



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

**CRIMINAL APPLICATION NO.2359 OF 2021
IN
CRIMINAL APPEAL NO.501 OF 2021**

Anand Nathaji Khandare

..Applicant

vs.

State of Maharashtra

..Respondent

Ms.Poonam Bodke-Patil, Advocate for applicant
Mrs.S.N.Deshmukh, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : MAY 10, 2024**

ORDER :-

This is an application for suspension of sentence awarded against the applicant by learned Addl. Sessions Judge, Parbhani, vide judgment and order dated 03.06.2021 in Sessions Trial No.100 of 2019, whereby the applicant/appellant has been convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer imprisonment for life and pay fine of Rs.1,000/-, in default, to suffer R.I. for one month.

2. The case of prosecution, in short, is that the applicant strangled his wife in the intervening night of 12/13.02.2019 at his residential place.

3. Learned counsel for the applicant/appellant submits that if the medical evidence is perused in the light of the Modi's Medical Jurisprudence and Toxicology, inference flow that the deceased committed suicide. She submits that one lady by name, Anita, who had come to the landlord of the place of incident, seeking accommodation on rent for the applicant and deceased, has not been examined as witness. She submits that the evidence on record goes to show that the applicant/appellant was not present in his house and therefore, there is missing link, which has not been established by the prosecution. She submits that the burden under Section 106 of Evidence Act would not shift on the applicant/appellant. She, therefore, submits that the application may be allowed.

4. Learned APP opposed the application. She submits that there is ample evidence on record to show that the applicant/appellant was present in the house at the time of incident. She submits that the evidence of the mother of deceased shows that the deceased called her many times and told that the applicant/appellant was beating her. She submits that the applicant/appellant was medically examined and injuries were found on his person, which were possible by nails. She submits that the application may be rejected.

5. Perused the evidence on record. There is no dispute that the applicant/appellant and the deceased were residing together. The probable cause of death as seen from the evidence of Doctor (PW 4) is "*constriction of neck*". The dead body was found in the residential house of the applicant/appellant. The evidence of PW 3 - Gautam, landlord of the house wherein the applicant and the deceased were residing, goes to show that in the intervening night of 12-13.02.2019, there was quarrel between the applicant/appellant and the deceased and he separated the quarrel. This *prima facie* show that the applicant/appellant was present at the spot and time of incident. The evidence of PW 8 - Dr.Rupesh, who examined the applicant/appellant, show that there were six (6) injuries on the applicant/appellant. In this view of the matter, we do not see any merit for suspension of sentence.

6. In the result, the application is rejected.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP