

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

CRIMINAL APPLICATION [APPA] NO.974 OF 2017

IN

CRIMINAL APPEAL NO.568 OF 2017

[Devendra Maroti Bite .vs. The State of Maharashtra]

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

Court's or Judge's orders

Shri P.D. Sharma, Advocate for applicant-appellant,
Mrs. S.V. Kolhe, APP for respondent-State.

CORAM : KUM. INDIRA JAIN, J.

DATED : NOVEMBER 21, 2017.

By this application under section 389 of the Code of Criminal Procedure, applicant-accused is seeking suspension of substantive sentence of imprisonment awarded by the learned Sessions Judge, Yavatmal in Sessions Case No.50/2016. By the said judgment and order, applicant has been convicted of the offence punishable under section 304-II of the Indian Penal Code and sentenced to rigorous imprisonment for seven years with fine of Rs.5,000/- in default rigorous imprisonment for six months.

Heard Shri P.D. Sharma, learned counsel for applicant-appellant and Mrs. S.V. Kolhe, learned APP for respondent-State.

It can be seen from the case of prosecution that on 16.3.2016 at about 12.00 in the noon, accused assaulted Pravin Sureshrao Gadge and Swapnil with the help of an axe and stick on a dispute over babul trees. Swapnil sustained injuries and Pravin died due to axe blow on head.

Initially offence under section 307 of the Indian Penal Code was registered before the death of Pravin. After the death, the said offence was converted to Section 302 of the Indian Penal Code. The prosecution was launched against three persons. Accused nos.1 and 3 came to be acquitted on trial by the learned Sessions Judge.

It can be seen from the observations in paragraph 37 of the judgment that intention to cause the death of Pravin by accused no.2 has not been established by the prosecution. The trial court observed that incident appears to have happened in the heat of moment due to sudden quarrel. Considering the circumstances under which incident occurred and absence of an intention to kill Pravin, Sessions Court came to the conclusion that offence under Section 304-II of the Indian Penal Code is made out.

Applicant is in jail since 16.3.2016. The maximum sentence of imprisonment awarded is seven years. The learned counsel for applicant submits that accused has deposited fine amount.

In the light of the above and as major offence under section 302 of the Indian Penal Code has not been established by the prosecution, this court is inclined to suspend the sentence of imprisonment awarded by the Sessions Court. Hence, the following order :

ORDER

(i) The substantive sentence of imprisonment awarded by the trial court is suspended during pendency of appeal on applicant's furnishing

Personal Bond in the sum of Rs.15,000/- with one solvent surety in the like amount to the satisfaction of the trial court.

(ii) Criminal Application No.974/2017 is allowed and disposed of in the above terms.

CRIMINAL APPEAL NO.568 OF 2017

Heard.

Admit.

Call R & P.

Mrs. S.V. Kolhe, learned APP waives service of notice for respondent-State.

JUDGE

Gulande