

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1024 OF 2022
IN
CRIMINAL APPEAL NO.216 OF 2022

Jayram Tukaram Nimbalkar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Satej S. Jadhav, Advocate for the applicant.
Mr. A. M. Phule, APP for the respondent - State.

...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : JANUARY 13, 2023.

PRONOUNCED ON : JANUARY 24, 2023.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed for suspension of sentence. The appeal filed by the applicant/appellant has been admitted by this Court. In the appeal he is challenging his conviction in Special Case No.43 of 2020 by learned Special Judge, Ambajogai, who has convicted him along with other co-accused persons on 02.02.2022 for various offences.

2. Heard learned Advocate Mr. Satej S. Jadhav for the applicant and learned APP Mr. A. M. Phule for the respondent - State.

3. With the able assistance of learned Advocate for the applicant and learned APP, we have gone through the evidence that has been adduced in the matter before the Trial Judge. It is the prosecution story that one Babu Shankar Pawar was residing with his sons and the family members near Yashwantrao Chowk, Ambajogai since about 15 to 20 years prior to the incident. He had purchased 10 Acres 06 Gunthas land from Survey No.171 in the year 1959. Survey No.171 totally admeasuring 20 Acres 12 Gunthas is situated at village Mangwadgaon, Tq. Kaij, Dist. Beed. It is stated that Babu had agreed to purchase remaining land from one Salimabee Dastgir on the basis of agreement to sell and even the possession of the remaining portion was given to him. The Nimbalkar family i.e. the family of the accused persons denied the ownership and possession of Babu over the half portion of the land. There was civil litigation as well as criminal cases in between the families. Because of the order passed in favour of Babu by the Appellate Court, Ambajogai, it is stated that Nimbalkar family was annoyed and it is stated that they were restraining Babu from cultivating the remaining portion. It is then stated that deceased Babu was informed by village Sarpanch and Patil that he should go to the field for residing there, as the judgment is in his favour. Such meeting had taken place on 13.05.2020 and, therefore, deceased Babu proceeded towards the village. They had called one tractor and then the domestic articles belonging to the family was uploaded on the tractor trolley. Babu's two sons and their wives

started to go on motorcycles, however, remaining family members were boarded the tractor. They had reached the field around 9.00 to 9.30 p.m. After unloading the articles, the tractor returned to Ambajogai. Around 10.00 to 11.00 p.m. one red colour tractor had come from the cattle shed of Mohan Nimbalkar towards the place where the Babu and his family members were taken shelter and then it is stated that it had given dash to Prakash Babu Pawar. Further it is stated that in the meantime Sachin Mohan Nimbalkar, Hanumant @ Pintu Mohan Nimbalkar and other 9 to 10 persons had come to the spot with sword, axe, sticks and iron rod. Then it is stated that they had assaulted the family members of Babu. Babu had also sustained severe injuries and then he expired. In the said incident Prakash, Sanjay and Babu were murdered, whereas several others were injured thereby there was intention to commit murder of those persons also.

4. As aforesaid, after the evidence, original accused Nos.1, 2, 5, 6 and 11 have been held guilty by the learned Special Judge and they have been sentenced for various offences. Others have been acquitted.

5. From the evidence that has been considered it can be definitely said that death of the three persons was homicidal in nature, however, now it is required to be seen as to whether the applicant was part of the said unlawful assembly and whether any role was attributed to him so that it can be said that the conviction would be justified

against him. At this stage, we are required to consider the *prima facie* evidence. The relationship *inter se* between the accused persons has not been stated. Therefore, whether the motive for all the accused was same and whether the present applicant was also carrying the same interest and whether evidence to that effect was before the trial Court or not, is also one of the point. The learned Trial Judge has in the nutshell taken the evidence that has come against the present appellant, who was accused No.11. It has been specifically observed that name of accused No.11 is not appearing in the FIR, however, it has come by way of supplementary statement of the informant. P.W.1 informant had deposed that one Tukaram Nimbalkar was along with other accused persons and it has been further observed that said Tukaram Nimbalkar is not an accused in this case. P.W.1 does not say that the applicant was at the spot. It appears that P.W.2 Shivaji Babu Pawar - son of deceased Babu Pawar, who had also received injuries, has taken the name of the Nimbalkar family, but had not stated specifically the name of the applicant. P.W.3 Santosh is the grandson of Babu, who was also present at the spot, but he has also not assigned any specific role to the applicant. P.W.6 Daduli the daughter-in-law of deceased Babu has also not assigned any specific role to the applicant, still she has identified the applicant being an accused present before the Court. Further evidence appears to be in the form of test identification parade and some of them have identified the present applicant. Therefore, the question would be as to whether in

absence of assignment of specific role to the applicant, whether the evidence in the form of test identification parade can only be considered to convict him. Further evidence appears to be in the form of CDR report. The tower location of his mobile appears to be near the spot. Independently, such evidence will not be sufficient. Therefore, it is required to be seen as to whether in absence of substantive evidence the said electronic evidence can be only the basis for conviction. When all these points have been shown, definitely, case is made out for suspension of sentence. It appears that the applicant was not released on bail throughout the trial, still on the basis of the evidence that has come, the substantive sentence deserves to be suspended till the hearing and final disposal of the appeal. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The sentence imposed on the applicant/appellant in Special Case No.43 of 2020 by learned Special Judge, Ambajogai is hereby suspended till the hearing and final disposal of Criminal Appeal No.216 of 2022.
- III) The applicant/appellant - Jayram Tukaram Nimbalkar be released on P.R. Bond of Rs.50,000/- with one solvent surety of Rs.25,000/-.

IV) The applicant/appellant shall not commit any criminal activity.

V) The applicant/appellant to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date he tenders a bail papers and, thereafter, the trial Judge to fix dates for his subsequent appearances.

VI) In case of two consecutive defaults on the part of applicant/appellant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant/appellant.

VII) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm