

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2581 OF 2023
IN
CRIMINAL APPEAL NO.141 OF 2023

- 1 Ravi @ Ravindra @ Gotu Shriram Navpute,
Age 23 yrs., Occ. Agri.,
- 2 Amol @ Rameshwar Badrinath Navpute,
Age 24 yrs., Occ. Agri.,
- 3 Hari @ Rambhau Baburao @ Babasaheb Navpute,
Age 25 yrs., Occ. Agri.,
- 4 Shriram Janardhan Navpute,
Age 46 yrs., Occ. Agri.,

All are r/o Ghardon, Tq. & Dist. Aurangabad.

... Applicants

... Versus ...

The State of Maharashtra

... Respondent

...

Mr. Satej S. Jadhav, Advocate for applicants

Mr. S.J. Salgare, APP for respondent

Mr. V.P. Kadam, Advocate for assist to PP

...

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

RESERVED ON : 23rd AUGUST, 2023

PRONOUNCED ON : 20th SEPTEMBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the applicants who are the original accused Nos.1, 2, 3 and 8 for suspension of sentence imposed on them in Sessions Case No.104/2022 by learned Additional Sessions Judge, Aurangabad on 27.01.2023 after holding them guilty of committing offence punishable under Section 302 read with Section 149 of the Indian Penal Code and under Section 307 read with Section 149 of the Indian Penal Code. They have been sentenced thus -

अ) आरोपी कं.1) रवि उर्फ रविंद्र उर्फ गोदू श्रीराम नवपूते, आरोपी कं.2) अमोल उर्फ रामेश्वर बट्टीनाथ नवपूते, आरोपी कं.3) हरी उर्फ रामभाऊ बाबूराव उर्फ बाबासाहेब नवपूते आणि आरोपी कं.8) श्रीराम जनार्दन नवपूते यांना कलम 302 सह कलम 149 भारतीय दंड विधान्वये केलेल्या गुन्ह्यासाठी जन्मठेपेची सश्रम कारावासाची शिक्षा व प्रत्येकी रु.1,000/- द्रव्यदंड व द्रव्यदंडाचा भरणा न केल्यास, तीन महिने सश्रम कारावासाची शिक्षा ठोठावण्यात येते.

ब) आरोपी कं.1) रवि उर्फ रविंद्र उर्फ गोदू श्रीराम नवपूते, आरोपी कं.2) अमोल उर्फ रामेश्वर बट्टीनाथ नवपूते, आरोपी कं.3) हरी उर्फ हरीभाऊ बाबूराव उर्फ बाबासाहेब नवपूते आणि आरोपी कं.8) श्रीराम जनार्दन नवपूते यांना कलम 307 सह कलम 149 भारतीय दंड विधान्वये केलेल्या गुन्ह्याखाली पाच वर्षे सक्तमजुरी व प्रत्येकी रु.1,000/- द्रव्यदंड व द्रव्यदंडाचा भरणा न केल्यास, तीन महिने सश्रम कारावासाची शिक्षा भोगावी लागेल.

10) वरप्रमाणे ठोठावण्यात आलेली शिक्षा आरोपींनी एकत्रपणे भोगावयाची आहे.

2 Heard learned Advocate Mr. Satej S. Jadhav for the applicants

and learned APP Mr. S.J. Salgare for the respondent well assisted by learned Advocate Mr. V.P. Kadam.

3 It is the prosecution story that the incident had taken place on 26.06.2021 and in the said incident the father of the informant PW 1 Gorakh has been allegedly murdered and informant himself and witness Vikram have been assaulted and the said attempt was to commit their murder. In fact, there were in all 12 accused persons, however, under the same set of facts accused Nos.1 to 5 and 8 have been held guilty, whereas other accused persons have been acquitted.

4 It has been vehemently submitted on behalf of the applicants/appellants that the learned trial Judge has not appreciated the evidence properly. The contradictions, omissions and the admissions given by the witnesses have not been considered. PW 1 Gorakh submits that the motive behind the incident is dispute in respect of road going towards the field. However, in the cross-examination he has admitted that there is a civil dispute and in the sale deed existence of the road is not shown, which they are claiming and, therefore, appellant No.1 had objected to the use of his land as a road and when this fact was made known to the tractor driver, the said tractor driver went away with the tractor. The witness has admitted that

he himself and his brother have decided to complete the road, at any cost, on the same day. He admitted that his father deceased Manikrao had suffered paralytic attack in 2015 and in spite of the fact that the hospital was at a distance of about 10 minutes, they had reached the hospital after about two hours. The similar type of admissions have been given by PW 5 – the injured, brother of the informant. PW 6 Varsha is the wife of PW 1. PW 7 Dipak is the tractor driver, who says that PW 1 had not disclosed about abuses given by appellant No.1 on telephone. He admits that he left the place after appellant No.1 had taken objection. He has admitted in the cross that deceased was bed ridden and required other person's help to do his daily activities. Except the interested witnesses the prosecution has not examined any independent witness, though the incident is alleged to have taken place at 8.00 p.m. in a thickly populated area. The medical evidence is not supporting the prosecution in respect of injuries to PW 5 Vikram. Appellant No.1 had examined himself as DW 1 and had examined DW 2 Bhagwat, who is the eye witness to the earlier incident. DW 3 is the nephew of the deceased, who had stated that since last 5 to 7 years his deceased uncle Manikrao was bed ridden due to paralysis. Under the said circumstance, how the deceased would have come out of the house to make a request to the accused persons that they should not beat/assault his sons. The blood stains inside the house of the informant, that too, near the cot of the deceased have

not been explained by the prosecution. The appellants have good case on merits and, therefore, they need not be kept behind the bars. They are ready to abide by the terms of the bail and, therefore, the substantive sentence be suspended.

5 Per contra, the learned APP well assisted by the learned Advocate Mr. V.P. Kadam for the original informant objected the application. Accused Nos.1 to 3 and 8 appears to be not released on bail throughout the trial. The evidence of PW 9 Dr. Nilesh Kathar would clearly show that there were multiple injuries on the person of deceased Manikrao. The cause of death is head injury and, therefore, it can be certainly said that the death is homicidal in nature. As regards the injuries to the informant and his brother are concerned, it was to the vital part of the body and, therefore, certainly the case is covered under Section 307 of the Indian Penal Code. The motive has been proved as appellant No.1 had taken objection. Further, if we consider the testimony of DW 1 – appellant No.1 himself, then it can be seen that he is not denying the incident, but he is trying to give his own version. The testimony of DW 3 has been discarded by the learned trial Court as unbelievable. There are eye witnesses to the incident and the discovery of the weapons is also at the instance of the accused persons and, therefore, the prosecution had proved the offence beyond reasonable doubt. No

interference even by way of suspension of substantive sentence is required.

6 We have gone through the entire paper book, which is available, with the help of both sides. At this stage the point for consideration is only, as to whether the appellants can be released on bail by suspending their substantive sentence and, therefore, prima facie account of the evidence is required to be taken. Testimony of PW 9 Dr. Nilesh would certainly show that the death is homicidal in nature. In all 20 injuries were found on the person of the old man. Further, the injuries sustained by the informant and PW 5 Vikram has also been brought on record. Whether those simple injuries sustained by PW 1 would attract Section 307 of the Indian Penal Code or not is required to be considered at the time of final hearing, but at this stage, it can be seen that one Contused Lacerated Wound was on the head and another was blunt trauma on the ear. It also appears that PW 5 Vikram has sustained Contused Lacerated Wound to the head and it is said to be simple in nature. Even if we keep the charge under Section 307 of the Indian Penal Code aside; yet, as regards charge under Section 302 of the Indian Penal Code there is evidence regarding homicidal death of Manikrao in the form of PW 9 Dr. Nilesh.

7 The testimony of PW 1 informant would support by the PW 5

Vikram, who is also the brother and PW 6 Varsha, who is the wife of PW 1. Whether their evidence can be kept aside on the ground that they are the relatives, would be a matter of appreciation. PW 7 Dipak – tractor driver has stated about the incident i.e. appellant No.1 raising objection for the activity of taking the tractor for preparation of the road by PW 1 Gorakh has come on record. Now, whether PW 1 Gorakh and PW 5 Vikram were able to show that there existed a road and they had a right to use it ? In fact, it appears that the incident started as PW 1 Gorakh started use of the road with the help of tractor engaged through PW 7 Dipak. That was the triggering point. But then the place of incident is not the field, but it is in front of the house of the informant. DW 1 – appellant No.1 himself admits the incident, but denies the responsibility. Therefore, when prima facie there appears to be evidence, this cannot be taken as a fit case where the appellants should be released on bail by suspending their sentence. Application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)