

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3894 OF 2015**Mala Motiram Dhotre Vs.The State of Maharashtra.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.N.R.Thorat, advocate for the Applicant.
Mr.A.S.Shinde, A.P.P for the State.

**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.**
Date : 10.12.2015.

PER COURT :

1. Heard.
2. The present applicant is prosecuted and convicted for the offence U/s 302 of the I.P.C and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/- (Rupees one thousand), in default to suffer rigorous imprisonment for three (3) months.
3. Mr.Thorat, learned counsel submits that the conviction is awarded only on the ground that there is extra judicial confession and circumstantial evidence. According to the learned counsel, Motiram before whom it is said that extra judicial confession was made has not supported the prosecution. The chain of

circumstances is also not complete. The deceased is the child of the present applicant. C.A. Report on Sari of the applicant would show the blood group of the deceased as the deceased was the child of the applicant and she had lifted the deceased. Evidence of P.W.8 that she saw applicant along with an axe is not believable as all other persons said that they had seen the axe lying beside the body.

4. Mr.Shinde, learned A.P.P. Submits that there is extra judicial confession made to Motiram i.e. the husband of the applicant and heard by two other witnesses. The circumstances also depict the guilt of the accused. In para 53 of the Judgment, the learned Sessions Judge has culled out the incriminating circumstances which is sufficient to prove the guilt.

5. We have considered the submissions. No doubt, the evidence on record will have to be reappreciated at the time of final hearing of the appeal. There is no eye witness. The case is based on circumstantial evidence. The victim is the 13 months old daughter of the applicant. The story of the prosecution is that as the child was crying, under the impulse, the applicant killed the child. Motiram has not supported the prosecution case. He has resiled even as per prosecution. The motive does not appear. The evidence of P.W.8 appears to be inconsistent with the other evidence. The same will have to be reappreciated.

6. Considering the above, we are inclined to allow the

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application. The substantive sentence awarded to the applicant in Sessions Case No.319/2014 vide judgment and order dated 28.6.2015 is suspended. Pending hearing and final disposal of appeal, the applicant is released on bail on furnishing PR bond of Rs.10,000/- (Rupees ten thousand).

(V . K . JADHAV , J .)**(S . V . GANGAPURWALA , J .)**

Dt.10.12.2015.
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