



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

CRIMINAL APPEAL NO.520 OF 2025

Sandeep Sanjay Tandekar, R/o Minsi Tah. Pauni, Dist. Bhandara
vs.

The State of Maharashtra, Thr. Police Station Officer, Police Station Adyal, Bhandara

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

Court's or Judge's orders

Shri L. B. Thawkar, Advocate for appellant.

Shri I. G. Damle, Addl. Public Prosecutor for respondent/State.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.

DATED : 10th November, 2025

Criminal Application (APPA) No.884/2025

By the present application, the appellant is seeking suspension of sentence. He has been convicted for the offence punishable under Section 302 of I.P.C. in Sessions Trial No.53/2021.

2. Having heard both sides, and having gone through the evidence, we find that evidence of PW-1 and PW-5 is something that would make the appellant not entitled for suspension of sentence.

3. PW-1 has seen appellant committing offence which occurred on 20/12/2019 at about 7 pm. The evidence indicates that appellant has committed the offence on the date when he was released from jail in connection with the previous crime. He was in relationship with one Ritu who got married to Shashikant when the appellant was in jail. After having been

released from jail, appellant and Ritu were in village of which PW-1 was Up-Sarpanch. PW-1 saw from the window of his house, the appellant bringing Ritu at the square by holding her hand. The appellant abused Ritu for being unfaithful to him. At that time PW-1 called the appellant but he assaulted Ritu on her head by means of stick. She fell unconscious. PW-1 and other persons reached at the spot. The appellant ran away taking advantage of darkness. At that time Ritu's husband Shanshikant and brother-in-law came there and took Ritu to the hospital. She died later on.

4. Counsel for the appellant has invited our attention to the evidence of PW-5 to argue that PW-1 has not seen the incident. PW-5 came to spot just after the incident. He saw Ritu lying on ground in a pool of blood. Appellant was standing there with stick in his hand. He was shouting that Ritu was unfaithful to him. His mother and brother came there. The brother slapped him twice. Thereafter appellant ran away. Ritu was taken to hospital by her husband and other relatives. In cross-examination, PW-5 admitted that when he saw Ritu lying on the ground, her husband and relatives were not present. He further admitted that PW-1 was also not present at that time. This admission by PW-5, according to appellant's counsel is a proof that PW-1 was not present at the spot.

5. We do not find substance in the argument inasmuch as if the evidence of PW-1 is appreciated, he states that he saw incidence from his house. He has also seen Ritu's husband and brother-in-law coming at the spot. It would mean that when Ritu's husband and brother-in-law came at the spot, PW-1 was in his house. Keeping this fact in mind, if PW-5's evidence is looked into, what he has admitted is that when he saw Ritu lying on the ground, her husband and relatives were not present. Thus PW-5 has seen Ritu lying on the ground even prior to her husband and brother-in-law coming at the spot whereas PW-1 has come to the spot after Ritu's husband and brother in law came to the spot. In that sense it is quiet natural that PW-1 would not be present at the spot when PW-5 had reached at the spot. Such an evidence cannot be taken aid of to jump to the conclusion that PW-1 was not present at the spot. That being so, there is absolutely no substance in the contention of appellant that PW-1 had not seen the incident. We have gone through his cross-examination to find that he has withstood the same like a rock and therefore his testimony is trustworthy.

6. Another argument is that PW-1's residence is at about 70 to 80 meters away and that incidence has occurred in dark, therefore PW-1 has not seen the crime. The argument appears to us to be presumptive in nature in the sense, the appellant's

counsel presumed that PW-1 could not have seen the incident. He submits that PW-1 himself has stated that appellant ran away taking advantage of darkness. However, the term “darkness” is used in context with his running away in the darkness which cannot be co-related with status of spot to argue that PW-1 has not seen the crime. Infact the defence has not even put up a case that it was dark at the relevant time. What is put up is that in the night nothing was visible from PW-1’s house. This suggestion has been denied by PW-1. Further he has stated that the distance between his house and spot is 30 to 50 meters. Thus the argument that the spot was not visible is presumptive and is without any substance.

7. Learned Additional Public Prosecutor has relied upon the judgment of the Supreme Court in the case of *Omprakash Sahni vs. Jai Shankar Chaudhary and anr. (2023) 6 SCC 123* which lays down criteria while suspending sentence. It was held thus :

“ 33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of

the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances to acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of section 389 CrPc and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

8. Thus, the Court is under an obligation to see whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which ultimately the convict stands for a fair chance of acquittal. If the answer is in the affirmative, the sentence should be suspended.

9. In the present case, for the reasons stated above, we do not find that there are fair chances of acquittal, rather the evidence indicates otherwise.

10. That being so, there is no merit in the application. The same is accordingly is rejected.

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11. Process the appeal for hearing in accordance with Rules.

(Raj D. Wakode, J.)

(Anil L. Pansare, J.)