

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

CRIMINAL APPLICATION NO. 2975 OF 2021

IN

CRIMINAL APPEAL NO. 629 OF 2021

Vishal Pradeep Torne,	]	
Age : 32 Years, Occupation : Agri. & Labour	]	
R/o. Tornewadi, Padhegaon,	]	
Tq. Shrirampur, Dist. Ahmednagar.	]	... Applicant.

Versus

The State of Maharashtra	]	... Respondent.
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Mr. Satej S. Jadhav, Advocate for the Applicant (Appointed through Legal Aid).
Mr. A. M. Phule, APP for the Respondent – State.

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

RESERVED ON : 5th SEPTEMBER, 2022.

PRONOUNCED ON : 27th SEPTEMBER, 2022.

ORDER :

1. Present application has been filed for suspension of substantive sentence imposed on 24th May 2021 by the learned Additional Sessions Judge, Shrirampur in Sessions Case No. 18 of 2018 to the applicant, who was accused No.1 in the said case. The applicant has been held guilty for committing the offences punishable under section 302 of Indian Penal Code and has been sentenced to suffer rigorous imprisonment for life and pay fine of Rs.10,000/- (Rupees Ten Thousand Only), in default to suffer rigorous imprisonment for six months.

2. Heard learned Advocate Mr. Satej S. Jadhav for the applicant and learned A.P.P. Mr. A. M. Phule for the Respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant, who was the accused No.1 has been convicted and the accused No.2 has been acquitted. It is the prosecution story that there was illicit relations between accused No.2 and the applicant. Accused No.2 was the wife of deceased and from the evidence it can be gathered that deceased had gone to the house of applicant and thereafter the altercation took place. He was armed with wooden log and in fact PW-5 Sudhir A. Torne has stated that it was deceased, who had started beating the applicant. First, under such circumstance, it cannot be said that it was premeditated act requiring ingredients of offence under section 302 of Indian Penal Code. The case may fall under section 304 (Part II) of Indian Penal Code at the most. For this purpose, the applicant need not be asked to remain in jail till his appeal is heard, which is already admitted, he be released on bail by suspending the sentence.

4. Per contra, the learned A.P.P. strongly opposed the application and submitted that the present applicant was not released on bail, during the pendency of the trial. There is ample evidence against the applicant. Several witnesses have seen the applicant beating the deceased with wooden log. The wife of the deceased was in the house of applicant at the relevant time and

even PW-5 Sudhir Torne has also stated the said fact. Even since Sudhir further states that though deceased started beating the applicant, then the applicant gave him kick and made him to fall, thereafter, he started beating deceased with wooden log on the head on the other body. Accused No.2 was instigating the applicant to beat deceased, then deceased started running toward southern side of the house of applicant. But then the applicant followed him and again started beating the deceased with wooden log. This indicates that later on he developed intention to kill deceased and therefore ingredients of section 302 of Indian Penal Code can be said to have been proved by the prosecution beyond reasonable doubt. No leniency need to be shown to the applicant.

5. At the outset, it is to be noted that since the date of arrest the applicant was never released on bail, even during the pendency of trial. Now when the evidence is over, it is *prima facie* required to be seen as to what is against the applicant. The prosecution has examined in all 13 witnesses to bring home guilt of the accused. Out of them, PW-3 Sachin Nana Shirsath, PW-4 Ajay Vasant Torne, PW-5 Sudhir Anton Torne, are the eye witnesses. PW-1 Annasaheb Indrabhan Pawar is the brother of the deceased Vikas Pawar. He has specifically stated that accused No.2 had illicit relations with the present applicant and this fact has also been told by the PW-5 Sudhir Anton Torne. He was along with accused No.1 on that date of incident, and

thereafter, he was watching television in the house of applicant, where even accused No.2 was present. As aforesaid around 9.30 pm. to 10.00 p.m., deceased went to the house of applicant and when he saw his wife, he started abusing her and beating the applicant with wooden log. It appears that the accused No.1 after assaulting him snatched the wooden log and started beating him. Though the deceased is stated to have tried to run away from the said place, the applicant had followed him again gave blows. In cross no doubt he has stated that the deceased was in anger. Whether such evidence can be sent to be taken as private defence is a question, but taking into consideration the testimony of PW-6 the Medical Officer, who conducted autopsy and had noted seven surface injuries as well as corresponding internal injuries has given his opinion regarding probable cause of death as due to multiple injuries. It will not be out of place to mention here that though the accused No.2 has been acquitted, the State has filed application for leave to file appeal challenging the acquittal of accused No.2. When such evidence has come against the applicant, this is not a fit case where he should be released on bail during pending appeal.

6. Hence, application stands rejected.

7. Registrar (Judicial) to get the paper-book prepared.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)