

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.1183 OF 2016
IN
CRIMINAL APPEAL NO.636 OF 2016**

Dattatraya Dhakal Chimda ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Niranjan Mundargi i/b. Mr.Vinayak Patil, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 20th OCTOBER 2016.

P.C.

1 Heard the learned counsel for the applicant. Heard learned Additional Public Prosecutor for the respondent/State.

2 This is an application for suspension of sentence and grant of bail. By the order dated 01/09/2016 applicant/original accused No.3 came to be convicted by the learned District Judge-4, and Additional Sessions Judge, Thane for the offence punishable under Section 304 of the Indian Penal Code (For short, "the IPC") and is sentenced to suffer simple imprisonment five years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for six months.

3 Learned counsel for the applicant had contended that applicant/accused No.3 was tried along with two others being original accused No.1, who was Junior Engineer and original accused No.2 Assistant Engineer, while applicant at the material time working as Assistant Lineman with the Maharashtra State Electricity Company.

4 By referring to cross-examination of P.W.No.6 Investigating Officer, who has proved letter-Exh.38 which admittedly is correspondence made by Investigating Officer with the Authorities of Maharashtra State Electricity Company to obtain information as to who were responsible for not taking care of live electricity wire, which was found lying across the road. Learned counsel for the applicant has pointed out that inspite of such correspondence from Maharashtra State Electricity Company no statement of author of letter Exh.38 namely Mr.Rannaware concerned Engineer was not recorded during the course of investigation. It is, thus, contended that in the same set of facts learned trial Court though acquitted accused Nos.1 and 2, as aforesaid, convicted applicant as stated above, and has thus prayed that application be allowed as applicant was on bail pending trial and is imposed short sentence.

5 From the evidence of P.W.No.1 the panch, it is noted that on 12/08/2012 on the road proceeding going from Einshet to Pen, live electric wire was lying on road, due to which birds had died and grass was also found burnt. Evidence of P.W.No.2 the complainant reveals that said wire was lying on the road since 15 days of which he claims to have made report to Authorities of Maharashtra State Electricity

Company. In the cross-examination, it is admitted that deceased Vinod was aware of such live electric wire lying on the road and in spite of having knowledge, came in contact with the same and, his mother, when tried to rescue, both sustained electric shock and died.

6 In the background of evidence, as aforesaid, and particularly, considering the facts of acquittal of co-accused Nos.1 and 2 though placed in same situation as of applicant and for non-examination of concerned Engineer from Maharashtra State Electricity Company, who has issued the letter Exh.38, as mentioned above, application is liable to be allowed as applicant is, even otherwise was on bail pending trial and it is no case of prosecution that he has misused the liberty granted to him. Hence, order:

- (i) Applicant shall be released on bail on his executing personal bond in the sum of Rs.15,000/- with one surety in like amount.
- (ii) Applicant shall mark his presence with Wada Police Station, District Thane once in six months pending appeal.
- (iii) Applicant shall produce his address to the Wada Police Station and communicate the change, if any.

(P. N. DESHMUKH J.)