

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.175 OF 2022
IN
CRIMINAL APPEAL NO.497 OF 2022

Vasant s/o Gunaji Kale
Age: 58 years, Occu.: Nil,
R/o. Kundi, Tq. Dharur, Dist. Beed.
(Applicant presently in Central Prison) **.. Applicant**

Versus

The State of Maharashtra
Through Police Station : Sirsala
Tq. Dharur, Dist. Beed. **.. Respondent**

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Mrs. Vaishali Shinde for the applicant (Appointed through Legal Aid).
Mr. A. M. Phule, APP for the respondent - State.

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**CORAM : SMT. VIBHA KANKANWADI AND
GAURI GODSE, JJ.**

DATE : January 27, 2023.

ORDER :-

. Present application has been filed for suspension of sentence by the original accused, who has been convicted by learned Additional Sessions Judge, Majalgaon, Dist. Beed in Sessions Case No.24 of 2017 on 31.05.2019. The appellant/applicant has been convicted for the offence punishable under Section 302 and thereby sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer two months simple imprisonment.

2. Heard learned Advocate Mrs. Vaishali Shinde for the applicant and learned Advocate Mr. A. M. Phule for the respondent - State.

3. With the help of both the Advocates, we have gone through the entire paper-book containing evidence. The prosecution story is that the daughter of the applicant was in their house and the applicant and his wife had gone to the field. The applicant came back, but the wife did not and, therefore, the daughter asked applicant as to where the mother is. Applicant asked daughter to tie two rotis/bhakries for him and by taking two rotis/bhakries, when he was about to step outside the house, he informed the daughter that he has killed her mother and then ran away. Daughter says that she chased him while crying and shouting, but she could not catch him up and upon hearing her cries, the paternal uncle of the applicant, who resides nearby came to the house of the applicant. It was around 3.00 p.m. on 15.03.2017. The daughter informed the said fact to the informant. Then the informant went to the field of the applicant, where he saw the dead body of the wife of the applicant and then lodged the report.

4. The prosecution has examined in all 12 witnesses. P.W.5 Radha is the daughter of the applicant. Admittedly, the case is resting on the circumstantial evidence, however, it is also resting on the confessional statement given to the daughter. Daughter is aged 21 and married and we find *prima facie* that her testimony is supported

by the informant. The postmortem report shows mention of about 12 surface wounds. In all four incised injuries were on the high parietal region, right occipital region and then there are chop injuries around neck, left forearm and right hand. There are corresponding internal injuries and the cause of death is “haemorrhagic shock due to multiple incised injuries over neck”. Therefore, it can be said that the death is homicidal in nature. It was harped upon by the learned Advocate for the applicant that since there is no direct evidence and some of the witnesses have turned hostile, the applicant deserves to be released on bail by suspending the sentence, as it will take long time to heard his appeal. As aforesaid, there appears to be the confessional statement, so also the fact that P.W.5 is also the witness on the point of last seen together. The parents had told her that they would go to field and the dead body was found in the field, are the strong circumstances against the applicant. The applicant was not on bail throughout the trial. Under such circumstance, we do not find this to be a fit case where the applicant should be released on bail by suspending the sentence. Hence, the application stands rejected.

[GAURI GODSE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm