



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

CRIMINAL APPLICATION (APPA) NO.1229 OF 2024
IN
CRIMINAL APPEAL NO. 729 OF 2024

Vitthal Chindhuji Pachare

Vs.

State of Maharashtra, through Police Station Officer, Police Station, Deoli
Wardha, District Wardha

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

Court's or Judge's orders

Mr. R. U. Tambe, Counsel for the appellant.

Ms. Ritu Sharma, APP for the respondent / State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/02/2025

1. By preferring this application, the appellant is seeking suspension of sentence and releasing him on bail in connection with Crime No. 191/2016 registered under Sections 302 and 309 of the Indian Penal Code.

2. The deceased was the wife of the present appellant and the crime was registered on the basis of report lodged by Avinash Pachare, the son of the deceased and the present appellant on an allegation that on 20.02.2016 at about 2.00 p.m. he was doing the work of digging well in village Gadegaon along with his uncle Anil, who received a phone call and came to know that quarrel has been taken place between the parents. Hence, he came back at home

at about 5.00 p.m., he saw that his elder brother Pravin and grandfather were present in the courtyard. His father was sitting having axe and knife in his hand and his mother was also sitting near his father, at that time, his father told them if anybody interfered with them, then he will kill him. They tried to make him understand, but his father was not listening and he gave a blow on the person of the deceased. Due to which deceased sustained the grievous injuries on her the vital part of the body. On the basis of the said report police have registered the crime and after completion of the investigation the charge-sheet was submitted.

3. The prosecution has adduced the evidence in support of the prosecution and on the basis of the circumstantial evidence and the evidence of the neighbouring witnesses the accused / appellant is convicted of the offence punishable under Section 304 (Part I) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and fine of Rs.5000/-, in default payment of fine, simple imprisonment for one month.

4. Being aggrieved with the said judgment and order of conviction present appeal is preferred along with the application for suspension sentence.

5. Heard learned Counsel for the appellant who submitted that the conviction was based on the

hostile witnesses. There is absolutely no evidence to connect the present appellant in causing the death of deceased. He submitted that appeal would takes is own time for its final disposal. In the meantime, if the sentence is executed, the preferring of the appeal would be infructuous. He further submitted that at this stage, there are many arguable points for the appellant to show that there are chances of acquittal of the appellant in the said crime. For all above these reasons, he be released on bail and the execution of the sentence be suspended.

6. Learned APP invited my attention towards the evidence of PW 8, who is neighbour as well as the Investigating Officer and the other circumstantial evidence like blood stained knife was seen at the hands of the accused when the Investigating Officer has visited the spot of incident. The other witnesses have also seen the present appellant holding the weapon in his hand and the deceased has sustained the grievous injuries as well as the witness of the neighbour shows that there was a quarrel between the husband and the wife and thereafter within 15 to 20 minutes, the deceased has sustained the injuries. Thus, she submitted that considering all these circumstances, the learned trial Court has rightly convicted the present appellant. At this stage, reappraisal of the evidence is not permissible. In view of that, the application deserves to be rejected.

7. After hearing both sides and on perusal of the entire evidence on record, it reveals that the family members of the accused turned hostile, however, the Investigating Officer have also collected the circumstantial evidence in the nature of recovery of the blood stained knife at the instance of the present appellant. There is evidence of the witnesses like neighbours, there is evidence of the blood stain found on the knife and axe which was forwarded to the analysis and analyzed as with human blood having blood group A. It is pertinent to note that human blood was found on the knife, axe, clothes of accused/appellant and clothes of the deceased. The explanation given by the accused in his additional statement is not satisfactory, and therefore, the learned trial Court come to the conclusion that the involvement of the present appellant is revealed in the said incident. As far as the criteria for suspension of sentence is concerned, which is laid down by the Hon'ble Apex Court in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023 decided on 2nd May of 2023** wherein para No.33 the Hon'ble Apex Court observes "Bearing in mind the principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is

to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappraise the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

8. In view of the principles laid down by the Hon'ble Apex Court and after going through the evidence as well as the impugned judgment, I do not find any substance in the contention of the learned Counsel for the appellant. No case is made out of for suspension of sentence. In view of that the application deserves to be rejected. Accordingly, I proceed to pass following order.

The application is rejected.

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1. Appeal is already admitted.
2. Record and proceeding is already received.
3. Considering the appellant behind bar, the Registry to expedite the preparation of the paper book.
4. The appeal be listed after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)