



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

CRIMINAL APPLICATION (APPA) NO. 616 OF 2024
IN
CRIMINAL APPEAL NO. 345 OF 2024

Vitthal s/o Kisan Ingle

Vs.

State of Maharashtra, Thru. PSO, Nandura, Dist. Buldhana and anr.

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

Court's or Judge's Orders.

Mr. Mahesh Rai, Advocate for applicant.
Mr. Ganesh Umale, APP for non-applicant No.1/State.
Ms. Radha M. Mishra, Advocate for non-applicant No.2.

CORAM : ANIL S. KILOR AND
PRAVIN S. PATIL, JJ.

DATE : 03.04.2025.

This application is filed under Section 389 of the Code of Criminal Procedure for suspension of sentence.

2. This application is filed along with the Criminal Appeal No.345/2024, wherein a challenge is raised to the legality and correctness of the judgment and order dated 02.05.2024 passed by the learned Additional Sessions Judge, Malkapur, District : Buldhana, in Sessions Case No.29/2012, convicting the applicant for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and

fine of Rs.3,000/- in default of payment of fine to suffer simple imprisonment for three months.

3. Having gone through the impugned judgment and order, it is evident that total 14 witnesses were examined. The witness No.1 and witness No.14 turned hostile. The learned trial Court, mainly relied upon the evidence of PW-6, who is the widow of the deceased and who narrated the incident. As per the evidence of PW-6, she was present at the time on the spot of the incident. However, PW-2, who is an eyewitness to the incident, categorically stated in his cross-examination that he did not find PW-6 at the spot when the incident took place. He further states that she was at her parents house at the time of incident.

4. Furthermore, the FIR came to be registered on the basis of dying declaration which has been discarded by the learned trial Court on the ground that it was not recorded by taking proper precaution. Further, it was discarded on the ground that the person recording Dying Declaration failed to depose exact word stated by the person, whose Dying Declaration is recorded. For this purpose, the learned trial Court relied upon the judgment in the case of *Jivan Tulshiam Dhavali Vs. The State of Maharashtra*, reported in **2008 All.M.R. Cri. 2018**.

5. In the circumstances, we are of the opinion that, the application needs to be allowed.

6. Accordingly, we pass the following order:

- i) The Criminal Application is allowed.
- ii) The substantive sentence imposed on the applicant vide judgment and order dated 02/05/2024 passed by Additional Sessions Judge, Malkapur in Sessions Case No.29/2012 is hereby suspended, till decision of this appeal.
- iii) The applicant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs.Twenty Five Thousand Only) with one solvent surety in the like amount. The appellant shall attend Police Station, Malkapur once in a fortnight.
- iv) Bail before the trial Court.

The Criminal Application stands **disposed of** accordingly.

(Pravin S. Patil, J.)

(Anil S. Kilor, J.)