

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

CRIMINAL APPLICATION (APPA) NO.953 OF 2022

IN

CRIMINAL APPEAL NO.733 OF 2022

[Roshan S/o Babaji Deoke ..V/s.. State of Maharashtra and Anr.]

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

Court's or Judge's order

Shri R. M. Patwardhan, Advocate for the Applicant/Appellant.
Shri S. S. Doifode, Addl. P. P. for the Non-Applicant No.1/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 7th FEBRUARY, 2023.

. Heard.

2. This is an application seeking suspension of execution of sentence passed by the Trial Court in Atrocity Special Case No.58 of 2019, whereby the Applicant (Appellant) has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 and under Section 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused was sentenced to undergo imprisonment for life alongwith fine under different counts.

3. The prosecution case is totally based on circumstantial evidence. It is the prosecution case that the deceased Urmila's husband died, therefore she remarried. The second marriage also did not work, therefore she ran away with the Applicant. In village meeting, deceased Urmila has expressed and then started to reside in the company of Applicant. In such a situation, dead body of Urmila was found buried and therefore the offence.

4. The prosecution has examined in all 25 witnesses to establish the guilt. The prosecution mainly relies on the evidence of last seen together, finding of articles of deceased at the instance of Applicant, panchanama under which the accused has shown the place, where he has initially hanged deceased Urmila after strangulation and then buried the dead body.

5. The defence has challenged the very identity of dead body, it has been submitted that the evidence of last seen has been fabricated and memorandum panchanama does not relate to the incident. Moreover, it is submitted that the prosecution has not established that both were residing at village Nand.

6. We have gone through the evidence of PW-8 and PW-9 pertaining to last seen theory. According to these witnesses, on 18.05.2019, they have seen deceased Urmila in the company of accused in the midnight. At the instance of accused, several articles have been seized namely pair of chappal, burnt pieces of clothes, bangles and hair pins, which were sent for chemical analyzation. The Medical Officer has opined that death occurred prior to seven days, which has some correlations with the earlier incident. The dead body was found buried in the field of father of Applicant. From all these circumstances and the reasons assigned by the Trial Court while convicting the Applicant, we found that this is not a fit case to suspend the execution of sentence. All these points which have been canvassed is a matter of final hearing of appeal. Since we are not suspending the execution of sentence, we deem it desirable for not to dwell upon and deal all submissions on merits, which may cause prejudice.

7. In view of above, criminal application stands rejected.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE