

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

CRIMINAL APPLICATION (APPA) NO.818 OF 2016
IN CRIMINAL APPEAL NO.391 OF 2015
(Ramrao Kisan Rathod vs. State of Maharashtra)

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

Shri S.D. Chande, Advocate for applicant.
Shri S.S. Doifode, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 04, 2017

This application is filed by accused for suspension of substantive sentence imposed upon him and for grant of bail.

Heard Shri Chande, learned Counsel for applicant, and Shri Doifode, learned Additional Public Prosecutor for respondent.

Applicant is found convicted for the offence punishable under Section 305 of Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for six months.

According to Shri Chande, learned Counsel for applicant, all the material witnesses examined have not supported the case of prosecution and accused came to be convicted only on the basis of one chit allegedly recovered from the pocket of deceased Pawan, which is heavily relied by learned trial Court even in the absence of any evidence on record to establish its contents to be

in the handwriting of deceased Pawan. It is contended that in the absence of this evidence, learned trial Court has erred in relying upon said piece of evidence. It is submitted that deceased Pawan committed suicide as his mother was suffering from some disease for sufficient time and his father was addicted to liquor. It is also contended that there is nothing to establish that applicant in any manner abated deceased Pawan to commit suicide.

Perusal of depositions, copies of which are placed on record, substantiate the case of applicant as complainant Sandeep, maternal uncle of deceased Pawan as well as daughters of appellant, has not supported the case of prosecution. From the evidence of P.W.3 panch witness, it is established that one chit was found and recovered from the pocket of deceased Pawan, which is proved at Exh. 28 and was seized under panchanama.

To a specific query put to learned Additional Public Prosecutor, he has submitted that contents of the said chit are not proved by any witness. However, on effecting recovery of such chit from shirt pocket of deceased Pawan, it is exhibited. In that view of the matter, though it is found that learned trial Court has weighed much with respect to contents of chit, its contents are admittedly not proved. It is, therefore, prima facie found that evidence of Investigating Officer, who has stated that contents of said document were read over to panchas, according to which deceased Pawan committed suicide as he was harassed by applicant,

cannot be relied as admittedly no investigation is carried out as to whether the contents of said chit were in the handwriting of deceased Pawan.

By now law on this aspect is well established and since from the evidence, requisite mens rea cannot be attributed to applicant to hold him guilty for the offence punishable under Section 305 of Indian Penal Code, though deceased Pawan was below 18 years of age, application is liable to be allowed as per order below :

Substantive sentence imposed upon applicant stands suspended. Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- with one surety in like amount. While on bail, applicant shall mark his presence with Police Station, Washim City once in three months pending appeal.

The criminal application is disposed of.

JUDGE

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