



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

CRIMINAL APPLICATION (APPA) NO.875/2024

IN

CRIMINAL APPEAL NO.509/2024

Mohammad Shahbaz Abdul Wahab and Anr.

Vs.

The 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

Mr. Anil Mardikar, Sr. Advocate with Mr. V. R. Deshpande, Advocate
for Applicants.

Mr. A. Ghogare, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.

DATED : 10/10/2024.

. Heard.

2. This is an application seeking suspension of execution of sentence passed in Sessions Case No.49/2017 by which both applicants have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to undergoing imprisonment for life. Though this application has been filed by both applicants, however, when we expressed our non-inclination to suspend the sentence as regards to the applicant No.1 - Mohammad Shahbaz Abdul Wahab, the learned Senior Counsel Mr. Mardikar upon instructions, withdraw the application to that extent. In short, this application for suspension remains to the extent of applicant No.2 - Smt. Shalubai Rajendra Telang.

3. It is the prosecution case that applicant No.2 – Shalubai was having illicit relations with co-accused Mohammad Shahbaz. On the date of occurrence i.e. on

16.07.2017 in the afternoon, applicant No.2 – Shalubai and Applicant No.1 - Mohammad Shahbaz were seen in inappropriate position by deceased Rajendra, who was the husband of Shalubai. As per prosecution case, quarrel irrupted in between deceased Rajendra and co-accused Mohammad Shahbaz. At that time, applicant No.2 – Shalubai took her both daughters and son out of the house and locked it from outside. There was a quarrel/fight in between deceased Rajendra and Mohammad Shahbaz. After some time when the door was unlocked, it was found that Rajendra was lying dead. On the basis of such occurrence, initially AD was registered, followed by lodging of report by brother of deceased Anil on receipt of information from two daughters of the deceased, who have narrated the occurrence.

4. Mr. Mardikar, learned Senior Counsel for the applicants would submit that the prosecution case itself is doubtful since despite both daughters of the deceased and Shalubai i.e. PW-8 – Neha and PW-9 – Kuwanti have allegedly seen the occurrence, however, for next 24 hours, they did not disclose the things to anyone. Secondly, it is argued that though they disclosed the occurrence on 17.07.2017 at 2.00 p.m., however, still for next 8 hours, First Information Report has not been lodged. It is argued that both the witnesses have admitted in cross-examination that before entering into witness box, they have gone through their police statements and thus, according to the applicant, their evidence needs no consideration. It is argued that the cause of death is not certain as some

characteristics relating to death due to throttling are missing. Lastly, it is canvassed that no weapon was used and the incident was a sudden and thus, the offence under Section 302 of the I.P.C may not attract. Particularly, It is argued that, the role ascribed to the applicant No.2 – Shalubai is restricted to locking the door from out side and thus, she cannot be held liable. It is submitted that incident was as of sudden and thus, it cannot be assumed that Shalubai has conspired with co-accused and to facilitate the killing, she has locked the door. According to the applicants, since both were fighting, to see the safety of children, Shalubai might have locked the door from out side.

5. Considering the above submissions, nature of occurrence, limited role assigned to the Shalubai as well as taking in to account gender and responsibilities of three minor children, we are inclined to exercise our judicial discretion to suspend her sentence. Hence, the following order :

- i] The application is allowed to the extent of Smt. Shalubai Rajendra Telang.
- ii] Execution of substantive sentence passed in Sessions Case No.49/2017 against the applicant No.2 namely Smt. Shalubai Rajendra Telang shall stand suspended till disposal of the appeal.

- iii] The applicant - Smt. Shalubai Rajendra Telang shall be released on bail on she furnishing P.R. bond of Rs.25,000/- (rupees twenty five thousand only) with one or two sureties in the like amount.
- iv] The applicant No.1 - Mohammad Shahbaz Abdul Wahab is at liberty to revive the prayer after one year if the appeal is not decided.
- v] The application stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)