

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

Criminal Application (Appa) No.940 of 2017 in
Criminal Appeal No.549 of 2017
(Devidas Tulsiram Mankar vs. State)

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

Court's or Judge's Orders

Mr.K.S.Motwani, Advocate for the appellant/applicant.
Ms T.H.Udeshi, A.P.P. for the Respondent/State.

CORAM : R. K. DESHPANDE &
 M. G. GIRATKAR, JJ.

DATE : 23.1.2018.

Heard.

The appellant/accused is convicted for the offence punishable under Section 302 of the Indian Penal Code by the learned Additional Sessions Judge, Bhandara by the Judgment and Order dt.29.9.2017 passed in Sessions Trial No.42 of 2015.

The conviction is essentially based upon the circumstantial evidence after disbelieving the theory of prosecution that Smt.Jayshree wd/o. Rajesh Deshmukh (PW-1), Smt.Mangala w/o. Jogendra Hatwar (PW-2) and Vinod Deochand Deshmukh (PW-6) are the eye witnesses to an incident of assault by axe on the deceased by the accused. The incident occurred on 2.7.2015, at about 7.30 p.m.; whereas the accused was arrested in the midnight at about 1.45 a.m., though he was found at 11.45 p.m.

Seizure under Section 27 of the Indian Evidence Act was conducted. The weapon is discovered. The blade of axe does not contain the blood stains. But the handle of it contained the blood stains. Clothes were seized from the person of the accused on which blood stains were found to be of 'AB' group matching with the blood group of deceased. There is no evidence to show that the accused had suffered any injuries and the blood group of accused was found of group "O". There is evidence available on record to show presence of accused on the spot at the time of incident. There is no explanation of it in the statement under Section 313 of the Code of Criminal Procedure.

Taking into consideration the findings recorded by the Sessions Court and the fact that the offence is of serious nature, we do not find that any case is made out for suspension of sentence and enlargement of accused on bail.

The application is, therefore, rejected.

JUDGE

JUDGE

**jaiswal*