

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

CRIMINAL APPLICATION NO. 5400 OF 2015

PUNJARAM S/O KARBHARI WAGH
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr B R Kedar
APP for Respondents: Mr S G Karlekar

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: December 15, 2015

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PER COURT :-

1. The present applicant is prosecuted and convicted for the offences punishable under section 302, 201 read with section 34 of the Indian Penal Code and is sentenced to suffer R. I. for life with fine amount.

2. Mr. Kedar, the learned counsel for the applicant submits that whole case is based on circumstantial evidence. The chain of circumstances is not complete. As per the prosecution's case deceased was last seen with Atmaram. Atmaram is acquitted. Only because body of the deceased was found from the field of the present applicant, the applicant is convicted. Apart from the said facts, there is no incriminating evidence against the applicant.

3. Mr Karlekar, the learned APP submits that Atmaram happens to be son of the present applicant. The body of the deceased is found from the field of the present applicant. Burden, as such, shifts on the applicant to give explanation as per section

106 of the Evidence Act. Same is not forth coming. Sessions Court has rightly convicted the applicant.

4. Even if last seen theory is to be accepted, the deceased was lastly seen with Atmaram. Atmaram is already acquitted by the Court. Apart from the fact that dead body of the deceased was found from the field of the present applicant, there is no other incriminating evidence for convicting the applicant. Whether the chain is complete will have to be shown by the prosecution. Of course, whole evidence will have to be re-appreciated at the time of final hearing.

5. Considering the above, we allow the present application. Substantive sentence awarded to the present applicant in special Case (Atr) No.18/2010 for the offences punishable under section 302 and 201 read with section 34 of the Indian Penal Code is suspended. Pending and final disposal of the appeal the applicant is released on bail on his furnishing P.R Bond of Rs.20,000/- (Rs. Twenty Thousand) with one surety of the like amount.

6. Application is disposed of accordingly.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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