

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

CRIMINAL APPLICATION (APPA) NO.974/2018
IN CRIMINAL APPEAL NO.586/2018

Ganesh s/o Dnyaneshwar Kanadje (In Jail) .vs. The State of Maharashtra
through its P.S.O. P.S. Buldhana City.

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

Court's or Judge's orders.

Mr. V. D. Muley, Advocate for applicant.
Mr. B. M. Lonare, A.P.P. for non applicant-State.
Mr. S. Bhalerao, Advocate Assisting Prosecution.

CORAM : SUNIL B. SHUKRE &
PUSHPA V. GANEDIWALA, JJ.
DATED : MARCH 20, 2019

1. Heard Mr. Muley, learned counsel for the applicant/appellant and Mr. Lonare, learned A.P.P. for non applicant-State, assisted by Mr. Bhalerao, learned counsel for the complainant.

2. Learned counsel for the complainant sought time twice today on the ground that he was busy in another Court. In the first half, this Court acceded to the request so made on behalf of learned counsel for the complainant and, accordingly, kept the matter in the second half. But, once again in the second half, when this application came up for hearing, another request was made on behalf of the learned counsel for the complainant that this time also he is on his legs before another Court and thus, so busy as not to have any time to bestow his attention to this matter. The request, however, has

been turned down by this Court as accommodation on two occasions on the same ground could not have been made by this Court. This is the matter in which the appellant is in jail and now he has filed an application for suspension of sentence and his release on bail till final disposal of the appeal and, as such, this matter is required to be given priority. Priority cannot be given to other matters wherein learned counsel for the complainant thinks that other's interest should be taken care of by him first. We do not appreciate the approach of the learned counsel for the complainant and, according to us, the approach amounts to denying any effective assistance to the prosecution.

3. So far as merits of the present application are concerned, we have given our due consideration to the evidence available on record and has considered this evidence, in the light of submissions made by learned counsel for the applicant. The submissions are three fold. Firstly, it has been submitted that presence of eye witnesses; Vishal (PW1) and Gopal (PW3), is doubtful and they appear to be unnatural witnesses, for the reason that their conduct in the whole incident is unnatural. Secondly, it is submitted that admittedly, independent witnesses were present, but, they were not examined by the prosecution. According to the appellant, these independent witnesses were; Vijay Bhakre, Umesh Bhakre and Komal Bhakre. Thirdly, it is the submission that medical evidence brought on record through Doctor (PW5) is not consistent with the ocular evidence.

4. The learned A.P.P. submitted that the evidence brought on record by the prosecution sufficiently brings home the guilt of the appellant for an offence under Section 302 of the Indian Penal Code.

5. Upon a careful consideration of the evidence of Vishal (PW1) and Gopal (PW3), we are of the opinion that it would be too early for this Court to say that their presence was of doubtful nature, just because they have not acted, in the present case, the way the appellant thinks, they should have. If, these witnesses have not taken the deceased immediately to the hospital and instead went to the police station, such conduct would have to be examined in the light of the entire evidence available on record and, if this is to be done at this stage, it would amount to prejudging the issues involved in this case. Suffice it to state that in the present case, evidence of both the witnesses is of such a nature as would not warrant allowing this application.

6. Once it is seen that prima facie there is no doubt about the credibility of the material witness, they may be even the relative witnesses or the sons of the deceased, non examination of the witnesses alleged to be independent, becomes insignificant. Even otherwise, Komal, Vijay and Umesh could not be said to be independent witnesses, for the reason that, admittedly, they were relatives of Vishal (PW1) and Gopal (PW3), from the maternal side.

7. As regards the medical evidence being inconsistent with the ocular evidence, we would not like to express our view in a firm manner, lest, it would cause prejudice to the case of the appellant and may be also to the prosecution case. We would only say that this evidence appears to be properly taken into consideration by the trial Court.

8. In this view of the matter, we would find that no case has been made out for allowing this application.

The application stands rejected.

Paper book is expedited.

JUDGE

JUDGE