

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

CRIMINAL APPLICATION (APPA) NO.424/2021 IN
CRIMINAL APPEAL NO.309 OF 2021
Jaydeo s/o Niranjana Sardar

..VS..

State of Maharashtra, thr.PSO PS Etapalli, District Gadchiroli

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

Court's or Judge's Order

.....
Shri A.C.Jaltare, Counsel for the Applicant.
Mrs.M.A.Barabde, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE &
AMIT B.BORKAR, JJ.

DATED : APRIL 26, 2022

1. This is an application for suspension of substantive jail sentence and for grant of bail.
2. Heard learned counsel Shri A.C.Jaltare for the applicant and learned Additional Public Prosecutor Mrs.M.A.Barabde for the State.
3. The applicant was sole accused in Sessions Case No.69/2020. He was charged for committing an offence punishable under Section 302 of the Indian Penal Code. As per the prosecution, he was responsible for homicidal death of one Prachi whose body was found in a well. Learned Additional Sessions Judge, Gadchiroli, vide judgment and order of conviction dated 7.4.2021, convicted the applicant for offence punishable under Section 302 of the Indian Penal Code and directed that he shall suffer imprisonment for life and shall pay fine Rs.5000/-.
4. On 30.7.2021, the appeal was admitted.
5. Office has summoned record and proceedings of Sessions Case No.69/2020 and those are placed before us at the time of consideration of this application.
6. First Information Report is lodged by Diwakar

Urkuda Barsagade (PW1), the father of the deceased. From his oral report (Exhibit-10), it is clear that he is not eyewitness and he lodged the report in view of information supplied to him by Chhakuli Sudhakar Chandekar (PW2) and Pawan Dayal Julme (PW4) that Jaydeo, the present applicant, pushed Prachi inside a well.

7. The incident in question occurred on 11.6.2020.

8. The prosecution examined Chhakuli (PW2) and Pawan (PW4) as eyewitnesses. Their evidence shows that Prachi, the deceased, and Jaydeo, the present applicant, were friends and on the day of the incident they went near a forest and, thereafter, went inside the forest and after some time they came back. It is also their evidence that at that time the deceased was not in a good mood and, therefore, when enquiries were made by these two prosecution witnesses, it was disclosed to them that the applicant slapped the deceased on her cheek. It is their further evidence that, thereafter, the applicant dragged the deceased about 30 feet from a hut where the well was situated and, thereafter, he pushed the deceased inside the well.

9. Thus, it is crystal clear that according to versions of these two eyewitnesses, the applicant pushed the deceased inside a wall and she was dragged about 30 feet and during that time the applicant was assaulting the deceased. However, when the dead body was sent for postmortem and when autopsy surgeon (PW5) conducted postmortem and proved postmortem report (Exhibit-22), he found that there was no surface injury on the dead body. He also admitted in his cross-examination that if a woman is dragged from a rough surface, there is possibility of injuries on her ankles and toes, however in column No.9 of the postmortem report he found no such injuries. This particular aspect assumes importance in view of admission given by first

informant Diwakar (PW1) that Chhakuli (PW2) and Pawan (PW4) are his close relatives. Further, the incident in question occurred in their presence, however neither they did report to the police immediately nor did they disclose anything to Diwakar.

10. In this view of the matter, we are *prima facie* of view that at this stage we are not ready to believe versions of eyewitnesses Chhakuli (PW2) and Pawan (PW4).

11. Presently, the applicant is aged about 25 years and is not having any criminal past record at his discredit.

12. This Court is presently taking appeals of year 2019. Thus, there is no chance the appeal of the applicant will be taken up for its final hearing in near future. Hence, we pass following order:

ORDER

(1) The criminal application is allowed.

(2) Judgment and order of conviction dated 7.4.2021 passed by learned Additional Sessions Judge, Gadchiroli in Sessions Case No.69/2020 convicting the applicant for offence punishable under Section 302 of the Indian Penal Code shall stand suspended during pendency of the present appeal.

(3) Applicant Jaydeo s/o Niranjan Sardar be released on bail on he executing a P.R.Bond in the sum of Rs.5000/- with one solvent surety of the like amount.

(4) The applicant is directed to attend the police station once in six weeks and to mark his presence there.

(5) Learned Judge before whom the bail bond will be executed shall ensure that entire fine amount is deposited by the

applicant.

(6) The applicant shall remain personally present before the Court at the time of final hearing of the present appeal.

With this, the criminal application is disposed of.

JUDGE

JUDGE

!! BRW !!

BHUSHAN
RANA
WANKHEDE

Digitally
signed by
BHUSHAN
RANA
WANKHEDE
Date:
2022.04.27
17:45:55
+0530