

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

CRIMINAL APPLICATION (APPA) NO. 161/2016.

Namdeorao Udhavrao Pardhake

-VERSUS-

The State of Maharashtra and others.

CRIMINAL APPLICATION (APPA) NO. 325/2016.

The State of Maharashtra

-VERSUS-

Ravishankar Lalmohan Roy and another.

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
& A.S. CHANDURKAR, JJ.

DATE : SEPTEMBER 27, 2016.

The Additional Sessions Judge-4, Nagpur has vide his judgment dated 27.10.2015 delivered in Sessions Trial No. 311/2012, convicted the accused no.1 – Manoj Gayaprasad Mishra for the offence punishable under Section 302 of Indian Penal Code and acquitted accused no.2 – Ravishankar Lalmohan Roy and accused no.3 – Krushna @ Sonu Ashok Dubey, therefrom.

2. Appeal filed by accused no.1 Manoj,

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challenging his conviction is admitted by this Court. His application for suspension of sentence is however, rejected.

3. By the present applications, the applicant – State Government seeks to assail acquittal of accused nos. 2 and 3 and in another application i.e. 161/2016, father of deceased Vijay, seeks leave under Section 372 of Criminal Procedure Code, to challenge said acquittal.

4. We have heard Shri V.A. Thakare, learned A.P.P. on behalf of the applicant State Government and Shri A.B. Moon, learned Counsel for the applicant Namdeorao, father of deceased. Shri C.R. Thakur, learned counsel has opposed the arguments for non-applicant/accused Ravishankar and Shri R.B. Upadhye, learned Counsel has opposed the arguments on behalf of non-applicant/accused Krushna.

5. Trial Court has in the course of judgment in paragraph no.73 found that there was no overt-act or incriminating material against accused nos. 2 and 3.

6. Facts show that accused no.1 Manoj has some enmity with P.W. 4 – Malkam. He therefore,

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attempted to persuade Malkam on two occasions. On second occasion, deceased Vijay who happens to be friend of Manoj, proceeded to see Manoj and other two respondents.

7. P.W.4 thereafter, tried to contact Vijay and when he failed, he contacted P.W.6 Police Constable. Police Constable also tried to contact Vijay. In the meanwhile, P.W.4 saw Vijay being carried on motor cycle driven by respondent no.2 Ravishankar. Manoj was sitting on a pillion seat after Vijay. Krushna followed them on another motor cycle.

8. P.W.6 who was trying to locate Vijay, deposed that he saw some arguments between Manoj and Vijay and thereafter, Manoj taking out knife and stabbing Vijay. Thus, P.W.6 is the only eye witness to the actual crime.

9. P.W.6 does not speak of any overt-act by other accused persons. Enmity was between accused n1o.1 Manoj and P.W.4 Malkam. As Malkam had not come and Vijay had saved Malkam earlier, from prosecution story it appears that Manoj was enraged and thus stabbed Vijay. Thus, respondent nos. 2 and 3 are not shown to be aware of this decision or intention

of Manoj to stab Vijay. They have not played any overt-role also so as to associate them with Manoj in the act of killing.

10. In this situation, considering the limited scope available to this Court in appeal against acquittal, we find no perversity in the judgment. Leave is accordingly rejected. Applications are therefore, disposed of. No costs.

JUDGE

JUDGE

Rgd.

CERTIFICATE

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