

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.786 OF 2023
IN
CRIMINAL APPEAL NO.148 OF 2023

Bapurao s/o Khandu Navsare,
Age: 36 years, Occu.: Agriculture,
R/o. Village Navsarwadi,
Taluka Karjat, District Ahmednagar

.. Applicant

Versus

The State of Maharashtra,
Through the Police Station Officer,
Police Station, Karjat,
Taluka Karjat, District Ahmednagar

.. Respondent

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Mr. Rajendrraa Deshmukh, Senior Counsel i/b Mr. Devang R. Deshmukh,
Advocate for the applicant.
Mrs. V. S. Choudhari, APP for respondent – State.

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 7th September, 2023

ORDER :-

. Present application has been filed for suspension of substantive sentence imposed on the applicant vide judgment and order dated 15.12.2022 by learned Additional Sessions Judge, Shrigonda, District Ahmednagar in Sessions Case No.121 of 2019. The present appellant has been convicted for the offence punishable under Sections 302, 201, 498-A

of Indian Penal Code.

2. Heard learned Senior Counsel Mr. Rajendrara Deshmukh for the applicant and learned APP Mrs. V. S. Choudhari for the respondent – State.

3. It has been vehemently submitted by learned Senior Counsel instructed by learned Advocate Mr. Devang R. Deshmukh that the learned Trial Judge has not appreciated the evidence properly. The medical evidence was not clear enough to prove that the death was homicidal in nature. The evidence of P.W.7 Dr. Sucheta Yadav, attached to Sub District Hospital, Karjat on the day of incident, would show that she had conducted the autopsy. She has stated that when the dead body of Rupali was brought to the hospital for postmortem, she examined the dead body and after seeing ligature mark on the neck, she felt that the hanging might be because of a big rope and, therefore, she referred the dead body for forensic opinion to Sassoon Hospital, Pune. That means, she had not given the final opinion. Evidence of P.W.6 Dr. Ajay Taware would show that he had performed the postmortem with the help of Dr. Khurana and Dr. Shelke. He found ligature mark, abrasions at three places and the probable cause of death that has been given is “death due to constriction of neck due to ligature.” In his cross-examination, he has stated that he agree with the preposition given in Modi’s jurisprudence as well as Parikh’s jurisprudence regarding hanging. He admitted that the hyoid bone was intact in the

present case. When the well known book says that there should be fracture to hyoid bone and the situation would be different in respect of throttling, then it cannot be said that the death was homicidal in nature.

4. Another fact to be noted is that the incident is alleged to have taken place in the poultry yard. It has not been stated by any witness examined by the prosecution that the deceased was found in the company of accused prior to the death. Therefore, accused was not required to explain the circumstances in which his wife was found dead. The evidence of P.W.1 Sandeep, who is the brother of deceased has been considered as believable and on the basis of his evidence, it has been held that the deceased was subjected to cruelty. The defence that was taken by the appellant was not considered at all. He has given his written say as a part of his statement under Section 313 of the Code of Criminal Procedure explaining the circumstances in which his wife was found dead. In fact, he has stated that he was not with the deceased when the incident took place. With this evidence, the applicant need not be kept behind bar. There are every hopes of success in appeal.

5. Per contra, the learned APP supported the reasons given by the learned Trial Court. It is stated that testimony of P.W.1 Sandeep Kalbhor, brother of the deceased, was sufficient to prove the guilt as well as motive for committing the offence by the accused. The demand of the accused was

to the extent of Rs.1,50,000/-, which he could not fulfill. The testimony of both the medical officers would show that the death is unnatural and the dead body was found in the poultry farm. Even the accused says that he himself and deceased used to go for guarding Hens at night time. He ought to have then examined the witnesses to prove the defence of alibi. The deceased has died due to unnatural death and, therefore, there was ample evidence before the Trial Court to convict the applicant.

6. Here, we are required to consider the *prima facie* evidence. The testimony of P.W.7 Dr. Sucheta Yadav though states that she was under confusion as to whether the hanging is possible by *odhni*, but then she says that she had suspicion that the hanging might be taken place with a big rope. She had not denied that deceased sustained said injuries, which could be sustained due to hanging, but then she had referred the dead body to Sassoon Hospital and, thereafter the expert has examined the dead body. P.W.6 Dr. Ajay Taware is the said subsequent doctor. Both the medical officers are not ruling out the possibility of unnatural death. Definitely, throttling is different from hanging or strangulation, but still many times these words are mistakenly used. Learned Senior Counsel has taken us to the length of the piece of cloth seized in the matter that has been allegedly used as murder weapon and submitted that the said cloth is of a different quality and width than the ligature mark that was found, but since it is a

matter of appreciation, we do not want to have a thorough discussion about the same. Testimony of P.W.1 has been taken as the basis for establishment of motive for accused to commit murder.

7. Thea accused is not denying the fact that his wife has died because of unnatural ground. He has not entered the witness box, nor examined anybody to prove that he was inside the house when the alleged incident took place. Here also, the accused would have allowed his wife alone to guard the poultry at night time. Still, we will have to consider his defence also, but we do not find this to be a fit case to release the applicant on bail by suspending the sentence. He was not on bail throughout the trial. Hence, the application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm