

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

CRIMINAL APPLICATION (APPA) NO.507/2016

IN
CRIMINAL APPEAL NO. _____/2016

Shahjad Shah s/o Haidar Shah
...Versus...
Irfan Shah Akbar Shah and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B. Kasat, Advocate for applicant
Shri S.C. Bhalerao, Advocate for respondent no.1
Mrs. A.R. Kulkarni, APP for respondent no.2

CORAM : PRASANNA B. VARALE AND
ARUN D. UPADHYE, JJ.

DATE : 14.11.2017

1. Heard.
2. The learned Counsel for the applicant by inviting our attention to the copies of depositions of the witnesses placed on record along with Pursis dated 14/4/2017 submitted that the learned Additional Sessions Judge, Amravati failed to consider the evidence in its proper perspective. He submitted that a dying declaration recorded by the Executive Magistrate is one of the clinching evidence against the accused and the said dying declaration stood the test and on an erroneous presumption the said dying declaration is kept out of consideration by the trial Court. He then submitted that the learned trial Court also failed to appreciate the evidence of P.W.4. The presence of the accused

at the time of incident and on the spot of the incident is though clearly established, the learned trial Court failed to consider even this aspect.

3. Leave to file appeal is granted. The appeal is **admitted**. Call for record and proceedings.

4. Learned Counsel Shri Bhalerao waives notice of hearing for respondent no.1. Learned Additional Public Prosecutor Mrs. Kulkarni waives notice of hearing for respondent no.2.

JUDGE

JUDGE

Wadkar