



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

**CRIMINAL APPLICATION NO.4605 OF 2024 IN
CRIMINAL APPEAL NO.1003 OF 2024**

Rameshwar s/o Haribhau Misal ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Mr. N.S. Ghanekar, Advocate for applicant
Mrs. U.S. Bhosle, A.P.P. for respondent
.....

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

DATE : 18th DECEMBER, 2024

ORDER :

This is an application for suspension of sentence, which is imposed by learned Additional Sessions Judge-5, Jalna in Sessions case No.263/2021, dated 7/11/2024, convicting the applicant/ appellant for the offence punishable under Section 302 of the Indian Penal Code.

2. The case of the prosecution in brief is that, the applicant/ appellant caused homicidal death of his wife and her

dead body was found in the well. As per the case of the prosecution, the applicant/ appellant was suspecting the character of the deceased and he has committed her murder.

3. It is submitted by learned Advocate for the applicant/ appellant that, the case is based on circumstantial evidence and the main circumstance is last seen together. He submits that, the said circumstance of last seen together is based on the testimony of a chance witness. He submits that, after the dead body was found in the well, the brothers of deceased had reached near the well, where P.W.4, who claims to have lastly seen the deceased with the applicant/ appellant was present, however, he did not disclose about the same to the brothers of the deceased. He submits that, the applicant/ appellant was on bail during the trial. He submits that, the said witness P.W.4 was not on talking terms with the applicant/ appellant and was related to him. He submits that, the appeal will take its own time and the application be allowed.

4. The application is opposed by the learned A.P.P. She submits that, there was ill-treatment to the deceased by the applicant/ appellant. The applicant/ appellant was

suspecting the character of the deceased. The well where the dead body was found was merely 400 ft. away from the applicant's residence. She submits that, there is strong circumstance in the nature of last seen together. She submits that, the application be rejected.

5. We have gone through the evidence available on record. The learned Trial Court has relied on the following circumstances to convict the applicant/ appellant :-

- (1) Last seen together,
- (2) Non-explanation by the applicant/ appellant about the special facts within his knowledge, and
- (3) Homicidal death.

6. The case is largely based on the testimony of P.W.4 who claims to have lastly seen the applicant/ appellant with the deceased. His evidence shows that, he was not resident of the village where the applicant/ appellant was residing with the deceased. He was a chance witness as he had come to the village to return the utensils. His evidence shows that his field was on the opposite side of the well. Moreover,

the evidence of P.W.1 and P.W.3 who are brothers of the deceased, who had gone to the spot of the incidence after they came to know that their sister died in the well shows that P.W.4 was also present there. However, the evidence of both these brothers nowhere shows that P.W.4 disclosed that he saw the applicant/ appellant with the deceased. With this evidence on record, evidence in the nature of last seen together cannot be said to be concrete. If this circumstance goes, the other circumstances may not be sufficient to maintain the conviction. Moreover, the medical evidence does not conclusively establish that the death was homicidal. The applicant/ appellant was on bail during trial. In this view of the matter, we proceed to pass the following order :

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending the appeal, the substantive sentence of imprisonment imposed upon the applicant/ appellant by the learned Additional Sessions Judge-5, Jalna in Sessions case No.263/2021, dated 7/11/2024 is 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.

(iii) The applicant/ appellant shall co-operate in early disposal of the Criminal Appeal.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-