

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4977 of 2016

District : Osmanabad

Balaji s/o. Navnath Sarwade,
Age : 23 years,
Occupation : Agriculture,
R/o. Sumbha,
Taluka & District : Osmanabad. .. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Police Station, Bembli,
Taluka & District : Osmanabad. .. Respondent.

.....

*Mr. V.D. Salunke, Advocate, with
Mr. M.V. Salunke, Advocate, for the applicant.*

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for
the respondent.*

.....

CORAM : A.M. BADAR, J.

DATE : 10TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 81/2016
registered with Police Station, Bembli, District
Osmanabad, for the offence punishable under Section

302 of the Indian Penal Code, by this application, is seeking his release on bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for the applicant / accused. By pointing out statements of Bapurao Mote, Harishchandra Burle and Balbhim Mulay, the learned Counsel argued that the incident in question is fallout of a grave and sudden provocation to the accused by the deceased, as seen from the prosecution case. The learned Counsel further argued that injuries seen on back side of head of the deceased can be result of his fall on the cement road.

3. The learned Addl. Public Prosecutor opposed the application by contending that statement of Vaishali Waghmode shows that three blows of stick were given on head of the deceased by the present applicant and therefore offence punishable under Section 302 of the IPC is prima facie made out.

4. Perused the charge-sheet. The crime in question is registered on the basis of report lodged by Devidas - son of deceased Baburao Burle. He is not an eye witness to the incident in question.

5. Vaishali is the daughter of the deceased. She claims to be an eye witness to the incident in

question. She has stated to Police that after hearing shouts, when she went on the spot, which was cement road adjoining Maroti temple, she saw the applicant assaulting her father Baburao by means of a bamboo stick. She stated that the applicant had given three blows of that stick on the head of her father Baburao.

6. Post mortem report shows that Baburao died because of head injury suffered by him. Post mortem report further shows that the deceased has suffered in all seven injuries, out of which two were contused abrasion over frontal region left side and stitched wound over right parieto-temporal region. Bapurao Mote, Harishchandra Burle and Balbhim Mulay are material witnesses in whose presence the incident started. Their statements go to show that they along with the applicant were sleeping in Maroti temple of village Sumbha. All these witnesses are unanimously stating that then Baburao Burle (since deceased) came in the temple after consuming liquor. According to these witnesses, Baburao Burle then started giving abuses to the present applicant. Statement of Bapurao Mote shows that then the present applicant started going away from Baburao Burle. However, Baburao Burle started chasing him. All these three witnesses have stated that then they asked the applicant as well as deceased Baburao Burle to go out of the temple. Then they both went out of the temple

and thereafter the incident had happened.

7. Statements of these three witnesses prima facie shows that by giving abuses on mother, Baburao Burle awakened the applicant who was sleeping in the temple. Deceased Baburao Burle continued abuses and when the applicant attempted to go away, the deceased chased him. Statements of these three witnesses does not show that at that time, the applicant was holding a stick. The incident in question thereafter happened immediately outside Maroti temple. Allegations are regarding giving blows by bamboo stick. Prima facie it appears that considering the manner in which the incident had happened, there is every possibility of the applicant being deprived of the power of self-control by grave and sudden provocation at the instance of the deceased. As the weapon attributed to the applicant is a bamboo stick, it does not appear that the applicant had acted in a cruel manner while giving blows of that stick. There is nothing to show that the provocation was elicited by the applicant by any act which may be attributable to him. In this view of the matter, in the trial it will have to be seen whether the offence punishable under Section 302 of the IPC is made out or whether the applicant can be said to be guilty of some other offence.

8. In this view of the matter, considering

nature of evidence available against the present applicant, his further pre-trial detention is not warranted.

9. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 25,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant shall abide by the following directives :-

(i) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(iii) The applicant shall not repeat commission of similar type of offences in future.

(d) The Application stands disposed of in the above terms.

(A.M. BADAR)
JUDGE

.....