



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 640 OF 2024
IN
CRIMINAL APPEAL NO. 123 OF 2024

1. Mayur Shailesh Fulpagare @ Guddya,
Age : 49 years, Occu: Labour,
R/o. Lane No. 13, Bhoi Galli,
Old Dhule, Dist. Dhule.
2. Dipak Santosh Fulpagare,
Age : 38 years, Occu: Labour,
R/o. Lane No. 13, Subhashnagar,
Old Dhule, Dist. Dhule.
3. Vaibhav Ambadas Gavale,
Age : 32 years, occu: Education,
R/o. Ramkrushna Nagar, Nanakne Road,
Deopur, Dhule, Tq. & Dist. Dhule.
(All at present Central Jail Nashik Road,
Nashik).

...Applicants

Versus

1. The State of Maharashtra
2. Sagar Rajendra Salve,
Age : 27 years, Occu: Education,
R/o. Chandan Nagar,
Near Dr. Babasaheb Ambedkar High School,
Deopur, Dhule, Tq. & Dist. Dhule.

...Respondents

.....

Mr. D. R. Kale – Advocate for the Applicants
Mr. A. B. Girase – Public Prosecutor for the State
Mr. N. N. Desale – Advocate for respondent no. 2

.....

**CORAM : R. G. AVACHAT
AND
NEERAJ P DHOTE, JJ.**

DATED : 18TH MARCH, 2024

PER COURT : -

1. This is the application for suspension of substantive sentence by three convicts, who have been sentenced by learned Additional Sessions Judge, Dhule by order dated 21.12.2023 passed in Sessions Case No. 72 of 2018, as under : -

Sr. No.	Applicants Convicted u/s	Sentence
1.	302, 307, 324, 143, 147, 148 r/w Section – 149 of Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act.	(a) For the offence punishable under section – 302 of the I.P.C. read with section - 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act read with Section – 149 of I.P.C., to suffer imprisonment for life and fine of Rs.10,000/- (Rupees Ten Thousand) each in default to suffer rigorous imprisonment for one year. (b) For the offence punishable under section – 307 of the I.P.C. read with section - 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act read with Section – 149 of I.P.C., to suffer imprisonment for life and fine of Rs.5,000/- (Rupees Five Thousand) each in default to suffer rigorous imprisonment for six months. (c) For the offence punishable under section – 324 of the I.P.C., to suffer rigorous imprisonment for three (3) years and fine of Rs.2,000/- (Rupees Two Thousand) each in default rigorous imprisonment for three months. (d) For the offence punishable under section – 143 of the I.P.C., to suffer simple imprisonment for six (6) months. (e) For the offence punishable under section – 147 of the I.P.C., to suffer simple imprisonment for one (1) year. (f) For the offence punishable under section – 148 of the I.P.C., to suffer simple imprisonment for two (2) years.

2. After hearing both the sides at length and perusing the material available on record, it is fairly submitted by the learned Public Prosecutor that the Court can allow the application for suspension of substantive sentence to the extent of applicant no. 3 (accused no. 6) – Vaibhav Ambadas Gavale. In view of the said submission, the application to the extent of applicant no. 3 (accused no. 6) – Vaibhav Ambadas Gavale is allowed.

3. Insofar as applicant no. 2 – Dipak Santosh Fulpagare (accused no. 5) is concerned, admittedly, his name does not figure in the First Information Report relating to the first incident which resulted in death of victim by name Prashant @ Sunny Prakash Salve. The role attributed to Dipak is of assault in the second incident near the hospital by means of a baseball bat to two witnesses Saurabh and Sagar. It is not in dispute that the injuries caused to Saurabh and Sagar were simple in nature. Except this, there is no role attributed to applicant no. 2 – Dipak. Thus, the Application to the extent of Applicant No. 2 (Accused No. 5) - Dipak Santosh Fulpagare is allowed.

4. So far as applicant no. 1 – Mayur Shailesh Fulpagare @ Guddya (Accused No. 2) is concerned, it is submitted by learned advocate for the Applicant that the only role attributed to Guddya is of assault by chopper on the hands of witness Sumedh. He submits that

the injuries suffered by Sumedh were simple in nature. He further submits that, no role is attributed to the said applicant in the second incident which occurred near the hospital. It is further submitted that the said applicant Guddya is behind the bars for more than six years and there is no likelihood that the Appeal would come up for hearing in the near future. He prays for suspension of sentence.

5. Learned Public Prosecutor opposes the application. He took us through the evidence available on record and pointed out role attributed to Guddya. He submits that the injured witness Sumedh in his statement recorded immediately after his discharge from the hospital has given detailed account of the assault. He submits that the said injury was grievous in nature. He submits that the learned trial Court rightly convicted him and submitted that the application be rejected.

6. Perusal of First Information Report shows that, the role attributed to the applicant – Guddya is that of assault to witness Sumedh by means of chopper in the first incident. The relevant portion from the FIR is reproduced as below : -

दिनांक 18/04/2018 रोजी रात्री 10:30 वा. चे सुमारास मी व सनि प्रकाश साळवे, सुमीत अनिल सुर्यवंशी असे सनि उर्फ प्रशांत साळवे याची मोटार सायकलवरून नरसिम्हा बियर बार मार्गाने पेट्रोल पंप येथे पेट्रोल टाकण्यासाठी जात असताना वाडीभोकर रोडवरील नरसिम्हा बिअर बारजवळ 1) दादा भोई 2) गुड्डया फुलपगारे 3) जितु फुलपगारे 4) गणेश फुलपगारे यांनी आमची मोटार सायकल थांबवून गुड्डया फुलपगारे याने त्याचे हातातील चोंपरने सुमित सुर्यवंशी याचे डावे हाताचे दंडावर दोन वेळा वार करून दुखापती केले. तसेच माझा भाऊ सनि साळवे यास जितु फुलपगारे याने त्याचे जवळ असलेली गुप्तीने पोटात मारून जिवे ठार मारण्याचा प्रयत्न केला तसेच गुड्डया

फुलपगारे याने त्याचे हातातील रॉडने मला मानेवर, कमरेवर मारहाण केली व गणेश फुलपगारे याने त्याचे हातातील फायटर कमरेवर, पोटावर मारहाण केली.

7. The prosecution has examined Doctor who medically examined the said witness Sumedh [PW14]. His evidence shows that, in his examination-in-chief he refers to injury caused to Sumedh as the grievous one whereas; in the cross-examination, he deposes that the injury may be called as 'simple'. We are surprised as to how such evidence in respect of the same injury is given by this doctor witness. Be that as it may, the Injury Certificate shows that, the nature of injury is 'grievous in nature'.

8. Witness Sumedh (PW14) in his evidence deposed as under :

“3. Accordingly, I myself, Prashant and Sagar stopped motorcycles of us. When motorcycle stopped by me, accused Guddya assaulted over the left side of my stomach by means of Gupti like knife. I tried to save that assault and turned towards right side. Due to same, that Gupti entered in the middle portion of shoulder and elbow of left hand, it goes from back to upper. Due to same, I sustained injury over my left hand. I tried to ran away from there, but accused Guddya caught to me from backside and that Gupti handed over by him to accused Jitu Fulpagare. Thereafter, by applying “Dav” over me, fallen down to me on earth. Accused Jitu Fulpagare assaulted over the person of Sunny 2-3 times by means of Gupti. That assault resisted by Sunny by means of his hand. When Sunny tried to ran away from there, accused Dipak Fulpagare caught to him from backside. At the same time, accused Jitu Fulpagare assaulted over the stomach of Sunny by means of Gupti. Accused Dada Bhoi assaulted over the person of Sunny and Sagar by means of hand blows. Accused Vaibhav Gavle assaulted over the person of me, Sunny and Sagar by means of base ball bat. Accused Ganesh Fulpagare assaulted over the face, back and chest of Sunny by means of fight. We all three tried to run from the spot, but accused Guddya Fulpagare followed to us by possessing iron pipe. Accused Guddya assaulted over my waist and leg from backside by means of pipe. Accused Vaibhav Gavle thrown base ball bat towards the direction of us. When we tried to run, at the same time accused uttered the word shoutly that, महारांनो, तुम्ही जास्त मातले, तुमचा माज उतरवितो. By abusing so, accused

assaulted over the motorcycles of us by means of kick and iron pipe on which sticker of Gautam Buddha and Dr. Babasaheb Ambedkar was also affixed. Due to same, damages caused to motorcycles of us.”

9. PW17 – Sagar, in his evidence, deposed as under : -

- “2. Thereafter, accused Guddya Fulpagare assaulted over Sumedh towards the left side of stomach by means of knife like Gupti. That assault restrained by Sumedh by using left hand. Due to same, that assault goes over the left shoulder of Sumedh from inner to outer. Prior to assault, accused Guddya abused to us. Accused Guddya present before the court is same. When Sumedh tried to ran away, accused Guddya caught to him from backside and knife like Gupti handed over by him to accused Jitu Fulpagare. Thereafter, accused Guddya fallen down to Sumedh by using “Dav”. Accused Jitu assaulted over the person of deceased Sunny by means of knife like Gupti 2 to 3 times. That assault restrained by Sunny by using hand. When Sunny tried to ran away from there, accused Dipak Fulpagare caught to him from backside. Thereafter, Jitu Fulpagare assaulted over the stomach of deceased Sunny by means of knife like Gupti. Accused Dada Bhoi assaulted to me and deceased Sunny by means of fist and kick blows. Accused Vaibhav Gavale assaulted over the person of me, deceased Sunny and Sumedh by means of base ball bat. Accused Ganesh Fulpagare assaulted over the face, chest and back of deceased Sunny by means of fight. When we tried to ran away from there, accused Guddya Fulpagare followed to us by possessing iron rod. Accused Guddya assaulted to Sumedh over waist and legs by means of iron rod. Accused Vaibhav Gavale thrown the base-ball bat towards the direction of us. Due to same, that bat divided into three pieces. That accused Dipak Fulpagare, Jitu Fulpagare, Dada Bhoi, Vaibhav Gavale present before the court are same. I can identify that knife like Gupti if shown to me. Now Article – A i.e. knife like Gupti shown to me, is the same. I can identify the three pieces of base-ball bat if shown to me. Now that three pieces of base-ball bat shown to me, are the same. That are at Article – B. I can identify iron rod if shown to me. Now iron rod Article – C shown to me, is the same.”

10. As regards the incident in front of hospital is concerned, the informant i.e. PW17 – Sagar deposed as under : -

- “4. By making cell-phone call to Amar Waghmare and Saurabh Salve, I called them in the square of Jaihind Senior College. Accordingly, Saurabh came and he meet to me near to Old Rajhans Hotel. I myself, Sunny and Sumedh also reached near to old Rajhans Hotel. After perusal of inquiry of Sunny, Saurabh stopped to one Activa motorcycle which was passes from there.

Saurabh directed to the rider of Aactiva motorcycle to left Sunny at Siddheshwar Hospital. Accordingly, rider of motorcycle gave lift to Sunny and me for reaching at Siddheshwar Hospital. Thereafter, Saurabh and Sumedh also reached at Siddheshwar Hospital by using motorcycle. I admitted to Sunny and Sumedh in I.C.U. unit of Siddheshwar Hospital. That I.C.U. unit was situated at basement of opposite building of Siddheshwar Hospital. Thereafter, I myself and Saurabh came outside of the Siddheshwar Hospital. At the same time Dada Bhoi, Guddya Fulpagare, Jitu Fulpagare, Dipak Fulpagare, Ganesh Fulpagare, Vaibhav Gavale, Bhaiyya Sutar, Gopal Choudhari, Sunny Sanap and also 15-20 persons by possessing weapons came there. That weapons in the nature of iron rods and pipes. Dipak Fulpagare assaulted over the face of Saurabh by means of fist blow. Guddya Fulpagare assaulted over the head of Saurabh by means of iron rod. Accused Dada Bhoi and Guddya Fulpagare assaulted over my left leg, neck and hand by means of iron rod and pipe. Accused Dipak Fulpagare assaulted over my person by means of fist blow. Meanwhile physical condition of Sunny became critical, due to same he was carried at Sudha Hospital. During the course of treatment at Sudha Hospital, Sunny passed away.

11. Moreover, PW18 – Saurabh Salve, in respect of the incident in front of hospital, deposed as under : -

“3. After the admission of Sunny and Sumedh in the hospital, I came outer premises of the hospital. Thereafter, again telephonic call made by me to my house members and friends. At the relevant time of making telephonic call, Sagar was with me. At the same time, Jitu Fulpagare, Dada Fulpagare, Guddya Fulpagare, Dipak Fulpagare, Ganesh Fulpagare, Viabhav Gavale, Kishor Baviskar and other their followers came in the premises of Siddheshwar Hospital by using their two wheeler vehicles. They were possessing iron rod. So also iron rod attached to their vehicles. I tried to persuade them लहान मुले आहे का, तुमची व त्यांची बरोबरी आहे काय. Thereafter, abuses were given by them to me by making round to me. I again tried to persuade them, but accused Dipak Fulpagare assaulted over the mouth of me by means of hand blow. Accused Guddya Fulpagare assaulted over the left side of my head by means of iron pipe and threatened by saying that तुम्हाला साल्यांना खलास करतो. Because of assault over my head, I fallen down on the earth. I fell unconscious. I became conscious in the I.C.U. unit of Siddheshwar Hospital. At that time, I noticed that stitches were performed over my head coupled with the bandage when I became conscious. I was indoor patient for the period of two days in I.C.U. unit. My discharge was effected on 20.04.2018 from the hospital.

12. The evidence on record goes to show that the incident in front of the hospital was also recorded in the CCTV installed at the hospital. Learned Public Prosecutor has shown the said clip of the CCTV footage which was collected by the Investigating Officer. The same was admitted in the evidence before the trial Court. The said clip corroborates the evidence of the said witnesses who have attributed role of assault to Mayur Shailesh Fulpagare @ Guddya. In the said CCTV footage, the applicant Mayur Shailesh Fulpagare @ Guddya, after the assault, is seen standing armed with weapon so as to create terror in the minds of the persons present over there. It is further seen that no one dared to come forward and saved the injured.

13. Learned Public Prosecutor relied upon the judgments of the Hon'ble Apex Court in the case of **Omprakash Sahni versus Jai Shankar Chaudhary & Anr. Etc.** reported in 2023 LiveLaw (SC) 389, wherein it is observed in paragraph no. 33 as under : -

“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 above said 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 take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of 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 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

14. In this view of the matter, for the present, we are not inclined to grant the application preferred by applicant no. 1 – Mayur Shailesh Fulpagare @ Guddya for suspension of substantive sentence. Hence, we proceed to pass the following order : -

ORDER

- [i] The application to the extent of applicant no. 1 – Mayur Shailesh Fulpagare @ Guddya is rejected.
- [ii] The application to the extent of applicant no. 2 – Dipak Santosh Fulpagare and applicant no. 3 – Vaibhav Ambadas Gavale is allowed.
- [iii] The substantive sentence imposed upon applicant no. 2 – Dipak Santosh Fulpagare and applicant no. 3 – Vaibhav Ambadas Gavale by the learned Additional Sessions Judge, Dhule by order dated 21.12.2023 passed in Sessions Case No. 72 of 2018, is suspended till the final disposal of Criminal Appeal No. 123 of 2024.
- [iv] Applicant no. 2 – Dipak Santosh Fulpagare and applicant no. 3 – Vaibhav Ambadas Gavale be released on bail on their furnishing PR bond in the sum of Rs. 15,000/- [Rupees Fifteen Thousand], each.
- [v] Bail before the Trial Court.

[vi] Applicant no. 1 - Mayur Shailesh Fulpagare @ Guddya is at liberty to revive his prayer for suspension of substantive sentence after a period of one (01) year, if he so desires.

15. Application is, accordingly, disposed of.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde