

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

**CRIMINAL APPLICATION NO.1578 OF 2022
IN
CRIMINAL APPEAL NO.262 OF 2019**

Shivaji S/o Bhojvant Shinde,
Age-52 years, Occu:Agri.,
R/o- At-Hatala,
Taluka-Kandhar, District-Nanded

**...APPLICANT
(Orig. Accused No.1)**

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.P.R. Katneshwarkar Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent-State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE OF RESERVING ORDER : 19th SEPTEMBER 2022

DATE OF PRONOUNCING ORDER : 20th DECEMBER 2022

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for suspension of substantive sentence. Present applicant is the original accused

No.1. Together with original accused No.2, he has filed Criminal Appeal challenging the conviction awarded to them by the learned Sessions Judge, Nanded in Sessions Case No.45 of 2015, on 26th February 2019.

2. The learned Sessions Judge, Nanded in Sessions Case No.45 of 2015, by Judgment and order dated 26th February 2019, has convicted and sentenced the present applicant – original accused No.1 and original accused No.2, thus:-

“ 1) The accused No.1 – Shivaji S/o Bhojwant Shinde, and 2 – Nagesh S/o Maroti Gadhave are convicted under Section 235(2) of Cr.P.C. of the offence punishable under section 302 r.w. section 34 of I.P. Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/- each, in default to pay the fine, they shall suffer further R.I. for six months in crime No.174/2014, registered at Police Station, Bhagyanagar, Nanded.

(2) The accused No.1 – Shivaji S/o Bhojwant Shinde, and 2 – Nagesh S/o Maroti Gadhave are convicted under section 235(2) of Cr.P.C. of the offence punishable under section 307 r.w. section 34 of I.P. Code and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.1000/- each, in default to pay fine, they shall suffer further R.I. for six months in crime No.174/2014, registered at Police Station, Bhagyanagar, Nanded.

(3) Both the sentences shall run concurrently. ”

3. It will not be out of place to mention here that original accused No.2 – Nagesh S/o Maroti Gadhave, who is appellant No.2 in Criminal Appeal No.262 of 2019, had filed separate application bearing Criminal Application No.1028 of 2019 for

suspension of sentence and it came to be allowed by this Court on 25th April 2019. Now the present Application has been filed by original accused No.1 – Shivaji S/o Bhojvant Shinde.

4. Heard Mr. Katneshwarkar, learned Advocate appearing for the applicant and Mr. Virdhe, learned APP appearing for the State.

5. Perusal of the record would show that the prosecution has examined in all 15 witnesses to bring home the guilt of the accused. Out of that, PW-3 Nandabai, mother of the deceased is the informant cum eye witness. The prosecution story is that the deceased Santoshi was the wife of present applicant No.1 and she has son out of the said wed-lock. However, due to the harassment from the applicant – accused No.1, deceased Santoshi was residing with her mother about 2 to 3 months prior to the incident. Due to the said matrimonial dispute, some mediators were called to the house of the mother of the deceased on 9th December 2014. During the talks of settlement, it is stated that the present applicant agreed to take back the deceased for cohabitation. The two mediators went outside the house. Thereafter, present applicant had requested PW-3 to allow him to talk with deceased. It is the further prosecution

story that deceased and present applicant went inside the bedroom of the said house and then PW-3, mother of the deceased, heard hue and cry. Therefore, she went to bed room and saw that present applicant was sitting on the person of the deceased and inflicting blows by sharp weapon on the person of the deceased. When the mother tried to intervene, the present applicant had given two blows with the said weapon to her also. Thereafter, accused No.2 entered the room and threw chilly powder at the mother and then both the accused escaped.

6. Learned Advocate for the applicant submitted that in fact the applicant was already married and it cannot be considered that deceased was his wife. There was no motive for the accused to commit murder, rather the circumstances indicate that the mother wanted to protect another person i.e. Shankar Mehetre. There were illicit relations between the mother and said Shankar Mehetre, and deceased Santoshi was taking objections for his visits to the house. When the mother, who has claimed to be the eye witness, is an interested witness, the learned Sessions Judge ought not to have relied on her testimony. The learned Sessions Judge did not consider the defence of the accused that there was in fact quarrel between PW-2 and PW-3 on the ground of illicit

relations and therefore the applicant, having hope of success in appeal, deserves to be released on bail.

7. Per contra, the learned APP supported the reasons given by the learned Sessions Judge and submitted that the applicant – accused No.1 was never released on bail during the trial also. Substantive sentence suspended in respect of accused No.2 is on different footing as the role attributed to him is different.

8. At the outset, it is to be noted that from the postmortem report it can be seen that there were in all 22 surface injuries on the person of the deceased and most of the same are chop injuries. Definitely, those can be caused with sharp weapon. Thereafter, there were corresponding internal injuries. Therefore, the prosecution had proved that the death was homicidal in nature.

9. It appears that the present applicant had taken the defence of alibi and the trial Court has held that it has not been proved. As against this, there is evidence of PW-3, who is the mother of the deceased and the murder was committed in her house. Therefore, her presence in the house can be said to be natural. The cross-examination does not indicate that there was

any grudge between PW-3 and the present applicant prior to the incident. Having dispute with the daughter, cannot be taken as a grudge. When the mother had seen present applicant inflicting blows by sharp weapon, then it cannot be, at this stage, said that she is interested witness. No doubt, the so-called mediator, PW-5 Madhukar Deshmukh appears to have turned hostile, but he accepts that he along with one Vishwambhar Wadje and Madhukar Wadje had gone to the house of PW-3 on 9th December 2014 for settlement talks. The substantive sentence suspended in respect of accused No.2 is on different footing, as the role attributed to him is entirely different than the role attributed to the present applicant.

10. There appears to be evidence against the present applicant and therefore this is not a fit case where the sentence should be suspended and the Application deserves to be rejected. Accordingly, the Application is rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE