

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.95 OF 2021
IN
CRIMINAL APPEAL NO.35 OF 2021**

Ajay Dhondiram Kokare

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Sameer S. Kadam for the Applicant.

Mrs. M. M. Deshmukh, APP for the Respondent.

**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 10 AUGUST 2021.

P.C.

This is an application for suspension of sentence and grant of bail by the Accused who has been convicted under section 302 read with 34 of the Indian Penal Code.

2. As per the prosecution case Laxman Vithal Mane along with the Accused had gone for lunch after preparing food and carrying utensils at a place "Dabicha Shivar" nearby to the house of the Deceased. Since the deceased did not return, the

mother of the Deceased sent her grand daughter to ascertain why he has not returned. Her grand daughter returned informing that he has been killed.

3. Investigation was carried out. Spot panchanama revealed that utensils taken from the house of the Deceased were found at the spot. The Medical evidence shows injury corresponding the prosecution case of assault by stone. The prosecution has relied upon the deposition of PW-4-Janabai Mane, the mother of the Deceased to establish this fact. PW-5-Shanti Kharat, sister of the Deceased saw the Accused and the Deceased taking lunch and when she moved slightly away she heard a noise and turned to see accused assaulting and Appellant picking up a stone and crushing the face of the Deceased. Hence, conviction was recorded under section 302 read with 34 of the Indian Penal Code.

4. The learned Counsel for the Applicant submitted that the case is only of Last Seen Together and chain to establish the guilt of the Applicant is not established. It was submitted that evidence of PW-5 stated to be an eye witness is not trustworthy since she has not disclosed the incident to the police till one and a half month of the incident. The learned APP opposed the application.

5. The prosecution has brought on record that the Accused and the Deceased had gone together to a specific place with the utensils to have food and at that place the body was found with the utensils. Apart from this position, explanation of PW-5, the eye witness that she did not inform the police for one and a half month that she was scared as her brother-in-law was assaulted by the Accused earlier and only when the police had come to her house she had disclosed the incident is probable. She also explained that she had married against the wishes of her parents and, therefore she was apprehensive. Once that is considered then PW-5's evidence is clear and cogent involving the Applicant. Other circumstances and the injuries corroborate her version.

6. Therefore, considering these factors, *prima facie* no case is made out for enlarging the Applicant on bail. The Application is rejected.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)

RAJESHWARI
SUBODH
KARVE
Digitally signed
by
RAJESHWARI
SUBODH
KARVE
Date:
2021.08.12
15:14:03 +0530