

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO.2761 OF 2022
IN APPEAL/610/2022

SHANKAR KISHOR SALVE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.R. Thorat, Advocate for applicant

Mr. A.M. Phule, APP for the sole respondent

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

DATE : 06th JANUARY, 2023

ORDER : [PER : SMT. VIBHA KANKANWADI, J.]

1 Present application has been filed for suspension of sentence. Applicant-accused stood prosecuted for committing murder of his wife Neha by assaulting her with kicks, fist blows, by belt and dashing her head on the wall, in his house between 2.00 p.m. to 4.00 p.m. on 08.03.2021 in Sessions Case No.82/2021. The learned Trial Judge i.e. Additional Sessions Judge, Shrigonda, Dist. Ahmednagar by Judgment and order dated 08.07.2022 has held the accused guilty for the commission of offence punishable under Section 302 of the Indian Penal Code, 1860 and sentenced to suffer

imprisonment for life and to pay fine of Rs.5,000/- (Rupees Five Thousand only), in default to suffer further rigorous imprisonment for six months.

2 Heard learned Advocate Mr. N.R. Thorat for the applicant and learned APP Mr. A.M. Phule for the respondent. With the able assistance of the learned Advocate for the applicant and learned APP we have gone through the evidence.

3 Important point to be noted is that informant is the sister of the deceased and it appears that to some extent she supported the prosecution story, however, as regards beating is concerned, she turned hostile. She has been cross-examined on behalf of the prosecution, however, she admitted that her statement under Section 164 of the Code of Criminal Procedure has been recorded by learned Magistrate and the contents of the same are correct. If we consider the statement of the said witness under Section 164 of the Code of Criminal Procedure, then, it can be seen that she was the eye witness to the incident. No doubt, there are some improvements, but whether those improvements were material or not will have to be considered. The fact remains is that as per the Postmortem Report the probable cause of death is, "Intracranial haemorrhage due to head injury". No doubt, the viscera was preserved for chemical analysis, but PW 6 Dr. Mrs. Bangar has

proved the Postmortem notes. There was severe head injury to the deceased supporting the statement by the informant that the head of the deceased was banged forcibly against the wall. The informant in her testimony has stated that there used to be severe quarrels between the deceased and the applicant in the past. At a point of time she had seen the incident and then she has stated that since she could not sustain watching those injuries or assault being caused to her sister and even after persuasion the accused was not leaving the deceased, she left the said place. Banging the head against wall for more than one time prima facie suggests that there was intention to kill. Thus, though later on for a particular aspect the informant has turned hostile; yet, there is major corroboration to the prosecution evidence and, therefore, this cannot be taken as a fit case where the sentence would be suspended. The applicant was not on bail throughout the trial. Application stands rejected.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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