

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION No.119 OF 2013.

IN

CRIMINAL APPEAL No.327 OF 2012.

Hari Bhaktabahadur Thapa

..Applicant.

Vs

The State of Maharashtra

..Respondent.

Mr Aditya Bapat, Advocate, for the Applicant.(Legal Aid Counsel).

Mr H.J.Dedhia, Additional Public Prosecutor for the State.

**CORAM :- P.V. HARDAS &
A.R. JOSHI, JJ.**

DATED:- 26th MARCH, 2013.

P. C. :-

(1) By this application, the accused seeks suspension of the substantive sentence and his enlargement on bail pending the decision of the appeal. The applicant stands convicted for an offence under section 302 of the IPC for the allegation that the applicant had committed murder of deceased Rajesh in the wee hours of 4th April, 2008. The prosecution relied upon the testimonies of the three eye-witnesses, namely, PW-1 Nirmala, PW-2 Jivan and PW-6 Devidas. The applicant accused is alleged

to have assaulted the deceased causing head injury as well as fracture of the ribs. The other evidence against the applicant comprises of discovery of an iron rod under Section 27 of the Indian Evidence Act. The said iron rod was found to be stained with the blood group-B which was determined to be the blood group of deceased. The clothes on seizure were found stained with human blood though the grouping could not be done.

(2) We have heard the learned counsel for the applicant, with whom assistance we have perused the findings recorded by the trial Court. The submission of the learned counsel for the applicant is that the applicant can at the most be convicted for an offence under section 304 (Part II) of the IPC as the applicant can be attributed with the knowledge regarding causing death of deceased Rajesh in the event of infliction of the injuries by an iron rod. According to us, at this stage, it is difficult to come to a conclusion regarding the offence which the applicant is alleged to have committed. Suffice it to say that the trial Court has convicted the applicant for an offence punishable under Section 302 of the IPC. We, thus, find that there is sufficient material against the applicant for justifying his conviction for an offence punishable under Section 302 of the IPC. Additionally, we find that the applicant was not on bail during the trial.

(3) Resultantly, therefore, we do not find any merit in the present application and application is dismissed. However, hearing of the appeal is expedited.

(A.R. JOSHI, J)

(P.V.HARDAS, J)

Ladda R.S.(P.A.)