

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.113 OF 2022

Akash Santosh Gundewar

Vs.

The State of Maharashtra, through its Police Station Officer, Police Station, Wani,
Dist Yavatmal and another

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

Court's or Judge's orders

Mr. S. M. Lodha, Advocate for appellant.

Mr. A. R. Chutke, APP for respondent no.1/State.

Mrs. Deepa I. Charlewar appointed Advocate for respondent no.2.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/06/2022

1. Heard Mr. Lodha, learned counsel for the appellant.

2. **Admit.**

3. Call R & P

4. Mr. Chutke, learned APP waives service of notice for the respondent no.1.

5. Issue notice on merits to the respondent no.2, returnable on 11.7.2022.

6. Mr. Chutke, learned APP shall ensure that the notice is served upon respondent no.2 by that time.

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7. Mr. Lodha, learned counsel for the applicant submits that the birth certificate of the victim (Article B) has not been proved, and the same ought to have been exhibited during the course of evidence of PW 10 Sadhana. There is another ground raised that the original record with the Nagar Parishad was not carried by the PW 10 while she tendered her evidence and therefore, there was no material on record, except for the oral evidence to indicate the date of birth of the victim.

8. It is further submitted by relying upon the nature of injuries claimed to have been suffered by the victim, which have been detailed in para 16 of the impugned judgment and the report of Medical Officer at Exh.40 and the opinion of the Medical Officer, it could be caused by any hard and blunt object and the age of injury was more than 24 hours as on 11.9.2015 the date of examination, in comparison to the incident which is alleged to have occurred on 10.9.2015 at 6.30 p.m. that there is every possibility that the applicant has not been involved in the said incident. It is also submitted that during the trial, the appellant was on bail, except for period of 41 days as stated in operative para 4 of the impugned judgment.

9. Though Mr. Chutke, learned APP assisted by Mrs. Charlewar, learned appointed counsel for respondent 2 opposes the application and contends that the judgment of the learned Sessions Court, succinctly marked the entire evidence and documents on record and considering the nature of the offence, the application be rejected.

10. However, considering that the applicant was on bail during the course of the trial as indicated above and the nature of medical evidence and the dispute about the age of the victim, and considering the fact that the certificate at Article B has not been proved, a case for suspension of sentence is made out. Hence, the following order.

ORDER

(a) The sentence imposed by the learned Sessions Court is hereby by suspended.

(b) The applicant be released on bail on his executing P.R. bond in the sum of Rs.50,000/- with two solvent sureties with like amount.

JUDGE

Sarkate