

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

**CRIMINAL APPLICATION NO.2023 OF 2019
IN
CRIMINAL APPEAL NO.682 OF 2019**

Makadya S/o. Vitthal Pawara,
Age : 34 years, Occu. Nil,
R/o. Borpani, Tq. Shirur,
Dist. Dhule.

.. Applicant /
Appellant

Versus

The State of Maharashtra

.. Respondent

...

Mr Hanumant P. Jadhav, Advocate for the applicant (appointed)
Mr. R.V. Dasalkar, APP for the respondent / State

...

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

**Reserved on : 09-02-2021
Pronounced on : 12-02-2021**

ORDER (PER : B. U. DEBADWAR, J.) :-

1. This is an application under Section 389 (1) & (2) of the Code of Criminal Procedure, 1973 (hereinafter 'CrPC') for suspension of sentence pending the appeal and release of the applicant / appellant on bail. Heard Mr Hanumant P. Jadhav, learned Advocate for the applicant

/ appellant and Mr R.V. Dasalkar, learned APP for the respondent / State.

2. The applicant / appellant has preferred the appeal against the Judgment and order dated 05-04-2017 passed by the learned Additional Sessions Judge, Dhule in Sessions Case No.94 of 2014 whereby convicted him for the offence punishable under Section 302 of Indian Penal Code, 1860 (in short 'IPC') and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine he shall suffer further simple imprisonment for four months.

3. In short, it is the case of the prosecution that first informant - Dasharath Chamar Pawara, accused - Makadya S/o. Vitthal Pawara and deceased - Chamar Mavashya Pawara are resident of one and the same village i.e. Borpani, Tal. Shirpur, Dist. Dhule. First informant - Dasharath Chamar Pawara is the son of deceased Chamar Mavashya Pawara. They used to reside together with their family members. Accused Makadya Pawara was their immediate neighbour. The houses of deceased Chamar and accused Makadya were situated on the western side of Boraji - Shahada road. There was sufficient open space in between the said road and the house of accused Makadya. On

18-02-2014 at about 04:00 p.m. deceased Chamar Pawara went to the open space situated in front of the house of accused Makadya for urination, as many persons of surrounding area use the said place for urination. After attending the nature's call i.e. urination when deceased Chamar Pawara was returning back to his house, accused Makadya came outside his house, rushed forward and in loud voice asked deceased Chamar as to why he used the open space adjacent to his house for urination. On replying by deceased Chamar that since many people from the vicinity of the area use the said place for urination, he had gone there and urinated. Upon saying so, accused Makadya annoyed. He rushed inside the house, picked up solid wooden log, returned back and gave forceful blow of the said wooden log on the head of deceased Chamar. Consequently, deceased Chamar fell down. Even after his falling down, the accused gave one more blow of the wooden log on the head of deceased Chamar and ran away leaving the wooden log there only. Dasharath Pawara and Prakash Pawara, who were standing by the side of the aforesaid road, looking to the incident, rushed forward so as to rescue deceased Chamar, but prior to that accused Makadya had run away.

4. Deceased Chamar had suffered bleeding head injury and he had lost the conscious. Dasharath Pawara took his father Chamar

Pawara initially to Cottage Hospital, Shirpur in a vehicle belonging to one Munna. After first aid, on the advice of Medical Officer of Cottage Hospital, he carried father Chamar to the Civil Hospital at Dhule. While under treatment at Civil Hospital, Dhule, on 18-02-2014 at about 09:30 p.m. Chamar Pawara succumbed to the head injury suffered by him.

5. Soon after declaring father – Chamar Pawara dead, Dasharath Pawara ran to the City Police Station, Dhule and informed Station House Officer on duty about the incident. Since no action was taken against the accused, on 19-02-2014 after funeral of his deceased father – Chamar, Dasharath Pawara went to the Shirpur Police Station, Dist. Dhule and lodged the report narrating the aforesaid incident. Treating that report as FIR crime bearing no.30 of 2014 came to be registered against accused Makadya Pawara under Section 302 of IPC.

6. The investigation of the said crime was carried by Sambhaji Patil, Police Inspector attached to Shirpur Police Station, Dist. Dhule. During the course of investigation, spot panchanama and inquest panchanama were drawn, statements of material witnesses were recorded and post-mortem report and other papers got collected from Dhule City Police Station, Dhule. Accused Makadya was arrested.

Muddemal articles were sent to Forensic Lab for examination. After completion of investigation and receipt of the CA reports, accused Makadya was charge-sheeted.

7. On 16-11-2015 the learned Additional Sessions Judge, Dhule framed the charge under Section 302 of IPC against accused Makadya vide Exh.4, conducted the trial and after completion of the trial held accused Makadya guilty for the murder of deceased Chamar and sentenced him, as stated above.

8. Mr Hanumant P. Jadhav, Advocate while taking us through the paper book of the case vehemently argued that impugned judgment and order is totally incorrect. The learned Additional Sessions Judge, Dhule failed to appreciate evidence on record in proper perspective and arrived at wrong conclusion. The evidence of first informant - Dasharath Pawara and alleged eye witness Prakash Pawara, which is relied upon by the learned Additional Sessions Judge, Dhule, is not at all worthy of credence. They both are highly interested witnesses. The scrutiny of their evidence was not done properly in the light of attendant circumstances. The learned Additional Sessions Judge, Dhule failed to appreciate that, initially Dhule Police Station, Dhule had registered A.D.

and subsequently on the basis of belated FIR crime was registered against accused Makadya. The story narrated in the FIR is false and afterthought. Except ocular evidence of two interested witnesses, there is no other cogent evidence to point out finger against accused Makadya. The spot panchanama is not at all reliable, as it has been drawn after many hours of incident. The evidence of Vasant Sasle (PW-1) (one of the panch witnesses) speaks volumes as to how panchanama is fabricated one. The alleged wooden log has not been seized at the instance of accused Makadya. Though there is no clear and cogent evidence to connect deceased Makadya with the incident, on the basis of false FIR and afterthought statements of witnesses including two interested witnesses, learned Additional Sessions Judge, Dhule has held accused Makadya guilty for the serious offence of murder and sentenced him to suffer rigorous imprisonment for life. The applicant / appellant has every hope of success in appeal. This is a fit case to suspend the sentence and release the applicant / appellant on bail.

9. Per contra, Mr R.V. Dasalkar, APP vehemently argued that case is based on eye witnesses. First informant - Dasharath and Prakash Pawara (PW-5) being eye witnesses their evidence assumes great importance. They both in one voice deposed about the incident and

complicity of the accused in incident. Nothing is brought on record through their cross-examination, on the basis of which, their evidence supported by cogent circumstances can be discarded. Medical evidence throws light not only about the severity of injury suffered by deceased Chamar, but also on the intention of the accused. Conduct of the accused after commission of the crime also lends support to the clear, cogent and ocular evidence of eye witnesses. The learned Additional Sessions Judge has rightly held the applicant / appellant guilty for the offence under Section 302 of IPC, after appreciating the evidence on record in proper perspective. There is no force in the application. As such, the application for suspension of sentence and bail is liable to be rejected.

10. In light of the aforesaid submissions made at bar by Advocate representing both the sides, we have carefully gone through the record, so as to ascertain whether the applicant / appellant deserves to be released on bail, pending appeal by suspending sentence.

11. To prove the charge of murder punishable under Section 302 of IPC, the prosecution has examined as many as 9 witnesses. All the witnesses examined by the prosecution are material witnesses.

12. It is admitted fact that first informant - Dasharath Pawara is the son of Deceased Chamar. It is also admitted fact that deceased Chamar Pawara and accused Makadya Pawara were the neighbours of each other. It is also not in dispute that eye witness - Prakash Suklal Pawara (PW-5) is cousin of first informant - Dasharath Pawara. On this background we will turn to the evidence on record.

13. Post-mortem examination report (Exh.26) proved in the evidence of Dr Ajit Patil, who conducted post-mortem on the dead body of deceased Chamar Pawara, on 19-02-2014 during 10:45 hrs to 11:45 hrs at S.B.H. Government Medical College and General Hospital, Dhule demonstrates that deceased Chamar Pawara had suffered 6 external surface wounds and injuries associated with 8 internal injuries and all the injuries are ante-mortem in nature. According to Dr Ajit Patil, internal injuries mentioned in column nos.19 and 21 of the post-mortem report are sufficient to cause death in ordinary course of nature. As far as cause of death is concerned, Dr Ajit Patil very clearly deposed that, head injury associated with splenic laceration is the probable cause of death of deceased Chamar Pawara. Provisional post-mortem report and final examination post-mortem report both corroborates to the evidence

of Dr Ajit Patil as far as cause of death of deceased Chamar Pawara is concerned.

14. Dr. Ajit Patil in his further evidence very specifically deposed that external and internal injuries suffered by deceased Chamar Pawara are possible by assault with a wooden log like muddemal Article no.1. During cross-examination Dr Ajit Patil has ruled out possibility that deceased Chamar Pawara suffered external and internal injuries mentioned in post-mortem report by fall on hard substance. It has also come on record through his cross-examination that 4 to 6 blows of hard and blunt object are required for causing injury nos.1 to 6 mentioned in post-mortem notes. Thus, at this juncture, we have no hesitation, *prima facie*, to hold that Chamar Pawara died of homicidal death.

15. The case is mainly based on eye witnesses. PW-4 Dasharath Pawara is eyewitness and first informant, whereas PW-5 Prakash Pawara is eye witness. It is evident from the record that they both saw accused Makadya while assaulting deceased Chamar with a muddemal solid stick and running away from the spot, when deceased Chamar fell down and lost the conscious. Their evidence also reveals that accused Makadya got annoyed, seeing deceased Chamar urinating in open space forming part of his house property and therefore first of all he picked up quarrel

and then gave successive two blows of solid wooden log by bringing the same from inside the house, on the head of the Chamar Pawara.

16. The testimony of PW-4 Dasharath and PW-5 Prakash are clear, cogent and consistent with each other. Nothing could be brought on record from their cross-examination, which would create doubt about their version. From the material came on record through the cross-examination of they both, it is *prima facie* clear enough that, PW-4 Dasharath and PW-5 Prakash, at the time of incident were standing by the side of the Boraji – Shahada road which was situated on western side of the houses of deceased Chamar Pawara and accused Makadya. The spot of incident was visible from the place where they were standing and chit chatting. Hearing the sound of commotion and cries they rushed to the spot, but before they had reached to the spot accused fled away. It was PW-4 Dasharath who lifted his father Chamar and immediately carried him to Cottage Hospital at Shirpur and then to Civil Hospital at Dhule in a vehicle. The accused has not come with any specific defence. When both the eye witnesses have given clear account of the incident and complicity of accused in the incident and there is no specific defence merely on the basis of the fact that both the eye witnesses are closely related with deceased Chamara, at this juncture,

their evidence cannot be discarded. It is settled position of law that close relationship of the witness with the deceased is no ground to reject his evidence, on the contrary he will not conceal the actual culprit. The only rider is that the evidence of witness closely related with the victim should be examined carefully.

17. Here in this case evidence of aforesaid two eye witnesses gets support from the spot panchanama. It is true that out of two panchas of the spot panchanama one viz. PW-1 has admitted in cross-examination that he reached to the spot at 03:00 p.m. whereas spot panchanama reveals that it was drawn between 11:10 a.m. to 12:10 p.m. But, merely for this reason, Spot Panchanama (Exh.30) at this juncture cannot be discarded since testimony of another panch witness PW-2 Prakash and PW-9, Sambhaji Patil, I.O., proves execution and contents thereof. Crime weapon viz. solid wooden log seized from the spot also *prima facie* corroborates to the evidence of the eye witnesses.

18. Record shows that on 18-02-2014 at about 09:30 p.m. while under treatment at Civil Hospital, Dhule, Chamar succumbed to the injuries suffered by him in aforesaid incident. Immediately after declaring Chamar dead by medical authorities, PW-4 Dasharath rushed

to Dhule City Police Station, Dhule and informed Station House Officer on duty about the incident and occurring death of his father Chamar Pawara, due to injuries sustained in incident. The report at Exh.23 recorded on 18-02-2014 covers all the necessary information required for registering the FIR / crime viz. place of incident, time of incident, name of victim / deceased, name of accused, person who carried deceased initially to the Cottage Hospital at Shirpur and then to the Civil Hospital, Dhule from the spot and declaring Chamar Pawara dead by the Medical Authorities while under treatment at Civil Hospital and on the basis of aforesaid intimation, instead of registering the crime, Station House Officer, on duty, wrongly registered A.D. therefore, it cannot be said that FIR (Exh.15) was lodged belatedly and at this juncture the case of the prosecution supported by evidence of two eye witnesses cannot be thrown away for the reason of not explaining the delay.

19. Thus, taking into consideration evidence on record in totality, we are not inclined to grant bail to the appellant / applicant by suspending the sentence. With this, the application is rejected.

20. The fees of Mr Hanumant P. Jadhav, the learned Counsel appointed to represent the applicant, is quantified at Rs.5000/- (Five

Thousand Only) which shall be paid by the High Court Legal Aid Services Sub-Committee at Aurangabad.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

Gajanan Punde, PA.