

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1866 OF 2023
IN APEAL/585/2023 WITH APEAL/585/2023

ARJUN DHONDIBA SURVASE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mrs. Bharad Pratibha Jagdish
APP for Respondent – State : Mr. S. J. Salgare
...

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

DATE : 17th August, 2023

ORDER :-

. Present application has been filed for suspension of sentence. The applicant is originally accused No.1 in Sessions Case No.3 of 2021. He has been held guilty of committing offence punishable under Section 302 of Indian Penal Code by learned Additional Sessions Judge, Omerga on 01.02.2023.

2. Heard learned Advocate Mrs. Pratibha Bharad for the applicant and learned APP Mr. S. J. Salgare for the respondent – State. With the able assistance of both of them, we have gone through the paper-book.

3. The postmortem report has been proved by P.W.1 Dr. Sainath Jalkote, the medical officer, who was attached to PHC Yenegur, Omerga. According

to him the probable cause of death is hypovolemic shock due to excessive blood loss due to head injury. He has found three external injuries and two internal injuries. He also says that those injuries are possible by axe shown to him.

4. The prosecution has examined in all eleven witnesses and the main witness appears to be P.W.7 Monika, who is the daughter of deceased and accused. She was aged 15 years at the time of deposition. She has categorically stated that at night time i.e. 02.00 a.m., her father had given the blow of axe on the mother. It has been now stated that the girl was brought up by the maternal uncle since childhood and there used to be quarrels between the husband and wife i.e. deceased and, therefore, her testimony is the outcome of tutoring. At this stage, she has supported the prosecution story and it also appears that the incident has taken place at night time in the house of the accused and on that count also it appears that the learned Trial Judge has invoked Section 106 of the Indian Evidence Act. From the statement under Section 313 of the Code of Criminal Procedure, it doesn't appear at this *prima facie* stage that the present appellant had taken defence of *alibi*. No doubt, certain witnesses have turned hostile, but taking into consideration the fact that the 15 years old daughter of the appellant has categorically stated that the father has killed mother and also the fact that the appellant was never on bail throughout

the trial, under the said circumstance, we do not find this to be a fit case to suspend the sentence. Hence, the present application stands rejected.

5. Learned Advocate for the appellant is making a statement that the appellant is HIV positive and in advance stage. Under such circumstance, we expedite the appeal.

6. The appeal to be listed in the week commencing from 04.12.2023.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm