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

INTERIM APPLICATION NO. 2209 OF 2021
IN
CRIMINAL APPEAL NO. 741 OF 2021

Doli Ledha Ravidas

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. Devidas Jadhav i/by. Mr. D.V. Kendre for applicant.

Mr. S.S. Hulke, APP for State.

...

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

DATE : 1st DECEMBER, 2021.

P.C.:

1. The applicant who is convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 ('the Penal Code'), and sentenced to suffer imprisonment for life and fine of Rs. 1000/- and in default to suffer simple imprisonment for one month, in Sessions Case No. 277/2017 by the impugned judgment and order dated 31/03/2021 passed by the learned Sessions Judge, Thane, has preferred this application for suspension of sentence and to enlarge him on bail till the disposal of the appeal, under Section 389 of the Code of Criminal Procedure, 1973 ('the Code').

2. The gravamen of indictment against the applicant runs as under:-

The applicant and Vasudev (the deceased), who was elder brother of Ranjeet Das, the first informant, were native of Jharkhand. The deceased Vasudev and the accused were residing together as they had cordial relations, at Sonale. The accused had gone to his native place leaving his wife at Sonale. Upon his return from native place, the accused entertained a suspicion that there were illicit relations between the deceased and his wife. A quarrel took place. The deceased started to reside separately. However, the accused continued to have grudge against the deceased.

3. On 13/01/2017 while the informant was waiting for the deceased near the premises of the company where the deceased used to work, he heard shouts of quarrel. The first informant rushed to the spot from where shouts emanated. The deceased was found lying on the ground. Upon inquiry, the deceased informed him that the accused assaulted him by means of knife. The first informant raised alarm. The first informant saw the accused fleeing away from the said spot. Passersby gathered. The persons chased the accused. The accused was apprehended. The deceased was declared dead before he could be admitted in the hospital.

4. The learned Sessions Judge, was persuaded to return the finding of guilt against the accused on the basis of the testimony of the first informant Ranjeet Das (PW4) and Shamshad Shaikh (PW2), who had seen the quarrel, the recovery of the blood stained knife pursuant to the discovery made by the accused and the number of injuries found on the person of accused, which were sought to be explained away by the accused by offering an explanation, which was, in turn, found to be not acceptable.

5. The learned counsel for the applicant would urge that the learned Sessions Judge has committed an error in basing the finding of guilt on the strength of the oral dying declaration allegedly made by the deceased before Ranjeet Das (PW4). Emphasis was laid on the fact that Shamshad Shaikh (PW2), another eye witness to the occurrence, did not depose that the deceased had made such declaration before him as well. In the circumstances, on the basis of such oral dying declaration, it could not have been recorded that the accused was the author of the assault.

6. We have perused the material on record including deposition of witnesses and the impugned judgment. The fact that the deceased had known the accused from before is rather

incontestable. Nor it can be disputed that Ranjeet Das (PW4), the brother of deceased, had known the accused. In addition to the dying declaration, allegedly made by the deceased before Ranjeet Das (PW4), the later has asserted in categorical terms that he had seen the accused fleeing away from the spot immediately after the occurrence. This claim of Ranjeet Das (PW4) could not be impeached during the course of cross examination. In addition to this, FIR came to be lodged within hours of the occurrence. The accused came to be apprehended almost instantaneously. Upon medical examination, as many as 10 injuries were found on the person of the accused. Two of the injuries namely, injury no. 8 and 9, were the incised wounds over the right index finger and middle finger. Those injuries demonstrate that there was a scuffle and injuries were sustained by the accused also, while unleashing blows by means of sharp weapon. To add to this, there is recovery of weapon of offence pursuant to the discovery made by the accused. Blood stains were also found on the said weapon.

7. In the totality of the circumstances, there is both, direct and circumstantial evidence to establish the authorship of the crime. Thus, we are not persuaded to exercise the discretion in favour of the applicant and suspend the sentence.

8. Hence, the application stands rejected.

9. However, having regard to the nature of occurrence, number of witnesses and the situation in life of the applicant, in our view, it may be expedient to expedite the hearing of the appeal. Accordingly, the hearing of the appeal is expedited.

10. Registry shall ensure that the paper books are received within the period of four months from today.

11. Subject to above directions, the application stands disposed of.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)