



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

Criminal Application No. 2741 Of 2024
in
Criminal Appeal No. 659 Of 2024

1. Dilip s/o Maroti Kapate,
Age : 32 years, Occu: Agril.
2. Manjulabai w/o Maroti Kapate,
Age : 50 years, Occu.: Labour,
Both R/o Kosmet, Tq. Kinwat,
District Nanded.

.. Applicants

Versus

1. The State of Maharashtra
Through Officer in charge of,
Islapur Police Station, Tq. Kinwat,
District Nanded.

.. Respondent

- * Advocate for the Applicants : **Mr. Sopan G. Bobade and
Mr. Paikrao Dhammadip, Mrs. Khan Sultana Rahim**
- * APP for Respondent / State : **Mr. S. R. Wakale**

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ..**

Date Of Reserving the Order : 22nd SEPTEMBER 2025

Date Of Pronouncing the Order : 30th SEPTEMBER 2025

FINAL ORDER (Per Mehroz K. Pathan, J.) :

1. The Applicants, Dilip Kapate and Manjulabai Kapate have
filed the present application for suspension of sentence during the

pendency of the appeal filed by them against the judgment and order passed by the learned Additional Sessions Court, Nanded on 30.03.2024 in Sessions Case No.404/2019. The appeal was admitted by this Court vide its order dated 18.07.2024.

2. The learned Counsel for the Applicants, Mr. Sopan Bobade has argued that the case rests on circumstantial evidence, where the Applicants, Dilip Kapate and Manjulabai Kapate have been convicted only on suspicion without there being any cogent evidence led by the prosecution to prove the guilt of the accused/Applicants. The submission of the Counsel for the Applicants is that the evidence on last seen of PW-10 – Prakash is weak in nature inasmuch as he only points out that the Applicant No.1 – Dilip Kapate and Applicant No.2 – Manjulabai was seen coming out of the field of Sanjay Jadhav, where the dead body was found on the fateful night.

3. The further evidence relied upon by the prosecution is the PW-5 – Parasram, brother of the deceased who had deposed about the ill-treatment on the part of the accused persons to the deceased, demanding Rs.50,000/- for purchasing Auto-Rickshaw and has narrated the incident that has taken place from 04.09.2019 to 08.09.2019. The prosecution has also examined the PW-4 – Saraswati who happens to be the younger sister of the deceased and also spoke about the ill-treatment given to the deceased by the Applicants/Appellants. The prosecution has examined PW-9 – Sayyad Akbar, panch on the memorandum wherein the Applicant No.1/Dilip had voluntarily disclosed the place where the nylon rope used for throttling the deceased was

concealed by him and accordingly a nylon rope was discovered at the instance of the accused/Appellant No.1.

4. The submission of the Applicants is therefore that the prosecution has grossly failed to establish the last seen theory and also failed to establish the motive which has caused a serious lacuna in the prosecution case. It is the extension of the submission of the learned Counsel for the Applicants that there is no ligature mark on the deceased found at the time of conducting the postmortem and also that there was no tissue matter on the nylon rope which would suggest that the nylon rope discovered at the instance of the deceased, was the one by which was used by the accused no.1 to throttle the deceased. Thus in the teeth of such weak evidence, the learned trial Court has wrongly convicted the Applicants and there is every likelihood that the Appellants may be acquitted after hearing the appeal on merits. The appeal is admitted and would take sometime for final hearing and therefore in the meanwhile the Applicants may be released by suspending the sentence, as the Appellants are in jail since 09.09.2019 and was not released on bail during trial.

5. As against this, the learned APP has argued that the prosecution has been able to establish the last seen theory, the motive and the other circumstantial evidence like the memorandum of discovery of the articles used for committing the crime and in addition the Applicants have failed to give any explanation in his statement and as such the learned trial Court has rightly convicted the Applicants under Section 302. Learned APP has further argued that the prosecution has also examined the

PW-1/father of the deceased, PW-4/sister of the deceased and PW-5/brother of the deceased to prove the cruelty committed by the Applicants, on account of non-payment of dowry amount of Rs.50,000/- for purchasing Auto-Rickshaw to the deceased and as such the trial Court has also rightly convicted the Applicants under Section 498A, which establishes the motive behind commission of the said crime. Learned APP therefore vehemently opposes the suspension of the sentence during the pendency of the appeal.

6. We have perused the evidence of the prosecution witnesses examined in support to prove the guilt of the Applicants. The learned trial Court has considered the evidence of PW-1 – father of the deceased, who proved the motive that is non-fulfillment of demand of money of Rs.50,000/- for purchasing the Auto-Rickshaw at the behest of the present Applicant No.1 on account of which both the Applicants have started ill-treating the deceased. The PW-4 – Saraswati who is the younger sister of the deceased, has also narrated the ill-treatment carried out by the Applicants on various accounts which proves the harassment meted out to the deceased by the accused persons since the inception of her marriage.

7. The prosecution has further led the evidence of PW-5 – Parasram, the brother of the deceased who had also reiterated the prosecution story of continuous demand of Rs.50,000/- by the Applicants for purchase of Auto-Rickshaw to the deceased and also narrated the incident that has taken place from 04.09.2019 to 08.09.2019. Thus it is seen that the ill-treatment of the deceased

Parvati is prima facie brought on record, wherein the witnesses have stated about the demand of Rs.50,000/- for purchase of Auto-Rickshaw and quarrels that have ensued on that count.

8. It is pertinent to note that PW-1/Senapti, father of the deceased had clearly stated in his evidence that deceased Parvati stayed in his house for around ten months and thereafter Sarpanch, Tantamukti President, Prakash Pawar, Ganpat Kagne came to the house alongwith accused persons and the accused persons took them after giving assurance of good behavior with her in front of all the aforesaid persons. The accused persons after some days had again started ill-treating her and few days thereafter he received information from one Kisan Khupse about Parvati missing and leaving the matrimonial house. Thus the deceased being wife of the present Applicant No.1 was taken back to the matrimonial home by the Applicants after the mediation carried out by Tantamukti President and other villagers at the house of the complainant/PW-1 – Senapti. The motive behind the commission of the said crime, is sufficiently brought on record by the prosecution.

9. The another important witness examined by the prosecution on last seen theory is PW-10 who had seen the Applicants coming out of the field of Sanjay Jadhav, on 04.09.2019 at about 11:00 pm. He further stated that between 05.09.2019 to 07.09.2019 he had not been in the village and on 08.09.2017 when he heard about recovery of the dead body of the deceased from the well of Sanjay Jadhav, he had suspicion about the accused persons and told it to the Police Officer. He had also identified the clothes of the accused persons which they were wearing at the time on 04.09.2019. Thus

on the date when the deceased Parvati went missing on 04.09.2019, the Applicants were seen coming from the field of Sanjay Jadhav. That the conduct of the Applicants is also relevant under Section 8 of the Evidence Act inasmuch as the Applicant No.1 has lodged the false report on the very next date i.e. on 05.09.2019 about Parvati missing from the home on 04.09.2019 which is at Exhibit-76.

10. The postmortem report shows that the cause of death of the deceased is asphyxia due to throttling. It is important note that the Applicants have recorded a memorandum under Section 27 of the Evidence Act and thereby led to the discovery of a nylon rope which was used by him to throttle the deceased to death. The prosecution has examined PW-12 – Rameshwar who has acted as panch on the discovery panchnama and had supported the prosecution case. it is important to note even though there are no ligature marks found on the dead body, however the body was found to be in a decomposed state and was taken out from the well after five days of the incident i.e. on 08.09.2019, whereas deceased Parvati went missing from 04.09.2019.

11. The prosecution has thereafter examined Dr. Uddhav - PW-8 who has conducted the postmortem and has recorded the injuries found on the dead body. The important injury noted by the Doctor is the Thyroid Cartilage fracture and Hyoid bone fracture with 7th rib fractured undisplaced on the right side. The Doctor has opined that the cause of death was asphyxia due to throttling.

12. Thus there is ample evidence brought on record to prima

facie opine that the accused have committed the murder of the deceased. However there is an arguable case is made out as against the Accused No.2/Manjulabai Kapate, against whom prima facie there is no evidence coming on record to prove her guilt in the commission of murder. The Accused No.1 has led to the discovery of the articles used by him to throttle the deceased and this is one important circumstantial evidence to prima facie prove the guilt of the Accused No.1. However insofar as the role of Accused No.2 – Manjulabai is concerned, she was only last seen by PW-10 – Prakash, coming from the field of Sanjay Jadhav on the fateful night of 04.09.2019 at about 11:00 pm.

13. We are therefore of the considered opinion that looking to the prima facie material available on record in the form of testimony of the prosecution witnesses and the relevant documents proved by the prosecution, no case is made out for bail at present as against the Accused No.1. However looking to the nature of the evidence relied upon by the prosecution as against the Accused No.2 herein, an arguable case is made out for prima facie disbelieving the prosecution story insofar as the charge for committing the murder of the deceased as against Applicant No.2. Though there is prima facie evidence of cruelty and harassment committed by the Applicant No.2, we are of the opinion that the sentence of Applicant No.2/Manjulabai can be suspended during the pendency of the appeal. Hence we pass the following order :

ORDER

- (i) The prayer for suspension of sentence of Applicant No.1 is hereby rejected.

- (ii) The prayer for suspension of sentence of Applicant No.2/Manjulabai Kapate is hereby allowed.
- (iii) The substantive sentence passed by the learned Additional Sessions Court, Nanded dated 30.03.2024 is hereby suspended to the extent of Applicant No.2 only. The Applicant No.2 be released on bail on P.R. bond of Rs.25000/- and one surety of like amount.
- (iv) The application is partly allowed in the above terms and hereby disposed of.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

Najeer