



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

CRIMINAL APPLICATION (APPA) NO.624/2024
IN
CRIMINAL APPEAL NO.613/2022

Maroti s/o Bhaurao Bhure

Vs.

State of Maharashtra, thr. P.S.O., P.S. Ramtek, Dist. Nagpur

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

Court's or Judge's orders

Shri A.K. Bhangde, Advocate a/w Shri N.K. Bhangde, Advocate for appellant
Shri A.M. Ghogre, APP for respondent/State

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

DATE : 12/12/2024

1. Heard.

2. By the judgment of conviction dated 08.07.2022, the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code in Sessions Case No.434/2015 passed by the learned Additional Sessions Judge, Nagpur and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5000/-. The appellant is also convicted for the offence punishable under Section 201 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.5000/-. Pending the appeal, the present application for suspension of sentence came to be filed.

3. Shri. Bhangde, learned Counsel appearing for the appellant would submit that there is no proximity in the last seen by PW-1 Ravindra Ramteke that the deceased was in the company of the accused rather thereafter, on next day, this witness has seen the accused in the market. PW-5 Daulat Sahare has deposed the incidence of last seen dated 22.07.2015. The dead body of deceased came to be recovered on 29.07.2015. Therefore, the last seen theory will not be applicable to the present case. The weapon is recovered almost after five days of alleged incident. According to him, there is fair chances to the appellant to succeed in the appeal.

4. *Per contra*, the learned APP for the State objected the application on the ground that there are two witnesses who have seen the deceased in the company of the accused and, thereafter, the deceased was not found dead. There is recovery of axe at the instance of appellant and human blood was found on the axe, which has been used by the appellant in commission of crime. He submitted that there is no merit in the appeal, therefore, sentence may not be suspended.

5. Having heard the learned Counsel for the respective parties and having gone through the impugned judgment and depositions, it is transpired to us that the applicant had taken hand loan from the deceased of Rs.1500/-. He was avoiding to pay the money. On 23.07.2015, accused took

the deceased from his house and thereafter murdered him by assaulting him with axe and, thereafter, throw the dead body in the bushes near Kejbaraja forest. There is no direct evidence in this case. The learned trial Court relied on the circumstances of last seen, recovery of weapon and clothes of the accused at his instance and motive, convicted the applicant for aforesaid offences.

6. Perusal of version of PW-1 itself goes to show that the applicant has paid amount of Rs.1500/- to the deceased on 27.07.2015. From the statement of PW-1, has stated that he saw the deceased with the company of accused on 23.07.2015 at pan shop of Subhash Puri along with one Raju Nakade and other two friends. Thus, the deceased was not only seen with the company of the applicant but there were other three persons. That apart, the body of deceased was found on 29/07/2015.

7. Considering these aspects, an arguable case is made out to be considered at the time of final hearing. The applicant was on bail during trial. In case, the applicant succeeds in appeal, the position is irreversible. Therefore, we are inclined to suspend the sentence. Hence this order:

ORDER

- i) The application is allowed.
- ii) Pending the appeal, the substantive sentence passed

by the learned Sessions Judge in Sessions Case No.434/2015 shall remain suspended.

iii) In the meanwhile, the applicant shall be released on bail before the Sessions Court, on furnishing PR Bond of Rs.30,000/- with one solvent surety in the like amount.

Accordingly, the application is disposed of.

(M.W. CHANDWANI, J.)

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare