



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Criminal Application (APPA) No. 636 of 2025

in

Criminal Appeal No. 366 of 2025

[Suwarna Sami Soni **vs.** State of Maharashtra through P.S.O., P.S. Kapilnagar, Nagpur]

Office Notes, Office Memoranda
of Coram, Appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. R. M. Daga, Advocate for the applicant/appellant
Mr. S. S. Hulke, A.P.P. for the State/respondent

CORAM: ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.

DATE : 26-03-2026.

Heard.

2. Leave to correct prayer clause is granted.
Correction shall be carried out forthwith.

3. The applicant and her husband have been convicted for the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code. They have committed murder of one Deepa Das, who was otherwise known to the applicant and her husband. The trial Court relied upon following circumstances for finding guilt of the accused persons.

“Circumstances as to the guilt of accused :

151. In view of the above discussion and as concluded that the following circumstances have been proved which are proved as the circumstances drawn are as:

1. *That the acquittance of the deceased and*

2

the accused are established.

- 2. That the presence of the deceased at the relevant point of time was at the place of the accused.*
- 3. Further it is also proved that the recovery of the mobile phone from the place which was shown by the accused and duly identified by the witness as it belongs to the deceased which was exclusively within the knowledge of the accused.*
- 4. The most important aspect as regarding the location of the accused at the relevant point of time was found at Samta Nagar where the streamlet or Nala from where the said mobile phone of the deceased was found in destructed condition.*
- 5. It is also proved by the Forensic evidence that due to the destruction of the said mobile phone of the deceased the data could not be retrieved as an attempt to destroy the evidence.*
- 6. It is also proved that the dead body was found at place where there are the bushes and was place in a such manner which clearly shows the intention as to disposal of the dead body and destruction of the evidence.*
- 7. Further, it is also proved that for the said disposal of the dead body or the destruction cannot be done without the help of any vehicle as it is also established and which is not even disputed that accused is having E-Rickshaw.*
- 8. From the record it also appears as proved that the polythene which is used to wrap the dead body which is usually supplied as to wrap as a packing of the electrical appliances like Washing Machine or Fridge.*

3

9. *It is also establish that the accused persons had purchased the said appliances just before and in the proximity of time when the actual incident take place.*
10. *It is also established and proved by the Forensic evidence that said plastic bag which were found at the spot and the control sample which were taken from the said shop were also tallied.*
11. *It is also established that the pieces of thermocol which were found at the house of accused substantially tallied as aligned with and physical properties the pieces which were found at the spot of incident.*
12. *As regarding the motive is concerned the evidence of the witnesses that the deceased had given some amount and for the refund thereof the quarrel taken place.” (emphasis now)*

4. Learned counsel for the applicant submits that except for first point, rest of the circumstances, on the basis of which this inference of guilt is drawn is related to applicant's husband. So far as second circumstance is concerned, though the trial Court has held that deceased was present at the house of accused at the relevant time, there is no admissible evidence in this regard. According to him, the trial Court has referred to the testimony of P.W. 4, daughter of deceased. She deposed that her mother i.e. deceased informed her that she is going to the house of applicant. Thereafter she made a phone call to her at about 2.53 p.m. At that time, the deceased informed her that she is at the house of applicant. Thereafter at 4.00 p.m., the

4

son of deceased made an attempt to contact her but he could not, as mobile was out of coverage area. The argument is that the trial Court has relied upon the testimony of P.W. 4 to hold that the deceased was at the house of applicant at the relevant time but conveniently ignored her testimony that when she called applicant at 9.30 p.m., she (the applicant) informed that her mother/deceased had been to her house but she left her house between 2.30 to 3.00 p.m. Accordingly, it is argued, and rightly so, that if the testimony of P.W. 4 is to be accepted, the Court was bound to accept it in entirety and could not have picked up part of evidence and ignored other part, to draw an inference that the deceased was at the house of the applicant at the relevant time.

5. Learned Additional Public Prosecutor (APP) does not dispute that other circumstances noted by the trial Court relates to the destruction of evidence at the hands of applicant's husband. We need not, therefore, delve upon this part of theory inasmuch as the said circumstances do not implicate the applicant.

6. So far as the last circumstance is concerned, the trial Court held that motive behind crime is money transaction. On this count, when we enquired with learned APP as to on what basis, such inference is drawn, he submits that the said inference is drawn on the basis of statement made by co-accused i.e. applicant's husband.

5

7. Learned counsel for the applicant submits that such inference could not have been drawn as it is based on inadmissible evidence. We find substance in the said submission. The prosecution could not have relied upon the statement made by co-accused before police to infer that motive behind crime is money transaction.

8. Put altogether, it appears that the conviction, to the extent of applicant, is based on a weak piece of evidence. We are informed that applicant is a lady, having one daughter, who is in jail with applicant. She is now four years old and would require education. That being so and considering the evidence led before the trial Court, we are of the considered view that the sentence imposed upon the applicant should be suspended. Accordingly, we allow the application. Hence, the following order.

ORDER

(i) The substantive sentence imposed upon the applicant by learned Additional Sessions Judge-4, Nagpur in Sessions Case No. 455/2022 convicting the applicant under Sections 302 and 201 read with Section 34 of the Indian Penal Code is hereby suspended pending final disposal of the criminal appeal.

(ii) Applicant - Suwarna W/o Sami Soni shall be released on bail on her furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties in the like amount, to the

6

satisfaction of the trial Court.

(iii) The applicant shall monitor progress of appeal and shall remain present before the Court at the time of final hearing of the appeal.

(iv) The Criminal Application stands disposed of accordingly.

(JUDGE)

(JUDGE)

wasnik