

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

CRIMINAL APPLICATION (APPA) NO. 779 OF 2018
IN CRIMINAL APPEAL NO. 484 OF 2018

(Dushyant @ Gabbar s/o Gulab Pushpatode vs. State of Maharashtra thr. PSO, Gobarwahi,
Tahsil – Tumsar, District - Bhandara)

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

Court's or Judge's orders.

Shri K.S. Motwani, Advocate for the applicant.
Shri M.K. Pathan, APP for the non-applicant.

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CORAM : P.N. DESHMUKH &
PUSHPA V. GANEDIWALA, JJ.
JULY 23, 2019.

Heard.

This application is for suspension of sentence of the applicant, who is convicted by the learned Additional Sessions Judge, Bhandara, in Sessions Case No. 37 of 2016 for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer R.I. for life and to pay fine of Rs.5,000/- and in default to suffer S.I. for six months.

During the course of hearing, we found that eye witnesses in the incident are not examined by the prosecution and reference has been made by the trial Judge in his judgment in para 15 that prosecution has dropped said witnesses being

mother, sister and brother of the accused. Admittedly, these witnesses are interested witnesses and have not stepped into witness box.

The only evidence against applicant is by way of his extra judicial confession, and recovery of axe and blood stained clothes at his instance under memorandum panchnama.

So far as recovery of axe is concerned, P.W. 4 - Nitin has admitted that cement tank from which axe is recovered was dry, while according to the case of the prosecution, electronic evidence in the form of video shooting of recovery of articles, some water is seen in the cement tank. In that view of the matter, such evidence is also required to be considered in favour of the applicant.

So far as recovery of blood stained clothes of applicant, the only circumstance against him is finding of blood of group 'A' of deceased, on his pant and chappal, for which the applicant has not put forth any explanation. However, considering the nature of evidence available against the applicant as discussed above and as there is no substantial evidence on record, we find it a fit case, where appeal be expedited to be heard out of turn as the applicant is a young boy of 28 years, having no criminal antecedents.

In that view of the matter, though we reject the application, expedite hearing of Criminal

Appeal.

Since R. & P. is already received, office to prepare paper book expeditiously and in any case within two months from today. On preparation of the same, Criminal Appeal be shown in the caption of "*Final Hearing*".

JUDGE

JUDGE

*GS.