

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO.2699 OF 2022
IN APPEAL/576/2018

DNYANESHWAR BALU DUKARE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. P.R. Nangare, Advocate for applicant

Mr. R.V. Dasalkar, APP for respondent

Mr. N.B. Narwade, Advocate for assist to APP

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

DATE : 25th JANUARY, 2023

ORDER :

1 Present application is filed for suspension of sentence. Applicant stood prosecuted in Sessions Case No.415/2106 before learned Additional Sessions Judge, Ahmednagar. The learned Trial Court by Judgment and order dated 14.06.2018 held that the accused has committed murder of his wife and, therefore, he has been sentenced to suffer imprisonment for life and pay fine of Rs.1,000/- (Rupees One Thousand only), in default to suffer rigorous imprisonment for six months for committing offence under Section

302 of the Indian Penal Code.

2 With the able assistance of the learned Advocate for the applicant/appellant and learned APP we have gone through the evidence before the Trial Court. It appears that the prosecution had examined in all nine witnesses to bring home the guilt of the accused. The learned Trial Judge has after scanning the evidence held that it is the custodial death of the wife of accused No.1 and, therefore, the explanation ought to have been given by accused No.1 i.e. the present applicant under Section 106 of the Indian Evidence Act regarding the circumstances, under which deceased found to be murdered in the house. That explanation is missing from the appellant. Though the other co-accused have been acquitted, only the husband has been held guilty. The defence of the accused husband is that deceased used to get epileptic attacks. The other accused were also not at home and at the night time the accused had gone to water the sugarcane crop in the field. The accused-applicant has no knowledge who has committed the offence. The applicant is behind the bars since 2016 and his appeal is not likely to over within a reasonable time and, therefore, the sentence needs to be suspended.

3 Per contra, the learned APP has strongly opposed the application

and submitted that the learned Trial Judge has scanned the evidence properly and has come to the conclusion that the offence has been proved against the accused. The said findings need not be discarded. No case is made out for suspending the sentence.

4 At the outset, the points which are against the accused are that he was never on bail throughout the trial. The incident has taken place in the house of accused No.1 between the intervening night of 01.09.2016 to 02.09.2016. Ordinarily accused No.1, who is the husband of the deceased, should be at home and in the company of the wife. There is absolutely no explanation given by him as to whether he was and if he had intention to take plea of *alibi* then he ought to have adduced positive evidence. In order to bring those circumstances on record that deceased was in the company of the applicant, the prosecution has led evidence. A fact remains that though all the accused persons including the applicant also stood prosecuted for offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, they have been acquitted and only accused No.1 has been convicted for the offence punishable under Section 302 of the Indian Penal Code. It appears that deceased and applicant have children but they were of tender age. None of them has been examined. They have not been examined as a defence witness also, but then the incident has occurred

at night time and the cause of death is due to smothering, which amounts to homicidal death. As aforesaid, there ought to have been an explanation as contemplated under Section 106 of the Indian Evidence Act. The burden then shifts upon the accused. As regards plea of *alibi* is concerned, no positive evidence has been led. Therefore, taking into consideration all these aspects we do not find, at this prima facie stage, that a case is made out for suspending the sentence. Application stands rejected.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

agd