

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

CRIMINAL APPLICATION (APPA) NO.576/2015 IN
CRIMINAL APPEAL NO.300/2015

(Rajesh Pundlik Selote and anr. .vs.. State of Maharashtra, through PSO P. S.
Bramhapuri, Dist. Chandrapur)

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

Court's or Judge's orders.

Mr. R.M. Daga, Advocate for applicant.
Mr. R. S. Nayak, A.P.P. for non-applicant-State.

CORAM : V. M. DESHPANDE, J.
DATE : OCTOBER 7, 2015.

Heard.

By the present application, the applicants are seeking suspension of their jail sentence and for grant of bail.

The applicants, who are original accused nos. 4 and 6 are convicted by the Sessions Judge, Chandrapur on 27.04.2015 in Sessions Case No. 19/2006. The applicants are convicted for the offence punishable under Section 304-II read with Section 34 of IPC and they are directed to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.500/- each, in default of payment of fine to suffer rigorous imprisonment for one month.

The deceased Manohar suffered following injuries as noticed by the Autopsy Surgeon in Post Mortem Report Exh.-110.

1. *Linear inclined abrasions on Right side of back 4 in number running parallel 2 cm X 20 cm. Approx skin denuded.*
2. *left side of back superficial abrasion of about 10 cm. In diameter.*
3. *Abrasion on left buttock 4 cm. In diameter.*
4. *Abrasion superficial on left thigh 5 cm in diameter.*
5. *Superficial abrasion on face below both eyes 2 cm. X 2 cm. Near left ear 2 cm.*
6. *Abrasion on both shoulder superficial about 2 cm X 3 cm.*
7. *Abrasion on dorsal aspect of both elbow 2 cm in diameter.*
8. *Above rear dorsal aspect of both knee about 1 cm X 2 cm.”*

Further the Autopsy Surgeon noticed that there is a hair line fracture of skull horizontal 6 cm. in length present on left side in occipital region on occipital bone not crossing suture.

Dr. Digambar Vyas has proved the post mortem notes Exh.110, he conducted the post mortem along with his colleague Dr.Indrayani. According to his evidence, the cause of death is injury to the vital organ such as brain. His evidence would reveal that the injuries mentioned in the column

no.19 of post mortem report, which are described supra are sufficient to cause death in ordinary course of nature. His evidence discloses that the injuries as mentioned in column no.17 of the post mortem report are simple in nature and injury mentioned in column 19 is possible due to significant violence on the occipital part of the skull.

Eye witness in the present case is Sunil, who is the son of the deceased. His evidence discloses that the role attributed to the present applicants is that they have participated in the assault by using fist and kick blows. No role is attributed to them that they are responsible for giving injury on the head.

Looking to the aforesaid nature of the evidence against the present applicant, the applicant, who were on bail throughout during the trial and it is not the case of the prosecution that at any point of time they have misused the liberty granted to them, in my view, the applicants have made out a case for suspension of substantive jail sentence. That leads me to pass the following order.

ORDER

- (i) Criminal Application No.576/2015 is allowed.
- (ii) The substantive jail sentence imposed upon applicant no.1-Rajesh Pundlik Selote and

applicant no.2-Jiwan Maroti Meshram, by learned Sessions Judge, Chandrapur by judgment and order dated 27.04.2015 in Sessions Case No.19/2006 shall stand suspended during the pendency of the present appeal.

(iii) The applicants shall be released on bail on they executing P.R. Bond in the sum of Rs.25,000/- each with one surety each in the like amount.

(iv) Bail before trial Court.

(v) The applicants shall remain present at the time of final hearing of the appeal.

JUDGE

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