

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

CRIMINAL APPLICATION (APPA) NO.536 OF 2015

IN

CRIMINAL APPEAL NO.288 OF 2015

Raju s/o Fattuji Meshram

..vs..

**The State of Maharashtra, thr its Police Station Officer, Police Station Tumsar, Tahsil
Tumsar, District Bhandara**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

**Shri Anil Mardikar senior counsel with Shri S.G. Joshi, counsel
for the applicant.**

Shri V.A. Thakre, Addl.P.P. for the State.

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.**

DATED : DECEMBER 8, 2015.

Heard.

Perused paragraph Nos.12, 13, and 14 of the
impugned judgment as also relevant evidence.

The rape could not be established as body was
found in totally decomposed condition. The
applicant/appellant states that cause of death is also not
determined.

However, the facts show that as per the report
of chemical analyzer, mud and soil detected on his clothes
and clothes of deceased matched. The accused, admittedly,
had no injury and blood of Group-B was found on his
underwear.

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The conviction is based on circumstantial evidence and last seen theory. There was previous acquaintance between accused and the deceased.

Learned senior counsel has emphatically attempted to demonstrate that the alleged incident has taken place on 27.10.2011 while body was found on 6.11.2011. During this period, the applicant was actively assisting relatives to search out the missing girl. The accused was then arrested on 7.11.2011 and alleged disclosure by him is on 14.11.2011. Learned counsel submits that the prosecution has not brought on record the fact that the clothes are recovered from a place which is nearby the spot where the body was found. It is the contention that clothes were found in shrub under a bridge and, therefore, mere fact that soil sample matched with each other is not sufficient.

Upon instructions, he states there is at least distance of 7 kilometers between the place where clothes were found and the spot where body was lying. He further wants to demonstrate that soil composition does not undergo any change for at least 7-8 kilometers.

Learned Addl.P.P. submits that at this stage all niceties cannot be gone into and the fact that blood of Group-B was found on those clothes cannot be overlooked. He further contends that the accused had no injury.

In reply, learned senior counsel points out that blood group of accused has not been brought on record by the prosecution.

We find that in depth scrutiny of evidence is not possible at this stage. The material on record, *prima facie*, shows involvement of the appellant. The Trial Court has appreciated the material and has reached a finding. The appellant has been acquitted of the offence punishable under Section 376 but convicted under Section 302 of the Indian Penal Code.

As such, we are not inclined to grant him bail during pendency of the appeal.

Hearing of the appeal is expedited.

The criminal application is rejected.

JUDGE

JUDGE

!! BRW !!

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