

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4561 OF 2015
IN APEAL/678/2015

JAIKISAN S/O KASHINATH DHAM
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Deshmukh Rajendra S.
APP for Respondent-State: Mr. D.R. Kale
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 17th DECEMBER, 2015

P.C. :-

1. Present applicant is prosecuted and convicted for the offences punishable under Sections 302 and 307 of I.P.C. and sentenced to suffer life imprisonment so also under the Arms Act.

2. Mr. Deshmukh, the learned counsel for the applicant submits that the appeal is admitted and present application is filed for suspension of sentence. The question about identification of the accused has not been considered by the Sessions Court properly. The witnesses P.W. 10, 11 and 14 are chance witnesses. Their depositions cannot be relied upon due to large scale inconsistencies and so also contradictions and omissions. Oral dying declaration is also not proved. The inconsistencies are of such nature that the

evidence of P.W. 10, 11 and 14, who are alleged to be eye witnesses is rendered totally unreliable.

3. Learned A.P.P. submits that the prosecution has proved the case. There are three eye witnesses. Coupled with the three eye witnesses even oral dying declaration is also proved.

4. We have considered the submissions. No doubt, the entire evidence will have to be re-appreciated at the time of final hearing of the appeal. The case is based on the evidence of three eye witnesses coupled with oral dying declaration, which is considered by the Sessions Court. Even the presence of the accused at the scene of offence is considered. The accused was also in jail during the trial.

5. Considering the evidence on record, we are not inclined to allow the present application. The present application as such is rejected.

6. Liberty to file private paper book.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)