

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

CRIMINAL APPLICATION (APPA) NO.797 OF 2019 IN
CRIMINAL APPEAL (APEAL) NO.606 OF 2019.

(Ajay s/o Bharatlal Shahu, Nagpur Vs. State of Maharashtra)

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

Court's or Judge's orders.

Shri R.M.Daga, Advocate for the applicant/appellant.
Ms.H.N.Jaipurkar, A.P.P. for the respondent.

CORAM : P.N. DESHMUKH &
PUSHPA V. GANEDIWALA, JJ.
JANUARY 10, 2020.

Heard Shri R.M.Daga, learned counsel for
the applicant/appellant and Ms.H.N.Jaipurkar,
learned A.P.P. for the respondent.

This application is filed for suspension of
substantive sentence imposed upon the applicant and
grant of bail by original accused No.2, who came to
be convicted in Sessions Case No.393/2016 by the
learned Sessions Judge, Nagpur by its judgment
dated 12/07/2019, for the offence punishable under
Section 302 read with Section 34 of the Indian Penal
and is sentenced to suffer imprisonment for life and
to pay fine of Rs.10,000/-, in default, to suffer simple
imprisonment for one year.

It appears to be the case of the
prosecution that the incident took place on
29/05/2016, at around 10.00 pm, near the house of

the accused, where, prior to the alleged incident of assault, a quarrel took place between deceased Chandrashekhhar and original accused No.1 Nitesh, the brother of applicant (accused No.2 Ajay), and in the course of same transaction, deceased Chandrashekar came to be assaulted, who sustained severe injuries on his head and chest by knife and was admitted in a hospital in dead condition.

Learned counsel for the applicant has contended that there are two eye-witnesses relied by the prosecution, however, in their evidence, applicant's involvement cannot be established except for his being present on the spot and has thus contended that since, according to the eye-witnesses' account, assault is committed by original accused No.1 Nitesh, application is liable to be allowed by imposing suitable conditions. Learned counsel for the applicant has also established involvement of applicant No.1 Nitesh as an assailant by referring to the evidence of PW/6 Dr.Nitin and has contended that the injuries attributed to original accused No.1 Nitesh are the cause of death of deceased Chandrashekhhar and therefore, contended that application be allowed.

Learned A.P.P. opposed the application contending that presence of original accused No.2 Ajay establishes his involvement in the present case and to substantiate the said contention, apart from

the eye-witnesses' evidence, she has also referred to evidence of PW/10 Vinayak contending that presence of applicant on the spot establishes his involvement in the present crime.

Considering the submissions advanced as aforesaid, it came in the evidence of PW/1 Rajendra that, on the issue of applicant's not attending the chapter proceedings pending before the Competent Authority at the relevant time, deceased Chandrashekhar alongwith PW/3 Chetan visited his house and asked him to remain present in such proceedings when quarrel took place between them wherein original accused No.1 Nitesh, the brother of applicant, also participated and in the course of same transaction, slapped deceased Chandrashekhar due to which, he fell down. According to further evidence of PW/1 Rajendra, thereafter, original accused No.1 Nitesh struck head of deceased Chandrashekhar on road and when PW/3 Chetan attempted to rescue the deceased, he was caught hold by the applicant. It has further come in the evidence of PW/1 Rajendra that accused No.1 Nitesh thereafter went inside the house and arrived having armed with one sharp knife and gave blows on the head of the deceased, due to which he died.

Similar is the evidence of PW/3 Chetan wherein he has deposed that after the quarrel as mentioned above, accused No.1 Nitesh assaulted the

deceased and when he went to rescue deceased Chandrashekhar, he was caught hold by the applicant. The rest of his evidence implicates accused No.1 Nitesh to have sat on the stomach of the deceased and about striking his head on road and thereafter getting knife from his house and committing assault on his chest.

Considering the evidence of eye-witnesses, there is absolutely no evidence establishing involvement of the applicant as an assailant of deceased.

With reference to the submissions advanced by the learned A.P.P., though it is found that the applicant was present on the spot which fact from the evidence of PW/10 Vinayak is also established, that by itself is not sufficient to establish involvement of the applicant in the present crime.

Moreover, from the evidence of PW/6 Dr.Nitin, deceased is opined to have died of head injuries and strangulation. However, it is no one's case that in the incident, the deceased was strangled by any of the accused person.

Considering the nature of evidence against the applicant as aforesaid, application is liable to be allowed as per order below.

The applicant/original accused No.2 Ajay shall be released on bail on his executing P.R. bond in the sum of Rs.50,000/- with one surety in the like

amount.

While on bail, the applicant shall mark his presence with the Police Station, Nandanvan, District Nagpur on the first day of each month, initially for six months, and thereafter quarterly on the first day of each such month pending the appeal.

JUDGE

JUDGE

Sumit