

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO.1245 OF 2023
IN
CRIMINAL APPEAL NO.142 OF 2023

YOGIRAJ BHASKAR SURVEY
VERSUS
THE STATE OF MAHARASHTRA

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Mr. S.G. Ladda, Advocate for applicant

Mr. S.J. Salgare, APP for respondent

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

DATE : 11th JULY, 2023

ORDER : (PER : VIBHA KANKANWADI, J.)

1 Present application has been filed for suspension of substantive sentence imposed on the applicant/appellant and releasing him on bail till the hearing and final disposal of the appeal. The present applicant faced trial with co-accused in Sessions Case No.65/2017 for the offence punishable under Section 302, 498-A, 201, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860. At the conclusion of the trial the learned Additional Sessions Judge, Vaijapur, Dist. Aurangabad on 31.01.2023 held

the accused guilty of committing offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.10,000/- (Rupees Ten Thousand only), in default to suffer further rigorous imprisonment for one month. He has been acquitted for all the other charges, however, the co-accused have been acquitted for all the charges. The appeal is filed by the applicant to challenge his conviction and by order dated 16.03.2023 it has been admitted.

2 Heard learned Advocate Mr. S.G. Ladda for the applicant and learned APP Mr. S.J. Salgare for the respondent.

3 It has been vehemently submitted on behalf of the applicant/appellant that the appellant stood prosecuted for allegedly committing murder of his wife Shalu. The motive as stated by the prosecution was non fulfillment of the illegal demands. It was alleged that accused being the husband and accused Nos.2 to 4 being his relatives subjected Shalu to cruelty for fulfillment of their illegal demand of Rs.2,00,000/- for purchasing cruiser jeep. However, since the appellant as well as co-accused have been acquitted, the said motive cannot be said to have been proved by the prosecution. Further, the prosecution is mainly relying on the testimony of PW 7 Dr. Pramod Madhukar Alhat, who had

conducted the autopsy. He had found conditions of skin in column No.14 of the Postmortem Report as – 1) Finger press mark around neck seen (finger impression), 2) Swelling on posterior triangle of neck seen. In column No.17 of the Postmortem Report Exh.43 the external injuries have been mentioned. There was only one external injury i.e. abrasion around neck present approximately 2 c.ms. swollen. The brain and lungs were congested. He opines that the probable cause of death of Shalu was “throttling leading to asphyxia leading to cardio-respiratory arrest”. In the cross-examination he has given many admissions. Those admissions have not been considered by the learned trial Judge properly. He admits that in case a person receives inadequate oxygen, then he may hold his throat and in that case the finger impression can occur. He had not tried to match the finger impression found on the neck of deceased Shalu with her fingers and thumb. He further says that the cause of epileptic attack may give sign of asphyxia. ‘Asphyxia’ is a general term which depicts that due to some illness the person is unable to breath smoothly. Therefore, merely because there was finger print or finger impression on the neck, he ought not to have come to the conclusion that the case is of throttling. The incident is stated to have taken place around 5.00 p.m. on 02.06.2017. It is not the time when it can be said that the husband and wife would be the only persons in each others company and, therefore, there was no question of invoking Section 106 of the Indian Evidence Act.

Certainly, a detailed re-appreciation is required and, therefore, the appellant deserves to be released on bail by suspending the sentence. He relied on following two authorities.

- 1) **Bhagwan Das and another vs. State of Rajasthan** [AIR 1957 SC 589].
- 2) **Sunderlal alias Sundera vs. State of Madhya Pradesh** [(1952) 2 SCC 464].

4 Per contra the learned APP supported the reasons given by the learned trial Judge and submitted that when there is prima facie evidence about the fact that there was illegal demand and she was subjected to cruelty and then she expired due to the throttling, which is said to be the homicidal death by PW 7, it was then for the appellant-husband to bring it on record, what was the reason leading to the death of his wife. The appellant was not on bail throughout the trial and, therefore, no case is made out for releasing him during the pendency of the appeal.

5 At the outset, though it appears that the learned trial Judge has acquitted the accused of the other offences on the ground that evidence to that effect has not been produced beyond reasonable doubt; yet, the prosecution still demonstrates as to what was the motive. Proving a case

beyond reasonable doubt in respect of offence is a different concept than the motive to commit an offence. Major part of the testimony of PW 7 has been reflected earlier. The admissions given by the Medical Officer are definitely required to be considered, however, there is no evidence produced by the accused to show that Shalu was suffering from epilepsy. No such suggestion has been given to the family members of Shalu i.e. her father and other persons, though certain other witnesses, who alleged to be the members of the meeting called after the alleged allegations about demand of money, have turned hostile. In his statement under Section 313 of the Code of Criminal Procedure the present applicant/appellant says that Shalu died due to suffocation. He does not say that it was epileptic attack. He does not say that she was suffering from epilepsy since prior to marriage or since after marriage. For suffocation there has to be something in the place where she was present before her death or suffered injury. No doubt, re-appreciation is required, in view of the fact that the appeal has been admitted, but at the same time it can be seen that the applicant/appellant was not on bail throughout the trial. The decisions relied by the learned Advocate for the appellant can be considered at the time of final hearing, as those are the judgments in appeal. Here, in this case, it appears that Shalu was brought by applicant/appellant in dead condition to Shivna Critical Care Hospital, Lasur Station. But it appears that he had not then informed the police about the

circumstances in which she died. Therefore, we do not find this to be a fit case where discretion should be used in respect of suspending the sentence during the pendency of the appeal. The application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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