

903 CRIMINAL APPLICATION NO.2272 OF 2023
IN APPEAL/610/2023 WITH APPEAL/610/2023

Balaji S/o Kashinath Biradar
Age: 52 years, Occu.: Agri.,
R/o. Village Sangam, Tq.Deoni, Dist.Latur. ..Applicant
(Orig. Accused)

The State of Maharashtra
Through Deoni Police Station. ..Respondent

Advocate for Applicant : Mr.Sunil Bappasaheb Jadhav (appointed)
APP for Respondent : Mr.A.V.Deshmukh

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

DATE : 9 AUGUST, 2023

PER COURT :-

1. Present application has been filed for suspension of sentence.
2. The applicant / appellant has been held guilty, for committing murder of his wife, by learned Additional Sessions Judge, Udgir, District Latur in Sessions Case No.35 of 2012 on 19-07-2013. It will not be out of place to mention here that the applicant approached the Legal Aid Committee of this Court after about 3572 days. After providing the legal aid, he has filed the appeal. The delay has been condoned.

3. Heard Mr.S.B.Jadhav, learned Advocate for the applicant and Mr.A.V.Deshmukh, learned APP for the respondent State.

4. The prosecution story in short is that the applicant was residing with his wife Sangita and two daughters namely Sneha and Shobha as well as son Manmath at village Sangam, Tq.Deoni, District Latur. The accused used to abuse and give ill-treatment to wife on trifling grounds. It is further prosecution story that Sangita had prepared food in the evening time on 09-06-2012. All the family members had dinner at around 08:00 p.m. While taking dinner, accused was abusing Sangita saying that she has not prepared the food properly. The children Shobha and Manmath went to sleep but Sangita while talking to daughter Sneha went to sleep in Veranda where she was earlier talking with accused. When Sneha was sitting near to Sangita, accused assaulted Sangita at around 10:00 p.m. to 10:30 p.m. by giving blow of *Musal* (a wooden tool used for crushing grains). The blow was with force because of which she sustained fracture to skull and blood started oozing out of the same. The brain matter was protruded. Daughter Sneha, under fear that accused will again beat her mother, came out of house and started making hue and cry. Neighbours gathered and even at that time, the accused was

holding *Musal* in his hand and was standing near Sangita. With the intervention of the neighbours, Police was called at the spot. Police Sub-Inspector Rathod had taken statement of Sneha and registered the crime. In the meantime, dead body was sent for post mortem by executing inquest panchanama. Spot panchanama was executed. Investigation was completed.

5. After committal of the case, trial was conducted. Prosecution has examined in all seven witnesses to bring home guilt of the accused.

6. For advocating the application for suspension of sentence, learned Advocate for the applicant submits that the prosecution is heavily relying on the testimony of daughter Sneha, who has been examined as **PW5**. Her cross-examination would show that she was tutored by the maternal uncle and the said maternal uncle was present in the Court hall when her testimony was recorded. The defence of accused is that when he alongwith his wife and children were sleeping in the house having roof of tin-sheet, the stones, which were put on the tin-sheet, came down heavily due to wind and it fell down on the head of Sangita. It is submitted that though **PW1**

Dr.Kadam, Medical Officer has denied that the injuries mentioned in column nos. 17 and 19 are possible by fall of stone of about 20 kg. from height of about ten feet, it appears to be the fact. **PW4** Kerba is Pancha to the Memorandum statement and seizure Panchanama, however, he has turned hostile. Therefore, with such kind of evidence, the appellant ought not to have been convicted. He has every chance of success in the appeal and therefore, learned Advocate for the appellant prayed for release of the applicant on bail during the pendency of the appeal.

7. Per contra, the learned APP for the respondent supported the reasons given by the learned Additional Sessions Judge and submitted that six witnesses have supported the prosecution story. **PW3** Shalubai is the neighbouring lady, who had gone to the spot immediately after **PW5** Sneha raised hue and cry. She says that accused was present there and when she made enquiry with the accused, accused had given extra judicial confession to her. The daughter has seen father committing murder of mother and the cross-examination has not shattered her examination-in-chief. The medical evidence is supporting the ocular evidence and therefore, conviction is proper.

8. At this *prima-facie* stage, we are required to consider as to whether there was sufficient material before the learned trial Judge. It appears that **PW1** Dr.Kadam - Autopsy Doctor says that probable cause of death is head injury. **PW3** Shalubai - neighbouring lady says that accused had given extra judicial confession to her and also immediate disclosure by Sneha to her about the incident. Testimony of **PW5** Sneha is important. She is 13 years old girl and eye witness. Taking into consideration the contents of Spot Panchanama and also the testimony of Medical Officer, the learned trial Judge appears to have concluded that it was homicidal death. The applicant was never released on bail during the trial. Under such circumstances, we do not find this to be a fit case where the applicant should be released on bail.

9. Application stands rejected. However, taking into consideration the fact that accused was arrested on 10-06-2012 and he is in jail since then, though his appeal is numbered in 2023, but as he was required to be given legal aid and the delay has been condoned, the matter stands expedited.

10. Send the Record and Proceedings back to the trial Court for preparation of paper book.

11. Trial Court to send the Record and Proceedings with paper book within a period of six weeks and after the receipt of Record and Proceedings, applicant - appellant is at liberty to get the matter circulated for final hearing.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

SPT