

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

CRIMINAL APPLICATION [APPA] NO. 132/2023
IN CRIMINAL APPEAL NO. 69/2023.

Vicky Baburao Dharale

-VERSUS-

State of Maharashtra.

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

Court's or Judge's Orders

Shri D.V. Chavhan, Advocate for the Applicant/Appellant.
Shri A.M. Kadukar, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI AND

BHARAT P. DESHPANDE, JJ.

DATE : APRIL 17, 2023.

Heard.

2. This is an application seeking suspension of sentence of execution of sentence passed in Session Trial No.261/2020 by the District Nagpur-12, Nagpur on 03.01.2023, whereby the applicant was sentenced to suffer imprisonment for life along with fine, for the offence punishable under Section 302 of the Indian Penal Code.

3. The prosecution has examined in all 10 witnesses to establish the guilt. Though P.W.2 – informant was the eye witness to the occurrence, however, he has not supported the prosecution case. It appears that the entire thrust of the prosecution is on the evidence of last seen theory, through P.W.3 – Satish Tajne. It is the evidence of said witness that once he proceeded with the accused and deceased upto the field of one Hemraj Dolas. He left both of them at around 11.15 a.m. and on the following day he realized that Raju is dead. Rather he says that the applicant Vicky has killed Raju, however, it is a hear-say information.

4. We have examined the evidence of all the witnesses, as well as reason assigned by the trial Court while convicting the accused. Undoubtedly the conviction is solely based on the last seen theory. The learned Counsel for the applicant would submit that when the conviction is based on single circumstance of last seen, then it should stand fully to the credit. In this regard, he took us through the evidence of P.W.3 – Satish,

who is unable to say about the date and day of the occurrence, as to when he went with both of them till the field of Mr. Dolas. It has not come on record as to who came across the dead body for the first time in the Well. There is no other evidence from any corner pointing towards the guilt of the accused.

5. The learned trial Court has expressed that the prosecution has not established the motive for commission of crime. Needless to say that when the case is based on circumstantial evidence, motive assumes significance.

6. The aspect of proximity carries much importance when the conviction is based solely on last seen theory. Prima facie it has not been explained as to exactly on which date the witness P.W.3, has seen both of them and when the dead body was found. Besides, the said evidence there is no material on record.

7. The appeal will take its own time for disposal in accordance with law. If the applicant/appellant succeeds in the appeal, then irreversible

possible would occur. Having regard to the nature of evidence and the material available on the basis of which conviction has been recorded, we deem it appropriate to suspend the sentence. In view of this, following order is passed.

ORDER

- i] Criminal Application is allowed and disposed of.
- Ii] The execution of the substantive sentence passed in Session Trial No.261/2020 by the District Nagpur-12, Nagpur on 03.01.2023,, is hereby suspended till the final disposal of the appeal.
- Iii] The applicant/appellant – Vicky Baburao Dharale be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- Iv] The trial Court shall issue release warrant after ascertaining that the entire fine amount has been deposited.

JUDGE

JUDGE