

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1615 OF 2025
IN
CRIMINAL APPEAL NO. 601 OF 2025

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Sangmeshwar Laxman Konkeri

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Tejas Hilage for the Applicant

Mrs. S.N. Deshmukh, APP for the Respondent - State.
.....

CORAM : R.G. AVACHAT AND
AJIT B. KADETHANKAR, JJ.

DATE : 2nd FEBRUARY 2026.

P C. :

1. This is an application under Section 389 of the Criminal Procedure Code. The applicant has been convicted for offence punishable under Section 302 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life vide order dated 5th September 2024 passed by the Additional Sessions Judge, Gadhinglaj. Dist. Kolhapur.

2. In short, the case of the prosecution is that the applicant along with his wife would reside at his own vasti, at village Jarali, Taluka Gadhinglaj, Dist. Kolhapur. His parents and younger brother would reside in the nearby. He would work as an agricultural labourer and sugarcane harvester as well. On the intervening night, of 1st and 2nd April 2020, the applicant along with his wife had been to his brother's (PW-5's) house for dinner. They did not take meals there. The applicant was addicted to alcohol. He would suspect his wife (deceased) to have illicit relationship with his younger brother (PW-5). On the fateful night, the applicant assaulted his wife with a scythe and thus committed her murder. He then fled. On the following day, the applicant was arrested. Clothes stained with blood were seized. Pursuant to the disclosure statement made by the applicant, the scythe was recovered. The prosecution examined in all 14 witnesses. On appreciation of the evidence, the trial Court convicted the applicant as stated above.

3. Learned Advocate appointed to represent the applicant / appellant would submit that the case was based on the circumstantial evidence. Except the evidence of PW-5 (brother of

the applicant) that too on the point of last seen together, there is no evidence to connect the applicant with the crime in question. According to him, the applicant examined himself as a defence witness. He testified that on intervening night, he had been away for sugarcane harvesting. As regards seizure of blood stained clothes on the person of the applicant and the scythe at his instance, learned Advocate would submit that C.A. reports in that regard are inconclusive. According to him, PW-5 is the real brother of the applicant. He did not stand by the prosecution in examination-in-chief. During his cross-examination by learned APP, he deposed that the applicant and the deceased were in his room. According to him, it is the case of the prosecution that the applicant suspected this witness to have illicit relationship with the deceased. He would, therefore, submit that PW-5's evidence is short of one of the parameters, given by the Apex Court in case of ***Sharad Birdhi Chand Sarda Vs. State of Maharashtra, 1984 SCC (4) 116*** which are required to be proved to establish a crime based on such circumstantial evidence. According to him, the applicant is behind the bars for little over 6 years and appeal is not likely to come up for

hearing. Learned Advocate urged for grant of the application.

4. Learned APP, would on the other hand submit that the crime took place in a room exclusively occupied by the applicant and the deceased. The applicant's bother i.e. PW-5 did not have an axe to grind against the applicant. On the night of 1st and 2nd April 20205, the applicant along with his wife had been to the house of PW-5. They returned to their room without taking meals. Learned APP drawn our attention to the evidence of Medical Officer, who conducted post-mortem to indicate that no food was found in the stomach of the deceased. According to her, the same reinforces the prosecution case. She would further submit that blood stained clothes on the person of the applicant were seized. He, therefore, owed explanation as to how come blood stained clothes on his person. He was arrested in the early morning. Moreover, pursuant to the disclosure statement, a scythe used in commission of the crime was seized. According to her, the chemical analyst was examined. His evidence indicate the clothes of the applicant and the scythe had blood stains on it. According to her, these facts reinforce the

prosecution case.

5. Learned APP would further submit that the applicant came with a false defence. The applicant claimed to have returned to the room in the early morning. According to the applicant, theft took place at his residence. Thieves might have committed murder of his wife. If this was so, it would have been but natural for the applicant to lodge the police report. He did not do so. The inquest indicates ornaments on the person of the deceased were in place. That rules out theft to have taken place at the residence of the applicant. No witness was examined to make out the case that the applicant was away from his residence at the relevant time. According to learned APP, it is not a fit case to grant relief to the applicant.

6. We have considered the submissions advanced. Perused the evidence on record. The case is based on circumstantial evidence. The golden principles as enunciated in case of *Sharad Birdhi Chand Sarda (supra)* read thus :-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be

noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. V. State of Maharashtra (AIR 1973 SC 2622) where the following observations were made:

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.”

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

7. We are conscious of the fact that we are dealing with an application for suspension of execution of substantive sentence. The circumstances on the basis of which the guilt of the applicant is

proved are thus :-

- (a) The applicant to have been in the company of the deceased on the fateful night.
- (b) Seizure of blood stained clothes on his person.
- (c) Seizure of scythe pursuant to disclosure statement made by the applicant.

8. Admittedly, the applicant along with his wife (deceased) would reside in a room exclusively possessed by them. To make out a case of having been in the company of the deceased, the prosecution relied on the evidence of the PW-5, real brother of the applicant. According to the prosecution itself, the applicant had suspected his wife to have illicit relationship with PW-5. In his examination-in-chief, PW-5 did not stand by the prosecution. Learned APP, in charge of the case, therefore, cross-examined him. In response to all the leading questions put to his witness, the witness testified that on the previous night, both the applicant and his wife had been to his residence. They did not take meals at his place. Both of them returned to the applicant's room. The witness further specifically denied to have had seen the applicant to have

come out of his room by little past 11.00 p.m. to answer nature's call (pee).

9. The evidence of this witness is very much shaky for the reason that he altogether disowned the prosecution case in examination-in-chief. It is reiterated that he is a witness with whom, according to the prosecution, the deceased allegedly had extra marital relationship. Admittedly, the deceased and the wife of this witness were real sisters. This witness has testified that sometimes his mother used to sleep in the room of the applicant. The applicant's wife used to sleep in his house. We are not taking this piece of evidence other way round. What could only be said to have been proved by the evidence of this witness is that by dinner time i.e. after 9.00 p.m. both the applicant and the deceased were together at their residence. It is a specific case of the applicant that he had left the house for sugarcane harvesting late in the evening. The applicant examined himself in proof of the same. PW-5 in his cross-examination admitted that the applicant would go for sugarcane harvesting sometimes during night hours. It is true that the

applicant's defence that theft took place at his residence may be false. The same could be taken as missing link. The same however, would not lessen the prosecution's burden to establish each and every circumstance conclusively. In our view, the evidence of PW-5, in the facts and circumstances of the case, may not be sufficient to conclusively establish the theory that the applicant was in the room so as to infer him to be the culprit.

10. So far as regards the other two circumstances are concerned, those have not been conclusively established for the reason, the C.A. reports pertaining thereto indicate blood found on those articles although human group whereof could not be determined. It is only the Investigating Officer testified that he arrested the applicant and seized blood stained clothes on his person. When where and how he arrested the applicant is not there in the evidence. One Shankar who had informed the village Patil about the incident, has not been examined. The FIR was lodged by the Police Patil was based on hearsay (information given by Shankar). We have to see whether based on the evidence in the case, the offence is made out.

11. In our view, the applicant may make out his defence on the basis of preponderance of probabilities. The applicant is behind the bars close to 6 years and the appeal is not likely to come up for hearing immediately.

12. For all the aforesaid reasons, we are inclined to allow the application. Hence, the following order is passed.

(a) The substantive sentence imposed on the applicant by the learned Additional Sessions Judge, Gadhinglaj vide its judgment and order dated 5th September 2024 in Sessions Case No. 19 of 2020 shall remain suspended till the final disposal of Criminal Appeal No. 601 of 2025.

(b) The applicant be released on furnishing bail in the sum of Rs.15,000/- with one or more solvent sureties of like amount.

(c) Bail before the trial Court.

13. The Interim Application stands disposed of.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT, J.]