

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3147 OF 2017
IN APEAL/275/2017 WITH APEAL/275/2017

RAMKISAN S/O. VISHNU NAGARE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. R.A. Jaiswal
APP for Respondent/State : Mrs. D.S. Jape

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CORAM : S.S. SHINDE & MANGESH S. PATIL, JJ.

RESERVED ON : 21st November, 2017

PRONOUNCED ON : 11th December, 2017

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ORDER:-

Learned counsel appearing for the applicant submits that, the trial Court has not properly appreciated the evidence on record, and in particular, the evidence of Baban Nana Khedkar (PW-3). It is submitted that, the deceased fell down on Cement Pole and died accidentally. The evidence of Tirtharaj Ramkisan Nagare (PW-2) suffers from inherent contradictions and improvements and the same is not believable. This court has already admitted the appeal filed by the appellant. It is submitted that, the evidence of eye witness does not inspire confidence and the said witness was tutored. The prosecution did not examine independent witness. Therefore, he submits that, the application may be allowed.

2. On the other hand, learned A.P.P. appearing for the respondent-State submits that, the trial Court upon appreciation of the evidence brought on record and after considering the defence taken by the applicant/appellant convicted the applicant/appellant. There is evidence of eye witness. The evidence of Medical Officer is convincing. The evidence of Tirtharaj Ramkisan Nagare (PW-2) gets corroboration from the evidence of Dr. Prashant Prakash Kondekar (PW-5). Therefore, he submits that, the application may be rejected.

3. We have heard learned counsel appearing for the applicant/appellant and learned A.P.P. appearing for the Respondent/State. We have carefully perused the notes of evidence so as to find out, whether the findings recorded by the trial Court are in consonance with the evidence on record. It appears that, the evidence of Tirtharaj Ramkisan Nagare (PW-2) gets corroboration of the evidence of Dr. Prashant Prakash Kondekar (PW-5). The prosecution has proved that, the death was homicidal and the same was not accidental. There was specific query put to PW-3 that, Sunita lost her balance thereby accidentally she fell down on cement pole and died. However, the said suggestion has been firmly denied by the said witness. We do not wish to elaborate the reasons since, the appeal filed by the applicant/appellant is pending. Admittedly, the applicant/appellant was not on bail during the course of trial. Hence the application stands rejected.

4. Registry of this Court shall send the original record and proceedings to the Registry of Additional Sessions Judge, Aurangabad. Upon receiving the original record and proceedings by the Registry of Sessions Court, the Registry of concerned Court shall prepare the paper book and send it back along with original record and proceedings, as expeditiously as possible, however in any case within three months from today.

5. Upon receiving the paper book and the original record and proceedings, liberty to the learned counsel appearing for the applicant/appellant to move for early hearing.

(**MANGESH S. PATIL, J.)**

(**S.S. SHINDE, J.)**

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