

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

CRIMINAL APPLICATION NO. 4061 OF 2022 in Cri. Appeal No. 952 of 2022

MAHADEV PANDURANG SURVASE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Hange Dayanand M.
APP for Respondents/State : Mrs. V.S. Choudhari
Advocate for R/2: Mr. Mohit Lalit Deoda (Appointed)

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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.**
DATE : 9th March, 2023

ORDER :- (Per: Y.G. Khobragade, J.)

1. Heard Mr. Hange learned advocate for the applicant/appellant, Mrs. V.S. Choudhari learned APP for the State and Mr. Mohit Deoda learned advocate for the respondent no.2.

2. The accused-appellant has filed present application and prayed for suspension of sentence and to release him on bail for the offence punishable under Section 302 of the I.P.C., during the pendency of the appeal.

3. With the able assistance of the learned advocate for the applicant, learned APP for the respondent-State as well as the learned advocate for the respondent no.2, we have gone through the record.

4. It is the case of the prosecution that informant PW1-Pandurang Chaudhari lodged a report on 08.04.2019 with Bembli Police Station,

Osmanabad alleging that marriage of his daughter-Savitri @ Babita was solemnised with the accused-Mahadev Pandurang Survase prior to sixteen years of the incident. Deceased Savitri and accused are blessed with two children. Accused/Mahadev Survase is Mason. Shila is the first wife of accused. Shila was residing at her parental home at village Chorakhali. Accused was alcoholic and addicted to ganja. He used to ill-treat and beat deceased-Savitri under the influence of liquor and sometimes used to leave her at the house of informant. Accused had left Savitri at her parental house, two days prior to Gudipadwa festival, after suspecting over her chastity. Thereafter she had gone to her matrimonial home. Informant's son-Sandip had received a phone call of police patil of Village Sangavi at about 09.00 a.m. on 08.04.2019. It was informed that accused-Mahadev has committed murder of Savitri by hitting her with stone on head. When PW1-Pandurang Chaudhari and his son-Sandip and other relatives visited the matrimonial house of deceased-Savitri, they found the dead body of Savitri was lying near the door of her house. They noticed bleeding injury on her head and a blood-stained stone near her body. Upon inquiry, the informant came to know that, on 07.04.2019 at about 09.00 p.m., accused-Mahadev committed murder of deceased by giving a blow of stone and throttling. On the basis of said report, Crime No.59 of 2019 was registered against the appellant-accused for the offence punishable under Section 302 of the I.P.C.

5. In order to bring home guilt to the accused offence under Section 302 of the I.P.C., the prosecution examined in all eight witnesses and proved inquest panchanama (Exhibit-11), spot panchanama (Exhibit-12), seizure panchanama of accused (Exhibit-15), seizure panchanama of deceased (Exhibit-16), post mortem report (Exhibit-18 & 19), CA report (Exhibit-52 to 54).

6. After conclusion of the trial and upon hearing both the sides, the learned trial Court passed the impugned judgment and order on 02.02.2022, and convicted the appellants-accused under Section 302 of the I.P.C. and sentenced to suffer life imprisonment. Appellant has challenged the said conviction and the said appeal has been admitted.

7. The learned counsel appearing for the applicant-accused submitted that the applicant is innocent and he has not committed the alleged crime. The applicant has been falsely implicated. According to the learned counsel, it was a case of accidental death due to felling of stone from tin roof of house on the deceased Savitri. It is canvassed that prosecution examined eight witnesses but the evidence of prosecution witnesses is not in corroboration with each other. Appellant has good case on merits. He need not be kept behind the bar till the decision of the appeal.

8. It is further canvassed that there was no direct evidence in this matter. The alleged circumstantial evidence fails to complete the chain of events. The testimony of PW 4 Ravindra Patil needs to be scrutinized minutely. It cannot be the sole piece of evidence to hold the accused guilty. Therefore, the learned counsel prayed for suspension of sentence and to release of the accused on bail during the pendency of the appeal.

9. Per contra, the learned APP vehemently submitted that there is ample evidence to prove that accused committed murder of his wife by assaulting her with stone on her head and throttling. The post mortem report (Exhibit-19) proves that the deceased died due to brain hemorrhage, due to fracture of frontal bone and due to head injury by hard and blunt object and asphyxia due to compression of tubular neck due to throttling. It proves that the death was homicidal in nature.

10. We find that the medical evidence proves that death of Savitri is homicidal in nature. PW4-Ravindra Patil who is the most crucial witness deposed that he was knowing the accused prior to the incident and first wife of the accused was not cohabiting with him. Accused had performed second marriage with Savitri. The accused was addicted to liquor, ganja and used to raise frequent quarrels with Savitri. As per evidence of PW4-Ravindra Patil, both the accused and deceased used to approach him for his intervention and the accused was suspecting about chastity of his wife. PW4-Ravindra Patil is

the witness to whom the accused had informed about falling of stone on the person of his wife on the day of incidence. PW 4 Patil had seen blood stains on white shirt and pant worn by the accused. Thereafter PW4 had visited the house of the accused and noticed that the deceased-Babita was lying on her back with bleeding injury on her right eye and two stones were lying near her feet of which one was stained with blood. It is deposed by PW4 that extra judicial confession was made by accused to him. He has further deposed that the dog sniffed the bloodstained stone and thereafter went to the motorcycle of the accused and thereafter to the accused. Thus, the evidence of PW4 is also on the point of last seen together as he has stated that he had seen the accused and deceased together on 07.04.2019. It shows that there is substantial evidence against the appellant.

11. The applicant-accused was not enlarged on bail during the pendency of trial. Therefore, we do not find substantial ground to suspend the sentence and release him on bail. In view of the above discussion, the present application is rejected. The fees of the appointed counsel for the respondent no.3 is quantified @ Rs.3000/- and it is to be paid through the High Court Legal Services Sub-Committee.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]