

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

CRIMINAL APPLICATION (APPA) NO. 361/2015
IN CRIMINAL APPEAL No. 558/2014.

Sumit Ramesh Chintalwar (In Jail)

-VERSUS-

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

CORAM : B.P.DHARMADHIKARI
& P.N. DESHMUKH, JJ.

DATE : JULY 14, 2015.

Heard Shri A.S. Manohar, learned Counsel
for the applicant and Shri S.S. Doifode, learned A.P.P.
for respondent State.

2. Submission of learned Counsel for the
applicant is there is no substantive evidence against
the applicant / accused no.1 and finding on conviction
is solely by accepting evidence of P.W.2 Vivek. The
incident is dated 10.08.2011 and his statement is
recorded on 15.08.2011. How he surfaced as an eye
witness after this date is not explained by the

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prosecution and the trial Court has put a negative burden upon the appellant/accused no.1. He points out that reason that mother of said witness has asked him not to talk about the incidence with anybody is, also been found to be an omission by the trial Court itself. The mode and manner in which the Investigating Officer could reach said witness, therefore, was material, and has not been brought on record.

3. He adds that though said witness claims that he knows accused persons since last about 5 years, in Court he indicated other accused as accused no.1 and thereafter has corrected that error.

4. He also submits that as substantive evidence itself is absent, other evidence looked into by the trial Court cannot be used as material clinching to return the finding of guilt. Accused no.1 was arrested on 12.08.2011 and his clothes were seized on 13.08.2011. According to him, in this situation, tampering or interpolation, cannot be ruled out. The finding of blood of deceased on the said clothes or recovery of blood stained clothes at his instance under Section 27, therefore, are not sufficient. He submits

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that in this situation, as there is no substantive evidence, the prayer made in the Criminal Application needs to be granted.

5. Learned A.P.P. is strongly opposing the contentions. According to him, though the witness has deposed belatedly, his evidence is found corroborated by other material on record, and the trial Court, therefore, has proceeded to accept it. He has taken us through the relevant discussion as contained in the judgment of trial Court.

6. After hearing the respective counsel, we find that the statement of witness P.W.2 has been recorded by the police authorities for the first time on 15.08.2011 i.e. almost 5 days after the incidence. Before that accused persons were arrested and their clothes were also seized.

7. Chemical Analyzer report shows blood group of deceased to be "B", while that of the appellant accused to be "O". The blood of deceased is found on the clothes seized under Section 27, at the instance of the appellant. Similarly, said blood is also found on the weapon used by the appellant.

8. In this situation, at this stage we find that

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no case warranting release of the applicant on bail is made out. Criminal Application is accordingly rejected, however, hearing of the appeal is expedited. The appeal be placed for hearing after preparation of the paper book.

JUDGE**JUDGE**

Rqd.