

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

923 CRIMINAL APPLICATION NO.3779 OF 2022
IN APPEAL/957/2022

SHARAD DASHRATH SHIVADE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mrs.Pratibha Jagdish Bharad
APP for Respondent : Mr.R.V.Dasalkar

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

DATE : 24th January, 2023

PER COURT :-

. Present application has been filed for suspension of substantive sentence.

2. The applicant appellant faced trial in Sessions Case No.87 of 2016 before the learned Sessions Judge, Dhule. After considering the evidence on record, learned Sessions Judge has convicted him on 31-10-2018 after holding him guilty for committing offence under Sections 302 and 324 of the Indian Penal Code.

3. Heard learned Advocate for the applicant and learned APP for the respondent-State.

4. With the able assistance of learned Advocate for the applicant and learned APP for the respondent-State, we have gone through the evidence. The prosecution theory is that, PW1 - Informant Sudhakar Londhe lodged a complaint that, three years prior to the incident, deceased, her husband Balasaheb Ahire and children were residing at Malegaon, Dist.Nashik. The accused was residing in their neighborhood and used to trouble deceased by saying that, she should love him else he would kill her. Apprehending danger from accused, her husband and family came to reside at Dhule. Even then accused used to trouble to deceased. In the meanwhile, deceased got a job. Informant was on visiting terms with deceased. On 28-05-2016 at about 11:30 p.m. deceased phoned to informant from her work place. Hence, informant went and picked up deceased and then both went on motorcycle to Hotel Dipak at Mohadi, Dhule. At that time accused came there, some dispute arose between accused and deceased, so informant came out of the hotel and saw that accused is assaulting deceased over neck and hands by means of sickle (scythe) and deceased fell in pool of blood. Informant tried to control accused but accused dealt the scythe blow over chest of informant and fled away. Deceased was succumbed to her injuries at the spot. Police arrived at the scene and referred informant for treatment to the Government Hospital, Dhule.

5. Informant is the eye witness as well as he had received injuries in the incident. His defence appears to be that the accused had love affair with the deceased and he has caused murder of the deceased. However, that defence without any evidence cannot be considered. Learned Advocate for the applicant has pressed on the fact that no independent witness has been examined. Though it is stated that the incident has taken place in front of a hotel and there was rush in the hotel, the fact remains that as per the post mortem report, the deceased had 22 injuries and most of them are incised wounds on neck and occipital part. There are corresponding internal injuries those have been noted. Probable cause of death is "Hemorrhage and shock due to injuries described". It is stated that sickle has been used for inflicting the injuries. There is recovery of said sickle. The informant's cross-examination, as noted by the learned Sessions Judge, has not shaken his examination-in-chief and infact, he had also received injuries in the same incident, which has also been got proved by examining PW14 Dr.Siddharth, Medical Officer.

6. Another aspect that is required to be considered is that as per the prosecution story, the appellant had motive to commit the offence and therefore, taking into consideration the

testimony of PW2 Balasaheb Ahire, husband of deceased and PW4 Bebibai Nagrale, mother of deceased, the learned Sessions Judge has arrived at the said conclusion regarding the murder. Deceased had gone alongwith PW1 Sudhakar to the hotel and it appears that the accused had come prepared with the weapon. When he was not released on bail throughout the trial, we do not find this to be a fit case where we should exercise our discretion for suspension of substantive sentence. Hence, application stands rejected.

(**ABHAY S. WAGHWASE**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE

SPT