

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4237 OF 2023
IN
CRIMINAL APPEAL NO. 1121 OF 2023

Gajanan s/o Sanjay Shevatre
Versus
The State of Maharashtra

...Applicant

...Respondent

.....
Mr. Aniruddha B. Ghule Patil – Advocate for the Applicant
Mr. V. K. Kotecha – APP for respondent/State
.....

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

DATED : 27TH JUNE, 2024

PER COURT : -

1. This Application is filed for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Jalna in Sessions Case No. 40 of 2022, vide Judgment and Order dated 26.10.2023, convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code.

2. The case of prosecution as seen from the paper-book, in nutshell, is as under : -

2.1. The Applicant was residing with the deceased and children. The Applicant's wife was found dead in her matrimonial home in the night of 23.11.2021. When father of the deceased learnt about the

same, he lodged report with Tembhorni Police Station and thereafter Crime came to be registered against the Applicant for the offence of murder.

3. The Prosecution examined in all seven witnesses to prove the charge which was framed against the Applicant by learned trial Court. After appreciating the evidence on record, the learned trial Court passed the above referred impugned Judgment and Order convicting the Applicant/Appellant.

4. It is submitted by the learned advocate for the Applicant/Appellant that the medical evidence is not corroborating the case of the prosecution for murder. He submits that, though the child witness deposed that the Applicant was with the deceased at their home, there is no evidence that the Applicant/Appellant continued to be at home thereafter, so as to hold that the Applicant/Appellant committed the crime. He submits that the Investigating Officer in his evidence admitted that when he found the dead body of Durga for the first time, they got the information that the accused had gone in the field for the agricultural work and so this evidence gives blow to the case of the prosecution. He submits that the evidence on record does not establish the Charge against the Applicant/Appellant. He submits that the Application be allowed.

5. Learned APP opposes the application. He submits that the Applicant/Appellant is the husband of the deceased and the evidence of child shows that he was very much present in their house and they had dinner together. He submits that the cause of death is compression of neck and there was fracture to the trachea. He submits that the learned trial Court rightly convicted the Applicant/Appellant and no case for suspension of sentence is made out.

6. We have perused the evidence on record. There is no dispute that the deceased was the Applicant's wife. The medical evidence shows the cause of death as "due to compression of neck". The evidence of Medical Officer, who examined P.W.2, shows that she gave opinion about the death on the basis of finding regarding the fracture of Trachea that may be the final opinion. The evidence of Applicant's daughter, who has been examined as P.W.4, clearly shows that the Applicant was at home in the evening of the date of incident and after her mother cooked the meal, she, Applicant/Appellant and the deceased had meal. She deposed that one Sudam uncle had come to their house for giving money and he gave money to her mother and thereafter she went to sleep. There is no evidence on record to show that the Applicant/Appellant had left his house after having meals. The evidence on record clearly establishes that the Applicant/Appellant was in the

company of the deceased lastly before her death. In this view of the matter, we are not inclined to grant the Application and proceed to pass the following order.

ORDER

. Application is rejected.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde