

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**964 CRIMINAL APPLICATION NO.260 OF 2022
IN APEAL/45/2022 WITH APPLN/790/2022 IN APPLN/
260/2022 WITH APEAL/45/2022**

CHITTARANJAN RAMCHANDRA GHUMARE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Satej Jadhav, Advocate for the applicants.
Mr. R.D. Sanap, A.P.P. for respondent – State.
Mr. Shashikant Shekade, Advocate assisting the PP.

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

DATE : 01-03-2022.

ORDER :

1. Pending Criminal Appeal No. 45 of 2022 preferred against the judgment and order of conviction passed by learned Additional Sessions Judge, Ahmednagar dated 14.01.2022 in Sessions Case No. 91/2021 convicting thereby the applicants – accused Nos.1 and 2 for the offence punishable under Section 302 r/w Section 34 of Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay fine of Rs. 5,000/- in default to suffer rigorous imprisonment for three months, both the applicants – accused have preferred this application for suspension of substantive part of the sentence and also for bail.

2. As per the prosecution story, quarrel had taken place between the deceased and the applicants and at that time deceased was sitting on bridge of the canal. Applicant Chittaranjan has allegedly given kick blow on the chest of deceased during the course of the said quarrel and in consequence thereof deceased Dnyaneshwar fell down in the water of the canal and sustained injuries on his neck.

3. Learned Counsel for the applicants submits that except PW-1 Vaibhav, who happened to be cousin of the deceased, all the other eye witnesses have not supported the prosecution case in any manner. Learned Counsel submits that even if the evidence of PW-1 Vaibhav is considered as it is, the alleged incident occurred without any premeditation. On that day, PW-1 Vaibhav alongwith deceased Dnyaneshwar had gone to the field to irrigate the land and they opened water gate near the field of one Rama. At about 11.00 p.m. both the applicants went there on their Splendor motorcycle. They had abused deceased Dnyaneshwar and slapped him on his cheek for the reason as to why he had opened the tin gate of the water channel. In the said quarrel applicant Chittaranjan kicked Dnyaneshwar on his chest and Dnyaneshwar fell down in the water of the canal from the height of 10 ft. Learned Counsel submits that there was no

murderous intention. Further, when the deceased Dnyaneshwar was taken in the hospital, his own father has given history to the Medical Officer that deceased Dnyaneshwar fell down in the water of the canal and sustained injury. Learned Counsel submits that the deceased Dnyaneshwar succumbed to the injuries six months after the incident.

4. Learned A.P.P. assisted by learned Counsel Mr. Shekade submits that there is evidence about homicidal death of deceased Dnyaneshwar. It is also evident that both the applicants went there near the channel and abused the deceased Dnyaneshwar in filthy language, extended beating to him and thereafter the applicant Chittaranjan has given kick blow on his chest. Learned A.P.P. submits that the trial Court has rightly come to the conclusion of the murderous intention on the part of both the applicants and accordingly convicted them for the offence under Section 302 of I.P.C.

5. We have carefully gone through the notes of evidence, particularly the evidence of PW-1 Vaibhav. *Prima facie*, it appears that the incident had taken place without any premeditation. It appears that both the applicants got annoyed because the deceased had opened the tin gate of the

water channel. In consequence thereof, both the applicants had given abuses to deceased and slapped him on his cheek. However, the applicant Chittaranjan allegedly given kick blow on the chest of the deceased Dnyaneshwar. It further appears that at that time deceased Dnyaneshwar was sitting on the bridge wall of the canal. Thus, he fell down in the water by of the canal which is having 10 ft. depth with shallow water. In consequence thereof, deceased Dnyaneshwar had sustained injury on his neck. It is also the part of the record that deceased Dnyaneshwar succumbed to the injuries six months after the incident. Furthermore, both the applicants were on bail during the trial. Thus, considering the entire aspect of this case and since there is no criminal history as such, we are inclined to release both the applicants on bail pending the appeal. Hence, the following order.

ORDER

- (i) Criminal Application is hereby allowed.
- (ii) Pending the Criminal Appeal No. 45 of 2022 preferred against the judgment and order of conviction passed by the learned Additional Sessions Judge, Ahmednagar dated 14.01.2022 in Sessions Case No. 91/2021, the substantive part of the sentence, is hereby suspended and till

then the applicant No. 1 Chittaranjan Ramchandra Ghumare and applicant No. 2 Priyaranjan Ramchandra Ghumare be released on bail on furnishing P.B. of Rs. 20,000/- (Rupees Thousand) each with one surety each of the like amount.

(iii) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)

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