



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO.117 OF 2024
IN CRIMINAL APPEAL NO. 94 OF 2023

Dhiraj Arunrao Shinde

..vs..

State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Sapna Jadhav, Advocate h/f Shri R.M. Daga, Advocate for
the applicant.

Shri Doifode, Addl.P.P. for the State.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 26/03/2024.

Heard.

1. This is an application seeking suspension of execution of sentence passed by the Trial Court in Sessions Case No.88 of 2018 vide judgment and order dated 12.05.2022 whereby the applicant has been convicted for the offence punishable under Sections 302, 380, 341, 203, 411 read with Section 34 of the Indian Penal Code and sentence of suffer rigorous imprisonment for life.

2. It is the prosecution case that, the deceased lady was residing alone at her house. The accused was her tenant. During the intervening night of 30.01.2018 to 31.01.2018, the accused entered in her house, throttled her, stolen the valuables including ATM and decamped. In order to establish the guilt of accused, the prosecution has examined in all 15 witnesses.

3. Though it is a case on circumstantial evidence, the prosecution relied on the evidence of last seen, seizure of stolen ornaments, mobile and ATM from accused no.2

who was the companion of applicant accused. More particularly, the prosecution relied on the evidence of CCTV footage captured in the ATM Centre on 31.01.2018 in wee hours around 5.20 a.m. i.e. soon-after the occurrence. The evidence is laid to the effect that the applicant accused was seen withdrawing the amount by using ATM of the deceased. Moreover, at the instance of the applicant a scarf (Odhani) was seized which was allegedly used to strangle the deceased.

4. Relying on the said circumstantial evidence, the Trial Court has recorded a finding of guilt. Though it is a case based on circumstantial evidence, in order to establish the guilt, it is not legal requirement that there should be eye-witnesses. The prosecution can establish the guilt by pointing out the circumstances which would unerringly points toward the guilt of the accused. The Trial Court has heavily relied on the evidence of CCTV footage, which was produced and proved by tendering certificate under Section 65B(4) of the Evidence Act. *Prima facie*, there is clinching evidence against the applicant. Moreover, during the trial, the applicant was in jail. Now, the first Court has recorded the finding of guilt which put dent on the presumption of innocence.

5. In the circumstances, we do not find it fit to exercise our judicial discretion to release the applicant on bail by suspending the execution of sentence.

6. Hence, the application stands rejected.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)