

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL APPLICATION NO. 1368 OF 2023
IN CRIMINAL APPEAL NO. 399 OF 2023

Pundlik S/o. Subhash Pillewad,
Age: 25 years, Occu.: Labour,
R/o: Raheer, Tq. Naigaon,
District Nanded.
[At present the Appellant is in
Harsool Central Prison, Harsool,
Taluka and District: Aurangabad]

... Applicant

Versus

1. The State of Maharashtra,
Through the Police Station Officer,
Kuntur Police Station, Tq. Naigaon,
District : Nanded.
2. Master Kanha Pundlik Pillewad,
Under Guardianship of
Rekha Ganpat Nagarwad,
Age: 47 years, Occ. Household,
R/o Shankarganj, Dharmabad,
Dist. Nanded.

[Respondent No.2 deleted as per
liberty granted vide order dated
28.04.2023.]

... Respondents

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Advocate for Applicant : Mr. Govind Anilrao Kulkarni and
Mr. Mrigesh D. Narwadkar
APP for Respondent-State : Mr. A. M. Phule

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

DATED : 18 AUGUST 2023

PER COURT :-

1. Present application has been filed for suspension of sentence. The appellant/applicant is the husband of deceased. He has been held guilty of committing offence punishable under Section 302 of the Indian Penal Code [IPC] in Session Case No. 12 of 2019 by learned Additional Sessions Judge, Biloli, District Nanded on 03.11.2022. He has been sentenced to suffer imprisonment for life and fine of Rs.5,000/-, in default to suffer rigorous imprisonment for one month.
2. As per the prosecution story, the incident had occurred at around 5.30 p.m. on 03.11.2018 at village Kuntur, Taluka Naigaon, District Nanded. The deceased and the accused had a nine months old son at that time. The naming ceremony had taken place a day earlier.
3. Heard learned Advocate Mr. Kulkarni and Mr. Narwadkar for the applicant and Mr. Phule, APP for the respondent State.
4. Learned Advocate appearing for the applicant vehemently submitted, after taking us through the evidence on record, that the prosecution case is based on circumstantial evidence and the conviction appears to be mainly on the ground of knowledge of the

accused i.e. Section 106 of the Evidence Act. However, according to him, prosecution has not proved the presence of accused in the house at the relevant time. There were scratches on the neck of the deceased but the samples of nail clippings of the accused do not support. There are also admissions in the cross-examination of informant-mother of the deceased and the motive is alleged to be suspicion over the character of deceased. There is no concrete evidence to support the motive. There are good chances for the appellant in the appeal and therefore, learned Advocate for the appellant/applicant prayed for suspension of sentence.

5. Per contra, learned APP supported the reasons given by learned trial Judge and submitted that as there was ample evidence and mainly that the incident has occurred in the house of the accused, the prosecution has proved that it is homicidal death and therefore, the appellant-applicant was bound to disclose the circumstances under which his wife was found dead.

6. At the outset, we would like to say that from the record it appears that the accused applicant was never released on bail throughout the trial. The second circumstance is that, as per the medical evidence, which is proved through PW6 Dr. Shila Bokare,

there was evidence of ligature mark partially more than one turn at the left side of neck, evidence of nail marks, scarring peeled part of skin underneath, fracture of tracheal ring and evidence of petechie noted below the chin and therefore, it has been opined by the medical expert that the probable cause of death is due to asphyxia due to throttling i.e. neck compression. If we consider the cross-examination of the medical officer, then, it is not giving any different version and therefore, there is *prima facie* evidence at this stage to support the prosecution story that the death is homicidal in nature.

7. Further, it appears that the station diary entry has been taken before registration of the FIR at about 1.54 p.m. on 04.11.2018 and thereafter inquest panchanama as well as spot panchanama was carried out. The station diary entry is not pointing out as to on the basis of whose information the said entry was taken. Certainly, it does not appear to be the stand taken by the applicant that he had informed the fact of death of his wife to police, but from the contents of the spot panchanama, it can be seen that by that time, i.e. when it was executed between 12.30 p.m. to 1.30 p.m. on 04.11.2018, the postmortem was performed, but the final cause was made known by the doctor to the police saying that it is the case of throttling. Under such circumstance, though now a point has been raised that there is

belated FIR, that cannot be a ground for suspension of sentence. The mother of deceased-informant has been examined and it would be revealed at the time of final assessment as to whether the motive has been proved or not, but certainly, learned trial Judge, taking into consideration the evidence on record, has invoked Section 106 as well as Section 114 of the Evidence Act. Therefore, we do not find this to be a fit case where the sentence needs to be suspended.

8. The application stands rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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