

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4194 OF 2022
IN APEAL/362/2022

PRASHANT GANESH KHARADE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Gade Akash D.
APP for Respondent – State : Mr. R. D. Sanap
...

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

DATE : JANUARY 13, 2023.

ORDER :-

. Present application has been filed for suspension of sentence. The learned Additional Sessions Judge, Majalgaon, Dist. Beed in Sessions Case No.18 of 2017 by order dated 30.11.2019 has convicted and sentenced the applicant thus :-

"1. The applicant - accused is convicted for the offence punishable under Section 363 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.3,000/- in default to suffer one month simple imprisonment.

2. The applicant - accused is convicted for the offence punishable under Section 364 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.3,000/- in default to suffer one

month simple imprisonment.

3. The applicant - accused is convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer life imprisonment and to pay fine of Rs.5,000/- in default to suffer two months simple imprisonment.

4. The applicant - accused is convicted for the offence punishable under Section 201 and sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.2,000/- in default to suffer one month simple imprisonment.

5. All the sentences shall run concurrently."

2. Heard learned Advocate Mr. A. D. Gade for the applicant and learned APP Mr. R. D. Sanap for respondent - State. With the help of learned Advocate appearing for the applicant as well as learned APP, we have gone through the evidence. The first and the foremost point is that the appellant - applicant was not released on bail throughout the trial.

3. P.W.2 is the father of the deceased girl aged 16. In his FIR itself he has stated that deceased was engaged to the present applicant, though she appears to be a minor. But then at the time when the FIR was lodged it was against unknown person, though he has stated that the deceased had gone along with the applicant.

4. Learned Advocate appearing for the applicant has harped upon the fact that the girl went missing on 09.01.2017 and her dead body

was found two days later and, therefore, though the evidence has been led by the prosecution that the deceased was allegedly seen with the accused in CCTV captured at hospital, yet there is no proximity. He also pointed out that since the deceased was already engaged with the applicant, there was no motive for him to commit the crime.

5. Perusal of the evidence would show that the prosecution has led the evidence on the point of CCTV footage, where the deceased was seen along with the applicant and, thereafter, when the accused was arrested on 12.01.2017, thereafter, while in police custody, he has given memorandums at different times and has discovered various articles at the time of preparing spot panchanama. The dead body was also shown by him. *Prima facie* it attributes knowledge of the accused regarding the existence of the dead body. Further his clothes have been discovered by him under Section 27 of the Indian Evidence Act. Though at the time of postmortem the opinion appears to have been reserved till histopathology report, yet it can be seen that final cause of opinion has also been later on given after histopathology report has come and the cause of death is asphyxia secondary to strangulation. Therefore, the medical evidence supports the prosecution story regarding the homicidal death. Now, whether there was proximity in respect of last seen together theory and the motive would be considered at the time of final hearing, but there is evidence in the form of discovery under Section 27 of the Indian Evidence Act.

Therefore, this cannot be taken as a fit case where the sentence should be suspended. Hence, the application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm