

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR**

CRIMINAL APPELLATE JURISDICTION

**INTERIM APPLICATION NO.3732 OF 2025
IN
CRIMINAL APPEAL NO.11 OF 2026**

Rupesh Rajbahaddur Karaki ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Niranjan Bhavake a/w. Sandeep Deshpande, Advocate for Applicant.

A. A. Naik, APP for respondent-State.

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

DATE : 2nd FEBRUARY 2026

P.C:

1. Heard.
2. This is an application for suspension of substantive sentence of imprisonment for life, imposed upon the applicant by the learned Additional Sessions Judge, Khed in Sessions Case No.4 of 2021 for the offences punishable under sections 302 and 201 of the Indian Penal Code.
3. It is the case of the prosecution that the applicant is a Nepal national. PW-1 Pradosh was running a brick kiln and a hotel-cum-

resort. The deceased, Raju More, had been employed by PW-1 for about 20 years and was supervising the swimming pool at the resort.

4. The applicant had come in search of employment and, on 20th March 2020, joined as a labourer at the brick kiln. He thus became acquainted with the deceased Raju. In the evening, both of them consumed liquor, and an altercation allegedly took place between them. It is alleged that the applicant committed murder of Raju.

5. After about three days, the dead body of Raju was found in a decomposed state. Injuries were noticed on his person, and the Medical Officer opined that the death was homicidal. Accordingly, a crime was registered against unknown persons. During the course of investigation, the applicant came to be arrested. Upon completion of investigation, a charge-sheet was filed against him.

6. The prosecution examined seventeen witnesses. The defence of the applicant was one of total denial. Upon appreciation of the evidence on record, the Trial Court convicted the applicant and consequently sentenced him.

7. The learned Advocate appointed to represent the applicant

submits that the case rests entirely on circumstantial evidence and that no witness has seen the applicant in the company of the deceased at any point of time immediately preceding the incident in question. It is contended that the conviction is based on surmises and conjectures and that the prosecution has failed to attribute any motive to the applicant. On these grounds, it is urged that the present application be allowed.

8. Per contra, the learned A.P.P. submits that there are prosecution witnesses who claim to have overheard a quarrel between the applicant and the deceased during a mobile phone conversation, and that the voice of the applicant was duly identified. It is submitted that the call data records could not be produced before the Court as the same were destroyed. It is further submitted that the applicant had joined service at the brick kiln of PW-1 and that both the applicant and the deceased were residing alone. The clothes of the applicant, which were seized, were found to be soiled, and the soil on the said clothes matched with the soil from the scene of offence. According to the learned A.P.P., the judgment of the Trial Court and the impugned order are based on cogent reasons. Hence, it is urged that the application be rejected.

9. We have considered the submissions advanced. Perused the entire evidence on record. The case is based on circumstantial evidence. The 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.”

10. In the case in hand, the prosecution has not attributed any motive whatsoever to the applicant. The incident is alleged to have taken place on the night of 20th March 2020. The dead body of Raju (the deceased) was found thereafter on 23rd March 2020 in a decomposed condition. The post-mortem report indicates grievous injuries to the head of the deceased. The testicles were also found to be swollen. There is no dispute that the deceased met with a homicidal death.

11. The evidence of PW-1 Pradosh and his two brothers only establishes that the deceased had been in the service of PW-1 Pradosh for about 20 years and that he was looking after the swimming pool at the resort/hotel. The applicant was engaged by PW-1 for work at the brick kiln either on 20th March 2020 or a day prior thereto. PW-1 had provided accommodation to the labourers engaged at the brick kiln and had allotted rooms to them on the said date.

12. It is the case of the prosecution that, on the evening of the incident, the applicant and the deceased consumed liquor. In this regard, PW-9, the grocery shop owner, was examined to show that

the applicant, along with the deceased, had visited his shop, where the deceased purchased moong dal and a water bottle. The shop owner identified the applicant before the Court, though it is admitted that no test identification parade was conducted for identification of the applicant by this witness.

13. The only evidence sought to be relied upon by the prosecution regarding the alleged quarrel is that of PW-7 Vaishali and PW-8 Sakshi. Both of them deposed that, in the absence of the deceased, they had independent telephonic conversations with deceased and claimed to have overheard a quarrel between the applicant and the deceased. According to the prosecution, the applicant is a Hindi-speaking person, whereas PW-8 Sakshi testified that the applicant abused the deceased in Marathi. PW-8 further stated that she was emotionally involved with the deceased. Therefore, her evidence is required to be appreciated with caution. PW-7, on the other hand, could not identify the voice of the applicant.

14. The prosecution has sought to connect the soiled clothes of the applicant with the crime in question. However, according to the prosecution itself, the clothes were seized from the house and

not from the person of the applicant.

15. The aforesaid circumstances constitute the only evidence in the case. It is reiterated that no motive has been attributed to the applicant. The exact time of death of the deceased has not been established. The dead body was found after three days at an isolated place in a field. Though the applicant was in the company of the deceased up to about 7.00 p.m., there is nothing on record to indicate that they continued together thereafter.

16. The evidence relied upon by the prosecution is in the nature of having allegedly overheard a quarrel on a mobile phone conversation between the applicant and the deceased. One of the witnesses examined in proof of the said circumstance was emotionally involved with the deceased. When the deceased went missing, none of the witnesses initially came forward to suspect the involvement of the applicant.

17. We find, therefore, that the applicant has made out a strong case to contend that the prosecution has not established his guilt beyond reasonable doubt. The applicant has been in custody for about six years, and the appeal is not likely to be taken up for hearing in the near future. We are, therefore, inclined to allow the

application. The application is accordingly allowed in terms of the following order:

ORDER

(a) The substantive sentence imposed on the applicant by the learned Additional Sessions Judge, Khed in Sessions Case No.4 of 2021 vide judgment and order dated 19th December 2024 shall remain suspended till the final disposal of Criminal Appeal No.11 of 2026.

(b) The applicant be released on furnishing a P.R bond in the sum of Rs.15,000/- (Rs. Fifteen Thousand only).

18. The application stands disposed of.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT J.]