



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

Criminal Application [APPA] No.833 of 2024

in

Criminal Appeal No.474 of 2024

Prakash Tulshiram Meshram

vs.

The State of Maharashtra, through Police Station Kanhan, Tah. Parshoni, Dist. Nagpur

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

Court's or Judge's Orders

Mr. S.S. Das, Advocate for the Applicant.

Ms. M.H. Deshmukh, A.P.P. for the Non-Applciant/State.

CORAM: SMT. M.S. JAWALKAR AND M.W. CHANDWANI, JJ.

DATE : 22nd NOVEMBER, 2024.

By the present application, the applicant-appellant seeks suspension of sentence pending the appeal.

02. By the impugned order and judgment, the applicant has been convicted for the offence punishable under Section 302 of the Indian Penal Code thereby sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.25,000/-. Apart from that, the applicant has also been convicted and sentenced to suffer three years rigorous imprisonment for the offence punishable under Section 452 of the Indian Penal Code.

03. The applicant, the employer of the brother of the deceased, on 11/04/2017 at about 2:30 to 2:45 p.m., entered in the house of the complainant, picked up quarrel with sister of the complainant on the count of her refuse to marry him and also stabbed on her stomach by knife. She succumbed to the injury. The trial Court relied on the version of complainant-Shailesh Bhoyar (PW-1) as well as mother-Shobha Bhoyar (PW-2) and father-Prakash Bhoyar (PW-3) of the deceased and neighbour-Shrikant Jagne (PW-6). PW-2 and PW-3 are

the eye-witnesses to the incident, whereas PW-1 claimed that dying declaration was made by the deceased to him when he reached the home, where she was assaulted by the applicant with knife.

04. The learned Counsel for the applicant submitted that the evidence of the PW-1 over dying declaration has not been supported by PW-2, PW-3 and PW-6. They did not whisper about the statement made by the deceased in the complaint. Therefore, it is highly doubtful, whether the dying declaration is made by the deceased to the complainant (PW-1). Taking his argument further he submitted that since there is inconsistency in the evidence of the witnesses i.e. PW-2 and PW-3, their version cannot be believed.

05. Perusal of the impugned judgment as well as the depositions reveals that PW-2 and PW-3 as well as PW-6 do not whisper about dying declaration made to the complainant, but the facts remains that PW-2, the mother of the deceased is an eye witness. She was present at the time of the evidence. She has given the details of the incident, which occurred at 2:30 p.m. The trial Court has believed on her statement apart from the statements of other witnesses. *Prima facie*, we do not find any glaring mistake in the impugned judgment on relying on the witnesses.

06. Considering the evidence as well as the findings recorded by the learned trial Court, we find that no case is made out for suspension of substantive sentence. The reappraisal of the evidence may be considered at the time of final hearing. In view of above, the application deserves to be dismissed. Accordingly, it is dismissed. Preparation of paper-book is expedited.

(M.W. Chandwani, J.)

(Smt. M.S. Jawalkar, J.)