). Applicant No. 2 is father and applicant No. 3 is the brother of applicant No. 1.

2. Learned Sessions Judge, by the impugned judgment and order dated 4 February, 2022 in Sessions Case No. 24/2013, while acquitting the original accused Nos. 4 and 5 have convicted the

applicants for the offence punishable under Section 302 of IPC. However, the applicants have been acquitted for the offence under Section 498-A read with Section 34 of IPC.

3. Sujata who is the wife of the applicant was found to have met with an unnatural death by electrocution at the house of applicant on 27 March, 2022. The matter was reported to the police by her father alleging that Sujata was subjected to ill-treatment by the applicants. According to the prosecution, the applicants were ill-treating the deceased on account of the fact that the deceased was insisting for partition of the agricultural land and asking her husband to stay separate. During the course of the investigation, the Investigating Officer has drawn the spot panchanama of the incident. The dead body was sent for post mortem examination and the Medical Officer has opined that the probable cause of death is due to cardio respiratory arrest, secondary due to shock.

4. We have heard the learned counsel for the parties and perused record.

5. It is submitted by the learned counsel for the applicant that the applicants have been acquitted for the offence punishable under Section 498-A of IPC, and, therefore, the entire basis of the prosecution case and the intention behind the murder has been found to be not proved. He, therefore, submitted that the necessary ingredients for attracting Section 106 of the Evidence Act which is

relied upon by the learned Sessions Judge are not made out. Secondly, it is submitted that the alleged recovery of an electric wire at the instance of applicant No. 1 cannot be an incriminating circumstance as such wire is usually used by the agriculturists in their field.

6. Learned counsel submitted that the injuries on the dead body as noticed in the post mortem report do not suggest that the death was homicidal in nature. Thus, in the submission of the learned counsel the deceased had met with accidental death by electrocution as a table fan was found near the dead body. It is submitted that the applicants were not at home when the incident had happened. There is also delay in filing the FIR. It is pointed out that the first informant had since expired and, therefore, could not be examined. The FIR was approved by the Investigating Officer. The applicants was on bail during the trial.

7. Learned APP has taken us through the spot panchnama in order to submit that the electric wire was found near the dead body. There are multiple injuries found on the dead body, which shows that there was physical violence apart from electrocution. He has also referred to the evidence of PW – 8 Anju who is the neighbour who has stated about the frequent quarrels between applicant No. 1 and the deceased.

8. We have considered the circumstances and the submissions made. *Prima facie*, we find from the post mortem report that there are as many as ten external injuries found on the deceased which at least

at this stage, rule out the possibility of an accidental death by electrocution. The perusal of the spot panchnama shows that there was a wire of about 55 inches which was found in burnt condition on either end and its ends were found from the dead body to the extension box near the door.

9. The Sessions Judge placing reliance on Section 106 of the Evidence Act, has found the circumstances leading to the death of Sujata being in the special knowledge of the applicants and they have failed to explain the circumstances leading to her death.

10. Considering the above circumstances, we do not find that this is a fit case for releasing the applicants on bail by suspension of sentence. The paper book is received and the appeal can be expedited.

11. In the result, the application stands rejected. The appeal is hereby expedited.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.