

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 CRIMINAL APPLICATION NO.1423 OF 2023
IN APPEAL/314/2023

BHAUSAHEB DATTU SHELKE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. R.R. Karpe, Advocate for applicant

Mr. S.D. Ghayal, APP for respondent

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

DATE : 19th AUGUST, 2023

ORDER :

1 Present application has been filed for suspension of substantive sentence imposed on accused No.1. Present applicant/appellant is the original accused No.1, who has been held guilty for the offence punishable under Section 302, 498-A of the Indian Penal Code, 1860 in Sessions Case No.165/2019 by learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar on 09.02.2023.

2 Heard learned Advocate Mr. R.R. Karpe for the applicant and

learned APP Mr. S.D. Ghayal for the respondent and with their help we have gone through the paper book.

3 Deceased is the wife of present applicant. There were in all four accused persons. Accused Nos.2 and 3 are the parents of the present applicant and original accused No.4 is not even their relative, still he appears to have been charged to have abetted accused Nos.1 to 3 to commit murder of deceased i.e. charge under Section 302 read with Section 109 of the Indian Penal Code. The prosecution story appears to be that before the marriage of deceased Rupali with present applicant she had love affair with accused No.4, however, after accused No.4 and deceased were given understanding, accused No.4 consented that Rupali can perform marriage with any other boy and it is the prosecution story that after giving the real picture i.e. disclosing his relationship between deceased and accused No.4, the marriage between deceased and present applicant performed. It is then stated that on that count thereafter the accused Nos.1 to 3 subjected her to cruelty and thereafter the accused Nos.1 to 3 have committed murder of deceased Rupali before 8.00 a.m. on 01.07.2012.

4 The prosecution has examined in all seven witnesses to bring home the guilt of the accused and after hearing both sides and perusing the

evidence the present applicant only has been held guilty, as aforesaid. Original accused Nos.2 and 3 have been acquitted of the offence punishable under Section 302, 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and accused No.4 has been acquitted of the offence punishable under Section 109 read with Section 302 of the Indian Penal Code.

5 The point which is in favour of the present applicant is that he was released on bail during the pendency of the trial. We are mainly concerned with his conviction for Section 302 of the Indian Penal Code. The medical evidence in the form of autopsy doctor i.e. PW 5 Dr. Suchita Yadav shows that the probable cause of death is “Cardio respiratory arrest due to asphyxia due to smothering”. However, in the cross-examination she has stated that there is least possibility of causing the injury Nos.2 and 7 by beating by sugarcane. It is least possible that while committing suicide, the person may lift her hands to remove dupatta around the neck. There are very less chances that hands of such person may come at upper side while committing suicide. It is, therefore, required to be seen as to whether these answers support the defence of the accused that Rupali had committed suicide, which is the primary defence of the present applicant. Further, on the same set of facts when the accused Nos.2 and 3, who were inside the house at the relevant time, have been acquitted by the learned trial Judge

and, therefore, that fact is also required to be considered. The motive is also required to be re-tested, when the prosecution witnesses i.e. the relatives themselves are coming with a case that before the marriage everything was explained to the applicant and still he agreed to perform marriage with Rupali. A chit is said to have been found in the house of the accused persons and with the admitted handwriting that chit has also been obtained. Whether from that letter we can infer the offence under Section 498-A of the Indian Penal Code is also required to be considered and, therefore, we find this to be a fit case where the sentence deserves to be suspended till the pendency of the appeal. Hence, following order.

ORDER

1 Application stands allowed and disposed of.

2 The substantive sentence awarded against the applicant/ appellant in Sessions Case No.165/2019 by learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar on 09.02.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.314 of 2023.

3 Applicant Bhausahab Dattu Shelke 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 appeal, 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.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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