

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 5364 OF 2015
IN
CRIMINAL APPEAL NO. 753 OF 2015**

Kalidas S/o Kundlik Lomte .. Applicant

Versus

The State of Maharashtra .. Respondent

Shri Ganesh J. Kore, Advocate for the Applicant.
Shri D. R. Kale, A. P. P. for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.
Date : 01ST DECEMBER, 2015.**

PER COURT :-

1. The present applicant is prosecuted for an offence punishable under Section 302 of the Indian Penal Code and is convicted to suffer rigorous imprisonment for life. The appeal filed by the present applicant is admitted. By the present application the applicant is seeking suspension of substantive sentence.

2. Mr. Kore, learned counsel submits that, fine amount is not deposited and the substantive sentence be suspended. The Sessions Court has relied on the evidence of P.W. 1, son of the applicant and the deceased. The learned counsel submits that, injury certificate does not support the

prosecution case. It has come on record that, injury is not possible by axe. According to the learned counsel, as per the prosecution the incident has taken place in dark. Since birth P.W. 1 is residing with the deceased. Even the applicant does not own the house where the alleged offence is said to have been committed. The learned counsel submits that, even the punchnama has not been proved. There are large scale inconsistencies in the prosecution evidence.

3. The learned A. P. P. supports the order and submits that, the case is based on evidence of eye witness who is the son of the applicant.

4. We have considered the submissions. No doubt, the evidence will have to be re-appreciated at the time of final hearing of the appeal. P.W. 1 is also son and eye witness. The deceased is the wife of applicant. P.W. 1 has deposed about the manner, the incident had taken place. The accused was also not on bail during the trial. The injuries are also found on the deceased as per the medical evidence.

5. Considering the above, we are not inclined to consider the application. The application as such is rejected. However, hearing of the appeal is expedited.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]