



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

**CRIMINAL APPLICATION NO.801 OF 2020 IN
CRIMINAL APPEAL NO.264 OF 2020**

Sahebrao s/o Gangadhar Mahapure ... **APPLICANT**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....
Mr. N.S. Ghanekar, Advocate for applicant
Mr. G.O. Wattamwar, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

DATE : 11th MARCH, 2024

ORDER :

This is an application for suspension of sentence awarded by learned Additional Sessions Judge, Aurangabad in Sessions Case No.170/2017, convicting the applicant/ appellant for the offence punishable under Section 302 of the Indian Penal Code and awarding sentence of life imprisonment.

2. Heard learned counsel for the applicant/ appellant and learned A.P.P. for the respondent – State. Perused the evidence on record.

3. It is submitted by learned counsel for the applicant/ appellant that, the applicant/ accused is the son-in-law of the

deceased. The incident succeeded quarrel between them on the 10th ritual day of the wife of deceased. He submits that, none of the family members support the case of the prosecution and the evidence of two eye witnesses as not concrete. He submits that, the dying declaration does not implicate the applicant/ appellant.

4. It is submitted by learned A.P.P. that Column No.18 of the post mortem note show following injuries :-

- (i) Displaced fracture of lower 1/3rd of shaft of left femur.
- (ii) Bilateral fractures of upper 1/3rd of shaft of tibia.
- (iii) Fractures mentioned injury No.3 & 6.

5. The learned A.P.P. submits that, the case of prosecution is based on the testimony of two eye witnesses which proves the charge against the applicant/ appellant.

6. What is not in dispute is that, before the incident, the quarrel had taken place between the applicant/ appellant and the deceased, who are related to each other i.e. son-in-law and father-in-law. The cause of quarrel is that, the deceased had consumed liquor on the 10th ritual day of his own wife. The family members of deceased did not support the prosecution case. It is seen that, the dying declaration was recorded, in which the deceased did not name anyone much less the applicant/ appellant. The weapon used is wooden stump, 2 ½ ft. in length. The evidence of two eye

witnesses appear a bit shaky as seen from the cross-examination,. The cause of death is "Septicemia due to multiple inflicted injuries" and the deceased died on the 11th day from the date of incident. The applicant/ appellant is behind the bars for more than 7 ½ years. The appellant has arguable case on merits. The appeal would not come up for final hearing in near future. The Court is, therefore, inclined to allow the application for suspension of sentence. Hence the following order :

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending the appeal, the substantive sentence of imprisonment dated 18/10/2019, passed by learned Additional Sessions Judge-10, Aurangabad in Sessions Case No.170/2017 to stand suspended and the applicant/ appellant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-