

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

**INTERIM APPLICATION NO. 3439 OF 2022
IN
CRIMINAL APPEAL NO. 1186 OF 2022**

Suresh Dharma Dhinda ... Applicant
Versus
State of Maharashtra ... Respondent

Ms. Jai Kanade a/w Rahul Shirgavkar for the Applicant.
Mr. V. B. Konde-Deshmukh, APP for the Respondent-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 15th FEBRUARY, 2023

P.C. :-

. The applicant came to be convicted for an offence punishable under Section 302 and is sentenced for life imprisonment in Sessions Case No. 200 of 2018 decided by the Sessions Judge, Thane.

2. The case of the prosecution is deceased Dharma, was married to PW1-Parvati and was blessed with two sons namely Suresh i.e. applicant/accused and Dasharath-PW4. The applicant/accused was married to Aruna and was blessed with a son Sachin-PW2. The applicant and deceased Dharma i.e. the father of the applicant were habitual drinker. Since, the applicant has not taken any occupation for his survival, deceased Dharma always used to criticize him, resulting into both were quarrelsome in terms. On 17th December, 2017, after a

This order is corrected as per speaking to the minutes order dated 21st February, 2023.

session of consumption of alcohol, out of aforesaid differences, applicant allegedly attack deceased Dharma by an Axe, causing multiple injuries resulting into the death on 18th December, 2017.

3. The prosecution case is mostly based on testimony of alleged eye-witness PW1-Parvati PW2-Sachin, son of applicant/accused and PW4 son of deceased Dharma i.e. brother of applicant.

4. It is brought on record by the defence that there are two other persons by name Suresh in the village and out of them one Suresh is in inimical terms with the applicant, as he has encroached on the land of the deceased.

5. In the aforesaid background, it was expected of the prosecution to establish the identity of the applicant/accused who has allegedly committed the offence in question. From the testimony of the eye-witnesses, it can be noticed that the said witnesses had not identified the accused.

6. Apart from the above, PW1, PW2 and PW3 although had claimed to be eye-witnesses to the incident, however, the perusal of their testimony does not support the case of the prosecution in view of doubt being **noticed** as to **witnesses** the having actually witnessed the incident. The cumulative effect after reading of the testimony of **PW1, PW2 and PW4** is all three of them have responded to the call of deceased Dharma, after he was attacked and PW1 claim to have stated that she is suspecting the involvement of the applicant in the offence.

7. The only incriminating material which can be considered against the applicant is that of a blood stained axe.

8. In the aforesaid background, at this stage, we are convinced that the prosecution has not *prima-facie* brought in the guilt of the accused beyond reasonable doubt. That being so, a case for grant of relief is made out. As such, **execution** of sentence is suspended.

9. The applicant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

10. The applicant, till the final hearing of the appeal, shall remain outside the jurisdiction of the Police Station.

11. Application stands disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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