

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1321 OF 2015**  
**IN**  
**CRIMINAL APPEAL NO.1025 OF 2015**

Nityanand @ Pappu Satyawar Kadam .... Applicant

***Versus***

State of Maharashtra,  
Through Malvan Police Station,  
Dist. Sindhudurg .... Respondent

Mr. A.S. Khandeparkar a/w. Mr. Lokesh  
Zade and Mr. Rajdeep Gude, i/by M/s.  
Khandeparkar & Associates, for the  
Applicant.

Mr. H.J. Dedia, A.P.P., for the  
Respondent/State.

**CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &**  
**DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 8<sup>TH</sup> JANUARY 2016.**

**P.C. :**

1. Heard learned counsel for the Applicant and the learned  
A.P.P.

2. This Criminal Application is preferred by the original  
accused seeking suspension of substantive sentence of

imprisonment and his enlargement on bail during pendency of the Appeal.

3. The Applicant stands convicted for the offences punishable under Sections 302 and 201 of IPC. He is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer R.I. for six months on the first count, and R.I. for seven years and to pay fine of Rs.5,000/-, in default to suffer further R.I. for six months on the second count.

4. As per the case of the prosecution, on 20<sup>th</sup> October 2008, father of deceased Sonam, Shri. Bharat Parab lodged a missing report that his daughter Sonam has left the house on 19<sup>th</sup> October 2008 at about 2:30 pm stating that she was going to college, but did not return. The clothes of one girl, sandal and empty bottle of liquor were found on 25<sup>th</sup> November 2008. They were identified as belonging to Sonam. On further search, some remainants of the human body were found in the bushes including the skull and bones. As the Applicant was having love affair with deceased Sonam, he was prosecuted and tried for the offences punishable under Sections 302 and 201 of IPC.

5. The case of the prosecution is based on the circumstantial evidence and the Trial Court found the chain of circumstances to be complete. However, as pointed out by learned counsel for the Applicant, PW-11 Dr. Sanjay Pol, who has conducted the postmortem examination, has categorically stated that the probable cause of the death could not be detected as only bony parts were available for postmortem. PW-13 Vaibhav Sonar, the Associate Professor from Anatomy Department, has also deposed that definite cause about the death cannot be given. Further, according to him, one also cannot certainly say that all the bones are belonging to one human being. Further he has stated that long bone ends showed gnawing by animals. He has accordingly referred the bones for identification by superimposition and D.N.A. typing; however, D.N.A. Report is not produced on record.

6. Though the Trial Court has relied upon the evidence of PW-8 Purushottam Bakkar and PW-9 Bhalachandra Kolambkar to prove the last seen circumstance, there is long gap between the circumstance of last seen and the dead body being found. The alleged chit proved through the evidence of PW-5 Shital Parab also nowhere implicates the Applicant.

7. In this view of the matter and considering the fact that during pendency of the trial also, the Applicant was on bail, we are inclined to suspend his substantive sentence of imprisonment and release him on bail. Hence, the order.

**“ O R D E R ”**

- The Criminal Application is allowed.
  
- The Applicant is released on P.R. Bond of Rs.30,000/- with one or two sureties in the like amount, subject to condition that he should give attendance at Malvan Police Station, Dist. Sindhudurg, on the first Monday of alternate month in between 11 am to 1 pm till the decision of the Appeal.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]    [ACTING CHIEF JUSTICE]**