

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

Criminal Application (APPA) No. 453 of 2015 in Criminal Appeal No. 265 of
2015

Dinesh s/o Shankarrao Khode vs. The State of Maharashtra

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	<u>Court's or Judge's</u> <u>Orders.</u>
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Mr. R.M.Daga, Advocate for the applicant/
appellant.

Mr. Deepak Thakare, learned Addl. P.P. For
the respondent.

CORAM: B.R.GAVAI & PRASANNA B. VARALE, JJ
DATE : 31.8.2015

The applicant has approached this Court being aggrieved by the Judgment and order passed by the learned Additional Sessions Judge, Wardha, in Sessions Trial No. 58 of 2014 thereby convicting the appellant/ applicant for the offence punishable under section 302 r/w 34 of the Indian Penal Code. The appeal is already admitted.

2. Now by this application, the applicant has prayed for suspension of sentence and grant of bail.

3. Heard Mr. R.M.Daga, learned counsel for the applicant and Mr. D.P.Thakare, learned Addl. P.P. for State.

4. As already held by the Hon'ble Apex Court elaborate discussion of evidence would not be permissible at the stage of grant of suspension of sentence.

5. However, perusal of the material on record would reveal that the learned Judge has basically passed the order of conviction on the basis of evidence of P.W.4 Vinod. The evidence of P.W. 4 Vinod would reveal that he stated in his evidence that in the year 2010 the deceased Kisna had gone to the filed of the present appellant carrying axe to assault Dinesh. From the evidence of said Dinesh, it would reveal that deceased Kisna had suspicion regarding the illicit relations of the accused no.1 with Lata, wife of the deceased. This is the only basis on which the learned Judge has found that the present appellant has caused the death of the deceased.

6. The case basically rests on circumstantial evidence. It is necessary for the prosecution to prove each and every circumstance beyond reasonable doubt and also to establish

the chain of incriminating circumstances which leads to no other conclusion than the guilt of the accused. The evidence of the brother of the deceased viz. Mahadeo (P.W.1) would also reveal some talks about information given to him by accused no.2 Ramesh. The said witness also does not whisper that last seen theory.

7. The evidence of P.W.3 Dr.Vivek would reveal that the prosecution has even failed to prove that the case was of homicidal death.

8. In that view of the matter, we find prima facie that the conviction is based purely on conjectures and surmises. In that view the application deserves to be allowed.

9. The application for suspension of sentence is allowed. The applicant is directed to be released on bail on the same terms and conditions as in the Sessions Court.

JUDGE

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