

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

CRIMINAL APPLICATION (APPA) NO. 570 OF 2016
IN CRIMINAL APPEAL NO. 337 OF 2016

(Ritesh @ Babbi Vilas Baviskar vs. State of Maharashtra, thr. City Police Station, Yavatmal)

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 &
KUM. INDIRA JAIN, JJ.
NOVEMBER 30, 2016.**

The appellant is the only person convicted by the trial Court on 03.08.2016. Remaining five persons have been exonerated.

We have heard Shri A.S. Mardikar, learned Senior Advocate with Shri S. Joshi, learned counsel for the applicant and Shri T.A. Mirza, learned APP for the non-applicant.

The prosecution has examined total four witnesses as eye witnesses. PW-3 has turned hostile. The trial Court has examined evidence of PW-7 – Jyoti wife of the deceased and PW-8 – Virag on merits and disbelieved them. It has accepted evidence of PW-9 – Vishnu. The learned Senior Advocate submits that his statement under Section 161 of the Criminal Procedure Code is recorded on 3rd day after the incidence. There is no explanation for it. He had more than two opportunities to disclose the alleged true and correct facts to the Investigating Officer but that was not done. Delay has not been explained.

The learned APP has submitted that in appeal,

this Court has to consider entire evidence on record afresh and PW-7 – Jyoti w/o the deceased has seen the incidence. She has seen the appellant assaulting on neck of the deceased with knife.

The learned Senior Advocate points out that the trial Court has disbelieved Jyoti for the reasons which are already recorded by it.

After hearing the respective counsel, we find that the recovery of knife (murder weapon) under Section 27 of the Evidence Act, is disbelieved by the trial Court. Similarly, recovery of clothes having blood stains from the person of the appellant appears to be after arrest in Police Station but then the fact whether the clothes were worn by him at that time is not clear.

A perusal of evidence of Jyoti reveals that at three different places during her cross examination, she has accepted that when she reached the spot her husband was lying on the ground in injured condition and at one place she has stated that when she reached at the spot of incidence, her husband was dead. She has contradicted herself and in chief had stated that she witnessed the present appellant assaulting with knife on neck of her husband.

The Investigating agency did not hold any T.I.P. and it appears that the accused persons were shown to PW-9 before recording his statement under Section 164 in Police Station.

The material noted supra, therefore, clearly shows that prima facie there is no case against the

appellant. We have also taken note of the fact that he was not on bail during trial.

In this situation, we find him entitled to be released on bail. Accordingly, we suspend his sentence and direct his release on bail on his furnishing two solvent sureties in the sum of Rs.50,000/- each and an undertaking that he shall remain present before this Court on such dates as and when he is called for as also at the time of final hearing without fail.

He shall also undertake to appear before the trial Court on every first working day of the month or on such other day as the trial Court may direct during the pendency of this Appeal. Failure to comply with the same shall constitute breach of bail conditions and result in automatic cancellation thereof.

Criminal Application is accordingly allowed. No costs.

JUDGE

JUDGE

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