

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.15 OF 2020

Baban Balu Mengale & Ors. .. Applicants
Versus
The State of Maharashtra .. Respondent
...

Mr.Anil Shitole for the Applicants.

Mr.P.H.Gaikwad, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 9th DECEMBER, 2020

P.C:-

1. The applicants are charge-sheeted under Sections 302, 323, 324, 504 read with 34 of the Indian Penal Code in relation to C.R.No.1018 of 2019 registered with Dehuroad Police Station on 21st August, 2019.

2. The complainant is one Sham Bajirao Mengale, who had lodged the report stating that he is residing with his wife Jija, mother and brother Ramdas, who is the deceased. He state that on the date of incident i.e. 20th July, 2019, he was working in the farm alongwith his wife-Jija, mother and the deceased. Then they came to their place of abode and some quibble ensued between his brother Ramdas and wife Jija. Jija telephoned her brother Baban, applicant No.1. He arrived at their residence accompanied by his cousin brother Ganpat

(applicant No.2) at around 7.30 p.m.. They came near the hut and after assessing the reason of the quarrel, verbally abused the complainant and picked up an iron rod and a wooden stick lying nearby and started assaulting. They took Jija alongwith them. The complainant and his brother had suffered injuries and, therefore, they were lying down. At 10 o'clock, the complainant realised that Ramdas is not responsive and, therefore, he was taken to YCM Hospital, Pimpri where he was declared "brought dead". On completion of investigation, charge-sheet has been filed by including statements of various witnesses. Sonabai i.e. the mother of the complainant was also injured in the incident. The autopsy was performed on the body of Ramdas and probable cause was ascertained as injuries on vital organs.

3. The postmortem report reflect as good as eleven injuries which are in form of contusions and CLWs. Contusion of size 7cm x 3cm on head is situated at parieto-occipital region of head, across the midline plane. It is opined to have been caused by hard and blunt object. Another injury is the contusion of size 10cm x 3cm located at right parietal region of head and it is also opined to be caused by hard and blunt object. Other injuries are also contusions and have been opined to be caused by hard and blunt object. Injury No.9 is the contusion of size 40cm x 4cm beginning from the scapular region, running obliquely downward across the midline plane

and ending at lower costal margin. The postmortem report also refer to the blood oozing from left ear. The age of the injuries is described to be less than 12 hours. All the injuries on the vital organs are responsible for the death of Ramdas.

4. The learned counsel for the applicant has vehemently argued that the investigation is over, charge-sheet is filed and on the basis of this, no intention can be attributed. The learned counsel would submit that the happening occurred at the spur of moment and it was not premeditated, which can be discerned from the fact that the weapons used i.e. iron rod and wooden stick were lying near the hutment and in absence of any intention, offence under Section 302 cannot be made out. *Prima facie* seen, the applicants are responsible for homicide. As many as eleven injuries are inflicted by means of wooden stick and iron rod. The cause of death is the injuries on the vital organs and as can be seen from the description of injuries in column No.17 of the postmortem report, the assault is on the vital organ "Head". The complainant himself is an eye witness and has narrated the incident. Whether the intention was there or not can be determined at the time of trial. Possibly at the time of trial, the applicants would be entitled to seek conversion of the offence into Section 304 Part II. However, at the stage of bail, considering the gravity of the offence and the availability of the evidence as compiled in the charge-sheet, the applicants do not deserve their release on bail. The above

expression is only *prima facie* view and may not influence the Trial Court, as opinion on merit and will not bind the Trial Court.

Application is rejected.

SMT. BHARATI DANGRE, J