

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

**INTERIM APPLICATION NO.731 OF 2021
IN
CRIMINAL APPEAL NO.205 OF 2021**

Deepak Chhaganrao Jadhav ...Applicant/Accused

V/s.

The State of Maharashtra ...Respondent

Mr. Aniket Vagal for the Applicant-Accused.

Mrs. P. P. Shinde, APP for the Respondent-State.

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

DATE : 26 JULY 2021.

P.C.

. Heard the learned Counsel for the Applicant-Accused and the learned APP.

2. The Applicant-Accused stands convicted under section 302 read with 34 of the Indian Penal Code and is sentenced to suffer imprisonment for life in view of the impugned judgment and order passed by the learned Sessions Judge, Nasik in Sessions Case No.286 of 2015.

3. As per the prosecution story the mother of deceased Vivek lodged a missing complaint with Nasik-Road Police Station on 14 February 2015 that her son was missing since 8.00 p.m. on the previous day i.e. 13 February 2015. Thereafter on 16 February 2015, Devidas the father of deceased Vivek lodged FIR with Nasik-Road Police Station that deceased Vivek was missing since 13 February 2015 and that his son used to tell him about quarrels with the accused including the present Applicant-Accused. Applicant-accused was arrested immediately. After trial, conviction under Section 302 of IPC has been recorded as above.

4. The case of prosecution is of circumstantial evidence. As regards motive is concerned both PW-1-Devidas Khandu Pagare, the father of deceased Vivek and PW-2-Smt Surekha Devidas Pagare, the mother of deceased Vivek deposed that there used to be quarrels between the accused and deceased Vivek 2-3 days before 13 February 2015. However, it is not a direct evidence. It is what the deceased Vivek told them. Secondly, the circumstance sought to be proved by the prosecution against the Appellant-Accused is regards the recovery of knife at the instance of the Appellant. PW-4-Harishchandra Ramchandra Shinde, is the panch witness to the recovery panchanama under Exhibit 34. Though he has deposed as regards the recovery of the knife from the side wall of the house of Nilesh Bhalerao, he has not deposed anything regarding as to on whose statement recovery was made. He had stated that two accused were present in the Police Station

viz., the Appellant-accused No.2- Deepak and accused No.1- Ritesh. He has not stated as to whose memorandum statement which led to the recovery of the knife under Exhibit 34. Third circumstance as invoked is of last seen together. However, PW-5- Kalpesh Rajendra Gangurde and PW-6-Abhijit Devidas Pagare, the brother of deceased have not made any reference to the Appellant-Accused being seen along with deceased Vivek.

6. Considering this *prima facie* case, and that appeal is not likely to come up for hearing for some time, we are of the opinion that the case for suspension of sentence and grant of release of the Appellant-Accused on bail is made out.

i) The application is allowed.

ii) The Applicant-Accused is directed to be released on bail in connection with CR No.I-37 of 2015 registered with Nashik Road Police Station, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)