

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 309 OF 2022

Anil Dattarao Talekar

Appellant

Versus

The State of Maharashtra

Respondent

Mr. S. J. Salunke, advocate for the appellant
Mr. K. S. Patil, APP for the Respondent.

CORAM : V. M. DESHPANDE AND
SANDIPKUMAR C. MORE, JJ.

DATE: 21st April, 2022.

PC :

Heard Shri Sudarshan Salunke, learned Counsel for the
appellant.

Admit.

Learned A. P. P. Shri K. S. Patil waives service of notice for
Respondent-State.

(SANDIPKUMAR C. MORE)
JUDGE

(V. M. DESHPANDE)
JUDGE

adb

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

**CRIMINAL APPLICATION NO. 1410 OF 2022 IN
CRIMINAL APPEAL NO. 309 OF 2022**

Anil Dattarao Talekar

Applicant

Versus

The State of Maharashtra

Respondent

Mr. S. J. Salunke, advocate for the applicant
Mr. K. S. Patil, APP for the Respondent.

**CORAM : V. M. DESHPANDE AND
SANDIPKUMAR C. MORE, JJ.**

DATE: 21st April, 2022.

PC :

1 Heard Shri Sudarshan Salunke, learned Counsel for the applicant and learned A. P. P. Shri K. S. Patil for Respondent-State. We have also perused the notes of evidence which are placed on record, for consideration of this application for suspension of substantive jail sentence and for grant of bail.

2 The applicant along with his other family members were tried before the learned Additional Sessions Judge-2, Parbhani, in Sessions Case No. 120 of 2020, for the offences punishable under Sections 302, 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code for causing death of Chandrakanta, wife of the present applicant. The learned Judge of the trial Court, after appreciating the

entire prosecution case, acquitted all other accused persons except the present applicant. It is worth to note that even the present applicant is also acquitted for the offence punishable under Sections 498-A, 323, 504 and 506, however, he is convicted for the offence punishable under Section 302 of the Indian Penal Code. From the reasoning supplemented by the learned trial Judge, for the offence punishable under Section 302 of the Indian Penal Code, is on the basis of Section 106 of the Indian Evidence Act, since the dead body of Chandrakanta was found inside the house of the applicant.

3 Though it is for the accused persons to offer explanation *qua* Section 106 of the Indian Evidence Act, however, at the same time, initial burden will always be on the prosecution to point out that the applicant was present at the time of the incident. In this case, though the prosecution has tried to prove its case against the applicant and other accused persons that deceased Chandrakanta was receiving ill-treatment for demand of money, the learned Judge himself has found that the prosecution has not proved the said charge and acquitted the applicant and other accused persons. In that view of the matter, *prima facie*, there was no motive on the part of the present applicant to commit murder of his wife.

4 Though the prosecution has examined seven witnesses, none of the witness is stating that they noticed presence of the present

applicant inside his house near the time of the incident or at the time of the incident. In that view of the matter, the written explanation offered by the present applicant when he was examined under Section 313 of the Code of Criminal Procedure that he was present throughout the night at his agricultural field assumes *prima facie* importance.

5 In our view, looking to the aforesaid aspects and looking to the fact that the applicant is not having any criminal antecedents, application of the applicant needs to be considered favourably.

6 Resultantly, we pass the following order:

(i) The judgment and order of conviction dated 04.03.2022, passed by the Additional Sessions Judge-2, Parbhani in Sessions Case No. 120/2020, convicting the applicant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life, shall stand remain suspended during the pendency of this appeal.

(ii) Applicant Anil s/o Dattarao Talekar be released on bail on he executing personal bond of Rs. 5000/- (Rs. Five Thousand) with one solvent surety for the like amount.

(iii) The learned Judge, who is ultimately going to issue the

release warrant, shall ensure that the entire amount of fine is deposited by the applicant.

(iii) The applicant is directed to attend Police Station Jintur, District Parbhani, once in six months and mark his presence during the pendency of this appeal.

(iv) The applicant shall remain personally present before this Court at the time of final hearing of the appeal.

7 Criminal Application is accordingly allowed and disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. M. DESHPANDE)
JUDGE

adb