



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO. 9 OF 2025
IN APEAL/1042/2024

Gajanan Murlidhar Salve

VERSUS

The State Of Maharashtra

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Mr. Sudarshan J. Salunke - Advocate for the Applicant

Mrs. U. S. Bhosale - APP for Respondent/State

...

WITH
CRIMINAL APPEAL NO. 1042 OF 2024

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

DATED : 25TH FEBRUARY, 2025

PER COURT : -

1. Leave to correct Paragraph No. 9 of the Application.
2. This is an Application for Suspension of substantive Sentence imposed upon the Applicant/Appellant by the learned Sessions Judge, Parbhani, in Sessions Trial No. 111 of 2020, by the Judgment and Order dated 30th September, 2024, convicting and sentencing the Applicant/Appellant as follows :-

1. *Accused No. 2 Gajanan s/o. Murlidhar Salve is convicted U/sec.235(2) of the Code of Criminal Procedure, 1973, for the offence punishable U/Sec.302 and 201 r.w. Sec.34 of the Indian Penal Code, 1860, and sentenced to suffer imprisonment, as follows :*

[i] For offence punishable under Section 302 of the Indian Penal Code, 1860, accused No.2 is sentenced to suffer rigorous Imprisonment for Life and to pay fine of Rs.10,000/- (Rupees Ten Thousand Only) i/d of payment of fine, to suffer simple imprisonment for 06 (six) months.

[ii] For offence punishable under Section 201 r.w. 34 of the Indian Penal Code, 1860, accused No.2 is sentenced to suffer rigorous imprisonment for 05 (Five) years and to pay fine of Rs.3,000/- (Rupees Three Thousand only) i/d of payment of fine, to suffer simple imprisonment for 03 (Three) months.

3. The case of the Prosecution, in brief, is that, Deceased/Accused No. 1 – Devidas Satwaji Salve had an evil eye on the wife of Deceased – Maroti @ Balu. On 04.06.2020, Deceased/Accused No. 1 and the Applicant/Appellant, who is Accused No. 2, had taken Deceased with them. The trio went near the canal and consumed liquor. While consuming liquor, there was quarrel between the Accused and Deceased. The Accused strangled Deceased by using handkerchief and thereafter threw the dead body in the canal. The dead body was found on 07.06.2020. The incident was reported to the Police and Crime came to be registered against both the accused for the offence punishable under Sections 302, 201 r/w 34 of the Indian Penal Code with Daithana Police Station.

3.1. During the course of investigation, the Statements of witnesses were recorded. The Applicant/Appellant and Deceased-

Accused came to be arrested. The handkerchief was seized during the course of investigation at the instance of the Applicant/Appellant. The Applicant/Appellant and Deceased-Accused No. 1 came to be Charge-Sheeted. After the trial, the Applicant/Appellant came to be convicted. The case abated against Accused No.1– Devidas Satwaji Salve.

4. It is submitted by the learned Advocate for the Applicant/Appellant that the evidence on record is in the nature of last seen together, extra-judicial confession and the discovery/recovery of the handkerchief at the instance of the Applicant/Appellant. He submits that though the Wife of Deceased was examined and she deposed that the Applicant/Appellant and the Deceased-Accused No. 1 came to her house and Deceased left with them, she claims to have lodged the missing report, which is not the part and parcel of the Charge-Sheet. It is further submitted that though there is evidence of the witness on the point of last seen, his statement was recorded after six days from the date when the dead body was found. It is submitted that the said witness was from the very village and, therefore, the said delay would be fatal. It is submitted that though there is recovery/discovery of the handkerchief, there is nothing to connect the said handkerchief with the death of Deceased. According to the Medical Officer, the time of death is more than thirty six [36] hours from the date of post mortem. He submits that the evidence in the nature of last seen and extra-judicial

confession is a weak piece of evidence. The Appeal would not come up for final hearing in the near future and, therefore, the Application be allowed.

5. The Application is opposed by the learned APP. She submits that, there is substantive evidence of the Wife of Deceased wherein she has deposed that the Deceased husband left with the Accused/Appellant on 04.06.2020. She submits that there is evidence of PW10 – Bhanudas Bhaurao Salve, who consumed liquor with both the Accused and Deceased and thereafter, he left the place. The dead body was found near the canal where the liquor was consumed. She submits that there is evidence of PW9 – Dhuraji Gopinath Panchal, wherein it has come that both the Accused persons had come to his house in the evening of date of incident and, therefore, it would be the burden on the Applicant/Appellant to show when they parted the company of Deceased. She submits that, this evidence on record was sufficient to maintain the conviction and therefore, the Application be rejected.

6. With the help of both the sides, we have gone through the evidence of material witnesses. The Report was lodged by PW1 – Marotrao Laxman Jogdand, who was father-in-law of Deceased, who, admittedly, is not the eye-witness to the incident. There is evidence of the Wife of Deceased, who is examined as PW6 – Kanhopatra Maroti Salve. Though she deposed that on 04.06.2020, the Applicant/Appellant

had come to their house and Deceased-husband accompanied him, in her cross-examination, she deposed that she has deposed for the first time before the Court whatever she has deposed in her evidence. Though she deposed about lodging of missing report, the same is not the part and parcel of the record. Therefore, it is not known what were the contents of the missing report. Therefore, it is clear that, for the first time before the learned Trial Court the Wife of Deceased deposed that the Applicant/Appellant had taken Deceased-husband with him. The evidence of PW9 – Dhuraji Gopinath Panchal nowhere shows that Deceased was accompanying both the Accused persons when they had come to his house in the evening of the date of the incident. There is evidence of PW10 – Bhanudas Bhaurao Salve on the point of last seen together. According to him, he, both the Accused and Deceased consumed liquor near the canal. His evidence shows that, he did not support the case of Prosecution. He was cross-examined by the learned APP. Admittedly, this PW10 – Bhanudas Bhaurao Salve was the resident of same village where the incident took place. However, he did not disclose about the same to anyone till his statement was recorded by the concerned Police after six (6) days from the date when the dead body was found. There is evidence of PW7 – Tukaram Murlidhar Salve that the Applicant/Appellant came to him in the morning of 05.06.2020 and made extra-judicial confession in respect of commission of the Crime. His evidence also shows that since the Applicant/Appellant was addicted

to liquor, he did not believe him. Extra-judicial confession is a very weak piece of evidence. There is no Chemical Analysis Report to connect the handkerchief with the death of Deceased. No Motive to the Applicant/Appellant to cause the Death has come on record. Even as per the Prosecution's case, the Motive was to the Deceased-Accused No.1. Considering all these aspects, in our considered view, the Applicant/Appellant has a good case on merits. He was behind the bars except for the Covid-19 Period. The Appeal would not come up for final hearing in the near future and hence, we proceed to pass the following order.

ORDER

- [i] The Application is allowed.
- [ii] The substantive sentence imposed upon the Applicant/Appellant, Gajanan Murlidhar Salve, by the learned Sessions Judge, Parbhani, in Sessions Trial No. 111 of 2020, by Judgment and Order dated 30.09.2024, is suspended during the pendency of the present Appeal.
- [iii] The Applicant/Appellant be released on bail on his furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- [iv] Bail before the Trial Court.

7. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE