

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

**CRIMINAL APPLICATION NO. 135 OF 2022 IN
CRIMINAL APPEAL NO. 51 OF 2020**

01 Suresh Rangnath Shinde

02 Savita Suresh Shinde

Applicants

Versus

The State of Maharashtra

Respondent

Mr. M. V. Narwade, advocate with Mr. V. P. Narwade, advocate for
the applicants

Mr. S. J. Salgare, APP for the Respondent-State.

**CORAM : V.K.JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 24th February, 2022.

PC :

1 Pending Criminal Appeal No. 51/2020, preferred
against the judgment and order dated 07.08.2020, passed by the
learned Additional Sessions Judge, Ahmednagar, in Sessions Case
No. 276/2015, convicting thereby both the applicants-accused for
the offences punishable under Section 302 read with Section 34 of
the Indian Penal Code and sentencing them to undergo rigorous
life imprisonment and to pay fine of Rs.25,000/- each, in default,

to undergo rigorous imprisonment for one year; so also convicting them for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for Ten years each and to pay fine of Rs.10000/- each, in default, to undergo rigorous imprisonment for six months and convicting them for the offence punishable under Section 504 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for one year, the applicants have preferred this application for suspension of substantive part of the sentence and to release them on bail.

2 The applicants and the informant are the neighbourers. On 28.06.2015, there was a dispute between the wife of the informant and applicant-accused no.2 on account of minor children. On 30.06.2015 at about 6.00 a.m., the main incident had taken place. As per the prosecution story, both the applicants have assaulted informant P. W. 1 – Shivaji Shinde, his mother Vatsalabai and his father deceased Dinkar. Applicant no.1 – original accused no.1 – Suresh allegedly given a blow of axe on the head of deceased Dinkar and also caused injuries to the other witnesses with the help of the said weapon. Applicant no. 2- Savita had used stick in the assault.

3 Learned Counsel for the applicants submits that applicant no.2 – Savita (original accused no.2) was on bail during trial. Learned Counsel submits that in the given set of allegations and considering the prosecution evidence, it is clear that there was no premeditated attack. The incident had taken place in the hit of anger during the course of sudden quarrel. The learned Counsel submits that no specific role has been ascribed to applicant no.2 – Savita so far as beating extended to deceased Dinkar is concerned. The learned Counsel submits that furthermore, the applicant-accused no1 – Suresh had given a single blow of axe on the head of deceased Dinkar. The learned Counsel submits that it can be inferred on the basis of prosecution evidence that there was no murderous intention. Both the applicants came out of their house due to the provocation given to them by injured Vatsalabai i.e. mother of applicant no.1. The learned Counsel submits that the incident had taken place on account of a very trifle issue. There are no criminal antecedents. Both the families are residing by the side of each other. They are peace loving persons.

4 The learned A. P. P. submits that both the families had

taken the issue of minor children to such an extent that they were quarreling with each other from 2/3 days prior to the main incident. The learned A. P. P. submits that both the applicants-accused came out of their house armed with the weapons. Applicant-accused no.1 assaulted injured Vatsalabai and also assaulted P. W. 1 Shivaji with the help of axe. The learned A. P. P. submits that deceased Dinkar, who was father of the informant and husband of Vatsalabai, had come to the spot to pacify the quarrel. Applicant no.1-accused Suresh had given a blow of axe on the head of deceased Dinkar. Deceased Dinkar had sustained head injury with internal complications as it was a forceful blow. The trial Court has rightly come to the conclusion that forceful blow was given with murderous intention. The learned trial Judge has also convicted both the applicants with the aid of Section 34 of the Indian Penal Code and even though injuries on the person of P. W. 1 Shivaji & injured Vatsalabai were simple in nature, however, considering the intention and the part of the body chosen for assault, convicted both the applicants-accused for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code. The applicant-accused no.1 – Suresh was not on bail during the trial. The learned A. P. P. submits that if the applicants are released on bail, there is a possibility of further quarrel

between the two families.

5 We have carefully gone through the evidence of the prosecution witnesses and the observations made by the learned Judge of the trial Court P. W. 1 – Shivaji has deposed that on 26.06.2015 at about 4 p.m., there was dispute between his wife and applicant no.2 on account of minor children. The matter was compromised immediately. On 29.06.2015 at 6 a.m., applicant-accused no.2 and her daughter Sonam assaulted his wife who was passing through the house of the applicant, however, there was no issue out of it.

6 So far as the main incident dated 30.06.2015 at about 6.00 a.m. is concerned, it appears that injured Vatsalabai was going to answer nature's call and while she was passing through the road in front of the house of the accused, she heard abuses from the house of the applicants. Thus, injured Vatsalabai asked accused as to why they are hurling abuses from the house and to come out of the house. It appears that in consequence of such sort of provocation, both accused have come out of their house. At that time, applicant accused no.1- Shivaji was holding axe in his hand and applicant accused no.2 - Savita was holding stick in her

hand. Then quarrel took place between both the families. Though mother of informant i.e. Vatsalabai was injured in consequence of the said quarrel, however, the prosecution has not examined her for the reason best known to it. Thereafter. P. W. 1 Shivaji and his father deceased Dinkar immediately rushed to the spot of the incident. Applicant accused no.1 assaulted deceased Dinkar on his head by the axe. It is not disputed that there was a single blow of axe on the head of deceased Dinkar. It appears that in the hit of anger and passion at sudden quarrel, the incident had taken place. Further, the incident had taken place without any pre-intimidation. Had there been no provocation from injured Vatsalabai, the applicants-accused nos.1 and 2 would not have come out of their house. Both the families are residing near each other and they are neighbours. There are no criminal antecedents. They are poor villagers. The applicant-accused no.2 was on bail during the course of the trial. Even if the applicant no.1 - Shivaji was not on bail during trial, however, considering the manner in which the incident had taken place and since applicant-accused no.1 has given a single blow of axe on the head of deceased Dinkar, we are inclined to release both the applicants on bail.

7 Hence, the following order:

(i) Criminal Application is hereby allowed.

(ii) Pending Criminal Appeal, substantive part of the sentence passed by the learned Additional Sessions Judge, Ahmednagar, vide judgment and order dated 07.08.2020 in Sessions Case No. 276/2015, convicting both the applicants for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous life imprisonment and to pay fine of Rs.25,000/- each, in default, to undergo rigorous imprisonment for one year; so also convicting them for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for Ten years each and to pay fine of Rs.10000/- each, in default, to undergo rigorous imprisonment for six months as also convicting them for the offence punishable under Section 504 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for one year, is hereby suspended and till then applicant no.1 - Shivaji Dinkar Shinde and applicant no.2 - Savita Suresh Shinde be released on bail on executing a P. R. bond of Rs.20,000/-

(Rs. Twenty thousand) each with one surety each for the like amount.

8 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb