

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

CRIMINAL APPLICATION (APPA) NO.798 OF 2022

IN

CRIMINAL APPEAL NO. 29 OF 2020

Sonu @ Raju s/o. Punwasi Shahu Vs. State of Maharashtra

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

Court's or Judge's orders

Shri D. V. Mahajan, Advocate for the appellant/applicant.
Ms Mayuri Deshmukh, A.P.P.for the respondent/non-applicant/State.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI,JJ.
DATED : 11/10/2022.

. This is an application seeking for suspension of execution of sentence passed by the Trial Court in Sessions Case No.50/2018 whereby the Trial Court has convicted the appellant/accused for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment along with fine.

2. The learned Counsel appearing for the appellant while seeking suspension has urged that the Trial Court has erred in recording findings of guilt despite sufficient evidence as required under criminal law. It is submitted that the case of the prosecution is totally based on the circumstantial evidence. The prosecution has not led sufficient evidence to complete the chain so as to exclude the hypothesis regarding innocence of the accused.

3. I have taken through the evidence of prosecution witnesses i.e. P.W.1 to P.W.15 to contend that there is no incriminating material against the accused. It is argued

that though the injury was found on the person of the accused however it has been explained in the statement under Section 313 of the Code of Criminal Procedure by stating that by way of a fall, the injury has occurred. Contextually, our attention has been invited to the evidence of Medical Officer, who admits that the said injury is possible by fall. Besides that it is submitted that though the clothes having blood stains were seized, however, Chemical Analysis Report is inconclusive as regards to blood group. Moreover, it is pointed out that though the incident took place around 1.30 p.m. in the open space, the First Information Report has been registered belatedly at 10.24 p.m. as well as there are no eye witnesses to the occurrence.

4. The learned A.P.P. resisted this application by contending that there are total 48 injuries on the person of the deceased showing the deadly attack. The learned Prosecutor has pointed out two circumstances on the basis of which the Trial Court has convicted the accused. Firstly, there was injury on the finger of the accused and human blood was found on his clothes.

5. We have carefully examined the entire evidence along with the documents tendered by the prosecution side. *Prima facie*, it appears that the conviction is solely based on the above said two circumstances i.e. injury sustained by the accused and finding of human blood on his clothes. Besides that motive has been pressed into service. However motive is one of the circumstance to be

appreciated along with other materials. Since it is a case totally based on the circumstantial evidence, it is settled canon of law that the chain of evidence shall be complete in all respect excluding the possibility of innocence. The appeal will take its own time for disposal. Since the conviction is based on two circumstances we find that the case is made out to suspend the execution of sentence.

6. In view of that the application is allowed. Execution of substantive sentence stands suspended till the final disposal of the appeal.

7. In the meanwhile, the appellant is released on bail on his furnishing P. R. Bond of Rs. 25,000/- (Rs. Twenty Five Thousand Only) with one or two sureties in the like amount.

8. The appellant shall attend the concerned Police Station on first Sunday of each quarter commencing from this month till conclusion of the trial.

9. The Trial Court shall issue release warrant after ensuring the payment of entire final amount.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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