



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4017 OF 2023

IN

CRIMINAL APPEAL NO.11 OF 2023

Thansing Mohan Bhil
Age: 44 years, Occu.: Labour,
R/o. Kalamsare, Taluka Shirpur,
Dist. Dhule

.. Applicant

VERSUS

The State of Maharashtra
Through Investigation Officer,
Shirpur Police Station, Shirpur,
Taluka and District Dhule

.. Respondent

...

Mr. Sushil P Pandit, Advocate for applicant.
Mrs. V. S. Choudhari, APP for the respondent – State.

...

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

DATE : 30th November, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present application has been filed for suspension of substantive sentence by original accused. Present applicant/original accused faced trial in Sessions Case No.14 of 2019 for the offence punishable under Section 302 of Indian Penal Code before the learned Additional Sessions Judge, Dhule. He came to be convicted for the offence punishable under Section

302 of Indian Penal Code and sentenced to suffer imprisonment for life on 02.12.2022.

2. Heard learned Advocate Mr. Sushil P. Pandit for the applicant and learned APP Mrs. V. S. Choudhari for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the learned Trial Judge has not appreciated the evidence properly. PW.1 and PW.2 are the panch witnesses and PW.7 is the investigating officer. PW.4 and PW.5, contended to be the eye witnesses, have turned hostile and the evidence against the appellant is only of PW.3 and PW.6 i.e. the son and grandson of deceased. Only interested witnesses have been examined. Their testimony alone was not sufficient to convict the appellant. Learned Trial Court failed to consider that there was no motive to eliminate deceased Neelabai for the appellant and the seizure of weapon is also doubtful. The offence appears to be not premeditated. There was no evidence to suggest that the appellant was armed with iron spade. The last seen theory ought not to have been considered by the learned Trial Judge. There was no sufficient evidence, which can be said to be beyond reasonable doubt to convict the appellant. The appellant has every hope of success in the appeal and, therefore, he need not be kept behind bars.

4. Per contra, learned APP supported the reasons given by the learned Trial Judge and submitted that the learned Trial Judge has appreciated the

evidence properly. The eye witnesses have supported the prosecution. The death was homicidal in nature and, therefore, the learned Trial Judge was justified in convicting the appellant.

5. It is to be noted that the postmortem report (Exhibit-34) has been admitted by the defence. The deceased was 70 years old lady. Three external injuries were found on her face and head and, there were internal corresponding injuries. The cause of death is stated to be due to injury to the head. Therefore, there appears to be sufficient evidence to hold that death of deceased was homicidal in nature. PW.3 is the son of deceased and he has specifically stated that his mother – deceased was residing with his sister and, therefore, at the relevant time i.e. 05.30 p.m. on 19.10.2018, he had gone to the house of his sister to see his mother. He saw that the accused was quarreling with his mother in respect of previous dispute. He says that one Nakubai, Sajan, Avinash and Kailash were present there. He tried to convince accused, but accused did not give response to him. Then the accused gave blow of iron spade on the head of his mother causing injury. It was bleeding injury and as people started assembling, accused fled away from the spot. The learned Trial Judge has held the presence of this witness in the house of sister at the relevant time as natural. Now, stress has been led on the fact that the previous dispute has not been explained. Whether establishment of motive was necessary here itself is a question,

which can be addressed at the time of final hearing. The prosecution case is based on direct evidence. It is the settled position of law that in respect of motive, it need not be prominently proved when the case is based on direct evidence. P.W.6 is the grandson of deceased, who was residing near the house of sister of the informant. It has come on record that accused was residing in neighbourhood of the sister of the informant. P.W.6 has also stated that he had witnessed the incident. It would be a matter of appreciation of evidence as to whether his presence was natural or not, but the further fact is that there is discovery of weapon at the behest of the present applicant and, therefore, in view of the fact that there appears to be evidence against the applicant/appellant, this cannot be taken as a fit case where his sentence can be suspended. Application therefore stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm