



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 913/2023
IN CRIMINAL APPEAL NO. 629/2022.

Sudhir Namdeo Kale

-VERSUS-

The State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri U.P. Dable, Advocate for the Applicant/Appellant.
Shri J.Y. Ghurde, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.

DATE : NOVEMBER 10, 2023.

Heard.

2. This is an application for suspension of execution of sentence passed in Sessions Trial No.61/2021 by the Additional Sessions Judge, Amravati by which the applicant/appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code, and sentenced to suffer imprisonment for life along with fine.

3. It is prosecution case that the applicant has allegedly committed murder of his own wife. On the date of occurrence the applicant along with his two minor children and wife were in the house. The applicant allegedly hit the deceased by means of a big stone causing her death. The prosecution has led evidence of as many as 9 witnesses to establish the guilt. It is the contention of the applicant that the prosecution has failed to establish the chain completely to exclude the innocence of the applicant. The learned Counsel for the applicant would be submit that the trial Court utterly erred in placing the burden on the accused, rather not considered the initial burden which lies on the prosecution. It is argued that the motive has not been proved as well as the recovery of blood stained clothes is doubtful. Besides that, it is submitted that two minor children of applicant have become shelter-less and till date the applicant has completed three years in jail.

4. The learned Counsel for the applicant also pointed out that earlier this Court has

declined to exercise the discretion, however, a period of one year has lapsed and now there are no chances of appeal coming for hearing in near future.

5. The learned Counsel for the applicant has relied on decisions of this Court in cases of (1) **Sunil Latari Khuje .vrs. State of Maharashtra - 2016 [4] Mh.L.J.(cri) 150** and (2) **Gunwant @ Dhudaku Tryambak Patil .vrs. State of Maharashtra – 2017 [6] Mh.L.J. (Cri) 227**, to impress that the burden lies on the defence is lighter as compared to the prosecution.

6. The learned A.P.P. has resisted the application by contending that it is a case of custodial death and thus, in view of Section 106 of the Evidence Act, the burden lies on the accused to explain the circumstances. He would submit that blood stained clothes of the accused have been seized. Chemical Analyzer's report supports prosecution case. Moreover, there is motive for commission of crime.

7. With the assistance of both sides, we have examined the entire evidence, as well as the reasoning recorded by the trial Court while arriving on the finding of guilt. Undisputedly the case is based on circumstantial evidence. The law in this regard is well settled, as the prosecution has to establish all the circumstances and chain of events must be complete so as to exclude every hypothesis of guilt.

8. The learned Trial Court has based the conviction mainly on the ground of failure of accused to discharge the burden, and finding of blood on the clothes of accused. One should not forget that initial burden always lies on the prosecution and the burden which would lie on the accused would be comparatively lighter. The defence counsel has pointed out that the blood group of the accused is also of "A" group, which is similar of the deceased. He took us through admission of panch witnesses that blood stains were not seen on the clothes. The defence has disputed the cause of death itself. It is submitted

that there is every possibility of accidental death. In this regard, he has taken us through certain admissions to impress that big stones were kept on the tin roof and chances of falling stones cannot be ruled out.

9. The prosecution has examined two children of the deceased, however, they did not support the prosecution case. Rather they have supported the defence story. Obviously, it is a matter of appreciation as the accused is their father.

10. The accused is in jail from last three years. The appeal will take its own time for hearing on merits. Both children of accused are staying at the mercy of relatives. Considering all these peculiar facts and taking into account that from last three years the applicant is in jail, discretion can be used. Arguable points have been raised, in case the appeal is allowed the position would become irreversible. Hence, we deem it appropriate to exercise our discretion for suspending the sentence, and pass the following

order.

11. The execution of the sentence imposed by the Additional Sessions Judge, Amravati in Sessions Trial No.61/2021 by judgment and order dated 04.07.2022 by which the applicant /appellant was convicted and sentenced to suffer imprisonment for life along with fine for the offence punishable under Section 302 of the Indian Penal Code, is hereby suspended till disposal of appeal.

In the meanwhile the appellant/applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

12. Criminal Application is accordingly allowed and disposed of.

JUDGE

JUDGE