

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 CRIMINAL APPLICATION NO.1783 OF 2021
IN APEAL/1128/2019

YOGESH @ GOLU RAGHUNATH CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. V.D.Sapkal, senior counsel i/b
Mr. N. L. Choudhari
APP for Respondent-State: Mr. G.O. Wattamwar
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 29th OCTOBER, 2021**

PER COURT:-

1. Heard.
2. Pending the criminal appeal No. 1128 of 2019 preferred against the judgment and order of conviction passed by the Sessions Judge, Nandurbar dated 23.10.2019 in Sessions Case No. 21 of 2018, convicting thereby the applicant-accused for the offence punishable under Section 302 of I.P.C. and sentencing him to suffer imprisonment for life and to pay fine of Rs. 10,000/- i/d to suffer S.I. for six months, the applicant-original accused has filed this criminal application for suspension of substantive part of sentence and for bail.
3. The prosecution story in brief is that on 17.4.2018 at about 9.00 p.m. a quarrel had taken place between accused person and

deceased and in the said quarrel the applicant-accused inflicted an injury on the chest of deceased Ravindra with the help of ice breaker.

4. Mr. Sapkal, learned senior counsel submits that though there are so-called eye witnesses to the incident, however, the said eye witnesses have contradicted to each other on material parts. Learned senior counsel submits that P.W.2 Mohan Mangalsing Mali though deposed in his examination in chief that he had witnessed the actual incident and the applicant-accused has assaulted on the chest of deceased Ravindra by means of ice breaker, however, after considering the admission given by the said witness in his cross-examination, the inference could be drawn that he is not an eye witness to the incident. His statement was recorded belatedly for which no explanation has been given by the Investigating Officer. In his cross-examination, he has stated that 20/25 persons were beating deceased Ravindra and 50 to 100 persons were gathered there at the time of incident. He has also admitted that he cannot say definitely as to who was holding which weapon. P.W.2 Mohan has also stated in his cross-examination that during the discussion in public he came to know that the accused committed murder of deceased Ravindra.

5. Learned senior counsel submits that P.W.3 Sandip Patil is P.S.I. Deceased Ravindra was the son of police head constable. P.W.3 P.S.I. Sandip Patil is interested person. He is not independent

eye witness. Learned senior counsel submits that P.W.7 Vicky cannot be an eye witness to the incident. P.W.3 P.S.I. Patil has deposed that after the incident, he has called auto rickshaw and asked the driver of the auto rickshaw to take deceased to civil hospital, Nandurbar. On the other hand P.W.7 Vicky deposed that he took deceased Ravindra to Shinde Hospital, Nandurbar in his auto rickshaw.

6. Learned senior counsel submits that P.W.15 Dr. Kirankumar Wankhede, Medical Officer, who has conducted the postmortem examination, has opined about probable cause of death as “asphyxia due to hemothorax and left lung collapse due to sharp pointed object injury”. Learned senior counsel submits that the lungs are covered by the ribs and in the instant case there was injury on ribs. P.W.15 Dr. Wankhede has also admitted in his cross-examination that there was no injury on chest. Learned senior counsel has pointed out from the cross-examination of P.W.15 Dr. Wankhede that Dr. Wankhede has admitted in his cross-examination that had the deceased been treated in a well hospital, then his life could have been saved. Learned senior counsel submits that, as admitted by Dr. Wankhede, there was no injury on the left lung. So far as the injuries mentioned in column No.17 are concerned, those injuries are simple in nature as admitted by P.W.15 Dr. Wankhede. Learned senior counsel submits that on the basis of aforesaid expert opinion, it can be safely inferred that there was no intention to commit murder. The applicant-

accused is in jail from the date of his arrest i.e. 18.4.2018. In view of the same, the applicant accused deserves to be released on bail during pendency of the appeal.

7. Learned A.P.P. has strongly resisted the application on the ground that the prosecution case rests upon direct evidence. There are minor contradictions and omissions. However, all three eye witnesses have supported the prosecution case and out of them P.W.3 is the P.S.I., who has witnessed the incident while proceeding from that road to Sakri Naka via fish market alongwith his writer Jayesh Gavit. He was on civil dress and his writer was also on civil dress. Learned A.P.P. submits that there is ocular evidence and the medical evidence is always considered as hypothetical evidence. In view of the same, the application filed for suspension of substantive part of sentence and for bail is required to be rejected.

8. On going through the evidence, particularly the evidence of P.W. 2, P.W.3 and P.W.7, who are eye witness to the incident, though we find that P.W.2 and P.W.3 have given certain admission in their cross-examinations, which are contradictory to their own version and also contradictory to each other, however, *prima facie* we find that the evidence of P.W.3 P.S.I. Sandip Patil is trustworthy, reliable and consistent. P.W.3 P.S.I. Sandip Patil has deposed that the applicant-accused has assaulted on the chest of deceased Ravindra by means of ice breaker during the quarrel. Even in the postmortem

examination during the internal examination, P.W.15 Dr. Wankhede in column No.20 has noted the injuries i.e. (i) normal puncture wound on left side IInd intercostal space below clavical and (ii) Bold and large 2 punctures on arch of aorta. P.W.15 Dr. Wankhede has also opined that the injuries mentioned in the postmortem report are possible by the weapon ice breaker. He was also shown the ice breaker in the court which he has identified.

9. The incident had taken place at a crowded place. Thus, considering the seriousness and gravity of the crime, we are not inclined to release the applicant on bail by suspending the substantive part of sentence. Hence, the following order:-

O R D E R

I. The criminal application is hereby rejected.

II. List the criminal appeal for hearing as per its turn.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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