

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

CRIMINAL APPLICATION [APPA] NO.531 OF 2018

IN

CRIMINAL APPEAL NO.367 OF 2018

[Sanjay s/o Shamrao Wandile .vs. The State of Maharashtra, through Police Station Officer, Police Station, Girad, District-Wardha]

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

Court's or Judge's orders

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Shri R.M. Daga, Advocate for Applicant,
Mrs. M.H. Deshmukh, APP for Respondent-State.

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CORAM : P.N. DESHMUKH AND
MRS. SWAPNA JOSHI, JJ.

DATED : DECEMBER 04, 2018.

Heard.

This application is preferred by accused for suspension of substantive sentence imposed upon him by learned Additional Sessions Judge, Hinganghat in Sessions Trial No.98/2017 whereby applicant came to be convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in-default to suffer simple imprisonment for six months.

It is the case of the prosecution that on 13.3.2016 at about 7.00 to 7.45 pm at mouza Girad, PW-3 Vijay Sanjay Wandile, the son of applicant, went to the Police Station and lodged the report about assault on his deceased mother. According to the prosecution, in his report, PW-3 Vijay stated that he has witnessed the incident of assault upon deceased by applicant, after some quarrel had taken place between applicant and deceased Lalita on the count of demand of Aadhar Card and other documents by deceased from applicant.

PW-3 Vijay stated in his report that accused quarreled with deceased inside the house then dragged her in the courtyard of the house and started beating by means of stick, due to which, she fell down in injured condition to whom he again assaulted by sitting on her chest. On the basis of the report, offence is registered and on trial, applicant came to be convicted as aforesaid.

Learned counsel for applicant submitted that the conviction is based on relying evidence of PW-3 Vijay, son of deceased and of PW-2 Shaila Zade, the neighbour. However, it is submitted that evidence of these two witnesses is not at all reliable, inasmuch as evidence of both these witnesses is suffering from material omissions. It is pointed that in fact evidence of PW-2 Shaila would reveal that she had deposed on the say of the police. For the purpose of above stated evidence of PW-2 Shaila with regard to her admission that she had deposed on the basis of statement read over to her by the police. Learned counsel relied upon case of **Suresh s/o Purushottam Ashtankar .vs. The State of Maharashtra**, reported in **2015 ALL MR (Cri) 4243** and has submitted that in view of the same and material omissions in the evidence of complainant Vijay, as well as of Shaila which is the only evidence relied upon by the learned trial Judge, application be allowed by imposing suitable conditions.

Learned Additional Public Prosecutor, while opposing application, contended that the omissions which are pointed out are not material nor go to the root of the case and as such even if omissions are duly considered, fact of assault by applicant on deceased is unshattered.

In the background of submissions as aforesaid, we have carefully scrutinized evidence of PW-3 Vijay, the complainant as well as of PW-2 Shaila, the independent witness along with other evidence and documents on record.

PW-3 Vijay deposed that incident took place on 13.3.2016. On that day he returned back to his house at about 7.00 to 7.15 pm, however, his house was locked. He therefore made enquiry with one

Archana Bhagat, who informed that his mother had gone to the flour mill of one Bhandakkar and therefore he went to said flour mill where he noticed quarrel between his mother and accused, as deceased was demanding School Leaving Certificate and Aadhar Card from the accused which he refused to give her and went to house. According to him, his mother also followed him to whom he also followed. His evidence further reveals that on reaching to the house, accused informed to his mother to stay back and he will bring documents from inside and went inside the house, however, deceased went inside the house; PW-3 Vijay heard noise of quarrel and of utensils coming from inside the house and within short time his mother came out shouting; and that accused dragged her in the courtyard and started beating her by means of stick, due to which, his mother fell down in the courtyard in injured condition and thereafter accused sat on her chest and assaulted her by sitting on her chest by bricks due to which she died on the spot.

In his cross-examination, PW-3 Vijay has admitted that he had not stated in his report nor his statement recorded by police that on his reaching home, he found that the house was locked or that Archana Bhagat told that his mother had gone to the flour mill of Bhandakkar, though PW-3 Vijay claims to have stated to police that he had witnessed quarrel between his mother and accused and followed them when they went to their house and further claimed to have witnessed accused saying deceased to remain in the courtyard and went inside the house to whom his mother followed and of PW-3 Vijay hearing noise of quarrel and utensils coming from inside the house and his mother being dragged out of the house by applicant assaulting her by stick due to which she fell down and thereafter accused assaulting her by bricks by sitting on her chest. All this evidence is by way of omission.

Similarly, evidence of PW-2 Shaila is also by way of material improvement so as to suit the case of prosecution. As according to her, on the day of incident, she was informed by one Archana Bhagat to bring her son namely Ansh from the house of applicant and therefore said

witness arrived in the house of applicant where she found applicant to have sat on the chest of Lalita in the courtyard of their house and noticed that Lalita was lying there without any movement where she noticed stick and some bricks were lying.

Her statement is recorded by the police on the next day. In view of above evidence, prosecution has relied PW-2 Shaila as an witness to the incident of assault, however, we find even her evidence is by way of material omissions as she had deposed that at the time of recording of her statement she had stated to police that she visited to the house of applicant as was informed by one Archana Bhagat to go to the house of applicant to bring Archana's son namely Ansh and on the spot claims to have witnessed one stick and brick lying there, however, is unable to state why these facts are not mentioned in her statement. She has also admitted the fact of recording of her statement in the court under section 164 of the Cr.P.C. which was recorded by learned Magistrate at Samudrapur and also claims to have stated similar facts about her reason to reach to the house of applicant and of witnessing applicant sitting on the chest of Lalita in their courtyard and about Lalita lying without any movement. However, she is unable to assign any reason why none of these facts are stated in her statement.

Having considering evidence of PW-3 Vijay as well as of PW-2 Shaila, who according to the prosecution, are the only eyewitnesses, their evidence does not inspire confidence at all to act upon. Moreover, from the evidence of both these two witnesses and more particularly from evidence of PW-2 Shaila, it is her specific case that before recording her evidence her statement was read over to her. Similarly PW-3 Vijay admits that before recording his evidence, he read over the report and accordingly deposed before the court. In that view of the matter and the law as laid down in the case of **Suresh Ashtankar (supra)**, evidence of these two witnesses is doubtful. Moreover, on the basis of report lodged by PW-3 Vijay, offence came to be registered on 13.3.2016 at about 10.44 pm. while according to him, accused was in the

Police Station on that day at 9.30 pm and is arrested in the present crime on the subsequent day as admitted by the investigating officer.

Having considering material evidence as aforesaid, application is liable to be allowed by imposing suitable conditions. Hence, the following order :

O R D E R

- 1) Criminal Application [APPA] No.531/2018 is allowed.
- 2) The substantive sentence imposed upon applicant stands suspended pending appeal.
- 3) Applicant shall be released on bail upon his furnishing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount pending appeal.
- 4) While on bail, applicant shall mark his presence with Girad Police Station, Tahsil-Samudrapur, District-Wardha once in a month, initially for a period of six months on the 1st day of each such month and, thereafter, quarterly on the first day of such month, pending appeal.
- 5) In addition to above, applicant shall mark his presence with the Registrar of the learned Sessions Judge, Hinganghat, District-Wardha, who shall maintain record of presence of applicant as aforesaid on the 15th day bimonthly, pending appeal.

JUDGE

JUDGE