

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

CRIMINAL APPLICATION (BA) NO. 1117 OF 2019

Vishwanath s/o Dajiba Gaikwad .Vs. State of Maharashtra,through PSO,
P.S., Washim (Rural), Dist. Washim.

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

Court's or Judge's orders.

Mr. A.M. Jaltare Advocate for applicant.

Mr. M.J. Khan, A.P.P. for non applicant- State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 03, 2020

Heard Mr. Jaltare, learned counsel for the applicant and Mr. Khan, learned Additional Public Prosecutor for non applicant-State.

2. Present application is filed by accused no.1- Vishwanath Gaikwad who is charged in the charge-sheet that he has committed murder of his father-in-law, Kisan. The first informant is wife of Kisan, her name is Kamal. The date of incident is intervening night of 10.05.2019 and 11.05.2019. First Information Report (FIR), which is lodged on 11.05.2019, shows that Savita, daughter of the deceased and first informant was not pulling well with the present applicant and the present applicant used to insist that she should give divorce to him. As per the FIR, on 10.05.2019 when first informant and deceased were sleeping on a cot in the courtyard of one Rambhau Kamble, she heard noise of her husband. At that time, she noticed that applicant is

running away from the spot and the deceased was having injury on his leg.

3. It is the submission of the learned counsel for the applicant that name of applicant is not immediately disclosed by Kamal to the Police Officer but to one Dnyanoba Khadse a prosecution witness. It is to be noted that mental state of the widow was such that when she noticed that her husband is assaulted by her son-in-law, therefore merely because his name was not disclosed to Dnyanoba Khadse, however the name of the applicant did figure in the FIR. Therefore, submission as sought to be made by learned counsel for the applicant that the entire FIR is a falsehood, is required to be rejected.

4. Further, as per prosecution case, axe is recovered at the instance of the present applicant. Another submission of the learned counsel for the applicant is that the injury was not on the vital part of the body. I am afraid, said argument can be tested at this stage, especially when the cause of death as per the postmortem report is cardio-respiratory failure due to hemorrhagic shock due to injuries sustained. Column no.17 of the postmortem report shows that three injuries were sustained by deceased including one chop injury.

5. When there is a direct evidence that applicant is a person who ran away from the spot and the deceased was

found to be injured immediately at that time coupled with the fact that there was a dispute between applicant and his wife Savita and the applicant is insisting for divorce, in my view, present is not a case wherein the Court should exercise discretion in favour of the applicant.

6. Consequently, the application is rejected.

JUDGE

srwagh