

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

**912 CRIMINAL APPLICATION NO.615 OF 2023
IN APEAL/131/2023**

**PRABHAKAR @ BALAJI S/O. VITHAL METKAR
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Chaudhary N. S.
APP for Respondents/State : Mr. S.J. Salgare
Advocate for R/2 : Mr. S.N. Zakade

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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.
DATE : 28th April, 2023**

PC. :-

1. The present application has been filed for suspension of sentence awarded by the learned Additional Sessions Judge-1, Nanded in Sessions Case No.05/2017 on 19.01.2023. The appellant has been held guilty and convicted for the offence punishable under Section 302, 201 of the I.P.C.

2. With able assistance of the learned advocate for the applicant/appellant and learned APP we have gone through the entire record which was before the learned trial Judge. It will not be out of place to mention here that by order dated 23.02.2023 the legal heirs of deceased to

whom the compensation is directed to be paid was made respondent and she appeared through advocate, however, today the said advocate is absent.

2. The prosecution story starts with lodging of accidental report by one Rukmaji Wanole who appears to be the cousin brother of deceased-Dnyaheshwar Metkar. It came to be filed on 14.10.2016 and registered vide A.D. No.25/2016 on 15.10.2016. After the dead body was sent for post mortem an opinion has been sought, it appears that the none of the family members came forward to lodge the FIR and therefore PSI-Keshav Jadhav attached to Islapur Police Station lodged the report on behalf of State against unknown persons. The investigation has been conducted and the charge-sheet came to be filed. It appears that the prosecution has examined in all ten witnesses to bring home the guilt of the accused and after considering the evidence on record and after hearing both the sides the learned trial Judge has held the accused guilty for offence punishable under Section 302 of the I.P.C. he has been sentenced to suffer imprisonment for life and pay fine of Rs.50,000/- in default to suffer R.I. for three years. Further for the offence punishable under Section 201 of the I.P.C he has been sentenced to suffer R.I. for 7 years and to pay fine of Rs.10,000/- in default to suffer R.I. for one year.

3. Perusal of the post mortem report would shows that the probable cause of death that has been given is “due to respiratory arrest due to asphyxia (suffocation) due to smoke”. However, viscera was preserved for chemical analysis. Thereafter, there were queries which were asked by Investigating Officer to the Medical Officer. The Medical Officer has ruled out the possibility of death by drowning he says that the death was unnatural and it might be possible that the death was due to suffocation due to the 36% burns sustained by the deceased. Though, there was injury to the head, the Medical Officer has ruled out the possibility of death due to head injury he was unable to give firm opinion as to whether the death was suicidal or accidental, he confirmed that death was unnatural and then he says that the death has occurred within 36 hours from the time of post mortem. This opinion has been proved through the PW7 the Medical Officer, however, it is to be noted from his testimony that in the cross he has admitted that the death of the deceased in this case may be accidental or suicidal. We find this to be contrary to his own opinion Exh.118, however, the fact remains that even in his examination in chief he was not firm about the nature of the death. It is only the possibility that has been stated.

4. The case is based on circumstantial evidence. The brother of the deceased had seen deceased-Dnyaneshwar and the present applicant sitting

near the temple at around 5.00 p.m. on 13.10.2016 and they both were under the influence of liquor. Thereafter, there is evidence of PW4-Madhav who is the son of the deceased and he has stated that he himself and his parents had gone at about 8.00 a.m. on 13.10.2016 for work and they returned at around 4.00 p.m. and thereafter the applicant-accused came on his motorcycle and Dnyaneshwar went along with the accused. The PW9 is the widow of the deceased and she has stated the same thing as stated by her son. However, it is to be noted that when Dnyaneshwar did not return on that day they have not lodged any missing report till the A.D. was registered by the cousin brother of deceased, it appears that there was no intimation to the police in respect of whereabouts of Dnyaneshwar. Now it is required to be considered as to whether the last seen of the son and wife at 4.00 p.m. and the brother at 5.00 p.m. near temple can be considered as strong segment of the chain of circumstantial events. But it has the shade of not reporting anything by all these three persons to the police station in spite of having the knowledge. Another aspect to be noted is that in the FIR itself the Police Officer is saying that none of the relatives expressed any suspicion over the death of Dnyaneshwar in the inquiry which was conducted in A.D. The other witnesses appear to be on the point of seizure panchanamas, spot panchanama etc.

Therefore, strong point is made that the chain of circumstantial events is not proved.

5. Though it appears that the present applicant was not released on bail throughout the trial except the Covid period. Upon consideration of the evidence, we find this to be a fit case where the sentence needs to be suspended. Hence the following order is passed:

ORDER:

1. Application stands allowed and disposed of.
2. The substantive sentence awarded against the applicant/ appellant in Sessions Case No.05/2017 by learned Additional Sessions Judge-1, Nanded on 19.01.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.131 of 2023.
3. Applicant - Prabhakar @ Balaji s/o Vithal Metkar be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) and two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.
4. The applicant shall not commit any criminal activity.

5. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeals, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.
6. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.
7. Bail before the Trial Court.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]