

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

CRIMINAL APPLICATION (APPA) NO.356 OF 2019
IN CRIMINAL APPEAL NO.216 OF 2019
(Badri Richhu Mujalde vs. The 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.

Smt. H.S. Dhande, Advocate (appointed) for
applicant/appellant.
Shri S. Sirpurkar, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH AND
 PUSHPA V. GANEDIWALA, JJ.

DATED : JULY 24, 2019

This application is filed for suspension of sentence imposed upon applicant/appellant by learned Additional Sessions Judge, Achalpur in Sessions Trial No.80/2016 whereby applicant came to be convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.5000/- and in default, to suffer rigorous imprisonment for six months.

Smt. Dhande, learned Counsel for applicant, submits that prosecution case is based on the evidence of sole eye witness and there is no corroboration to the evidence of said witness. It is contended that as evidence of said eye witness is contradictory to other evidence, application be allowed by imposing suitable conditions.

On the other hand, Shri Sirpurkar, learned Additional Public Prosecutor for respondent, has opposed the application contending that there are two eye witnesses and in fact, they have also identified applicant in the test identification parade held in Jail as well as in the Court. It is contended that there is other corroborative evidence against applicant, which shows that prior to incident, applicant had purchased sickle and the identifying witnesses, who are P.W.7 Gondibai and P.W.8 Radha are the same, who are stated as such witnesses in the memorandum of test identification parade on record (Exh. 37). With this background, it is submitted that since there is a direct evidence against applicant, application be rejected.

In the background of submissions advanced as aforesaid, we find that report came to be lodged by P.W.2 Thansingh, who is second husband of deceased Champabai and on the day of incident, which took place in the field, was informed by P.W.3 Zendalal about deceased Champabai lying in an injured condition and, therefore, visited the spot near water tank and found Champabai lying in an injured condition having wounds on her neck. He accordingly lodged report (Exh. 18).

Evidence of P.W.3 Zendalal corroborates evidence of P.W.2 Thansingh on the point of his informing him about the incident. P.W.3 Zendalal has further deposed that his wife Gondibai, who is examined as P.W.7, is an eye witness to the incident and has informed him that accused has assaulted deceased Champabai by sickle on her neck, due to which she

became unconscious. Evidence of P.W.3 Zendalal when perused with the evidence of his wife, namely, P.W.7 Gondibai, same corroborates to the extent of P.W.7 Gondibai witnessing the incident of assault on deceased Champabai by applicant/accused. Her evidence also establishes fact of her informing about incident to her husband P.W.3 Zendalal. Evidence of said eye witness corroborates and also establishes presence of P.W.8 Radha, who also establishes presence of P.W.7 Gondibai in the field.

P.W.8 Radha also states of her witnessing the incident of assault by applicant upon deceased Champabai. According to her evidence, before committing assault, applicant by coming near deceased Champabai, who was washing clothes at the water tank, insisted her to accompany him saying that she is his wife, upon which deceased Champabai told him that she had performed another marriage and, therefore, applicant should go away and she started going towards hut. At that moment, applicant assaulted deceased Champabai by sickle on her neck.

The eye witness account is also found corroborated by the evidence of P.W.11 Dr. Kanchan Jawanjal, who performed autopsy and found that deceased Champabai had sustained multiple injuries, which are also stated to be the cause of death of Champabai.

When entire evidence as aforesaid is collectively considered, applicant's involvement is

prima facie established. The application is, therefore, rejected.

JUDGE

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