

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

**CRIMINAL APPLICATION NO.2153 OF 2022
IN
CRIMINAL APPEAL NO.481 OF 2022**

1. Balasaheb @ Bandu Uttam Dake
Age : 42 years, Occ. Agri.,

2. Shivaji s/o. Uttam Dake,
Age : 40 years, Occ. Agri.,

Both r/o. Village Nitrud, Tq.Majalgaon,
Dist. Beed.

..Applicants

Vs.

1. The State of Maharashtra
2. Smt.Vidhya Bhagwat Gayke

3. Smt. Kaushalyabai w/o. Baburao Gayke

..Respondents

Mr.V.P.Raje, Advocate for applicants
Mr.R.V.Dasalkar, APP for respondent no.1

**CORAM : R.G.AVACHAT AND
R.M.JOSHI, JJ.**

DATE : OCTOBER 18, 2022

ORDER :-

This is an application under Section 389 of the Code of Criminal Procedure. The applicants/appellants have been convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to rigorous imprisonment for life and to pay fine of Rs.20,000/-. In default of payment of fine, they have been directed to suffer simple imprisonment for six months.

2. Heard learned counsel for the parties.

3. Mr.V.P.Raje, learned counsel for the applicants, would submit that almost all the witnesses examined in proof of the charge, did not stand by the prosecution. Learned counsel took us through the relevant evidence on record to submit that as such, there is no eye witness account of the incident. The mother of the deceased reached the scene of offence after the incident was over. She only claimed to have seen the applicants and other two acquitted accused present with some arms. She even did not describe as to, with what kind of arms they were armed with. Learned counsel would further submit that the quarrel that took place fifteen days before the alleged incident, was not reported to the police. The evidence of the witnesses in that regard, therefore, cannot be relied on. According to learned counsel, based on the very evidence, the co-accused have been acquitted. The applicants have been behind the bars for about four years and nine months. According to learned counsel, it will take time for the appeal to come up for hearing by its turn. He, therefore, urged for allowing the application.

4. Learned APP would, on the other hand, submit that the incident had a prelude. There was dispute over fetching of water from a common bore-well. The deceased was assaulted at one place. While he ran away to save himself, the applicants and the co-accused followed and killed him. Learned APP took us through the post mortem report to indicate that the deceased suffered thirteen injuries. He would further submit that the State has prepared an appeal to be filed against the acquittal of the co-accused. According to learned APP, hearing of the appeal can be expedited. He, therefore, urged for rejection of the application.

5. Considered the submissions advanced. Perused the evidence relied on.

6. It is true that most of the witnesses have turned hostile. There is, however, material to indicate that there was dispute over taking water of common bore-well. Just fifteen days before the incident, quarrel had ensued between the deceased on one hand and the applicants and the acquitted accused, on the other. It being a minor incident, appears to have not been reported to the police. The post mortem report indicates that the deceased died "due to head injury and fracture of skull". He suffered thirteen injuries.

7. There is evidence of the mother of the deceased. It is in her evidence that on the fateful day, the deceased went to the field in the morning. As he did not return home, she went to the field by 8.00 a.m. in search of him. She found her son lying motionless near the field of one Pillu Dake. The applicants and the acquitted accused were present around her deceased son. They were armed with sticks and stones. The evidence of the mother of the deceased coupled with the reasons given by the trial Court to convict the applicants herein, lead us to reject present application, at this stage.

8. Hence, the application is rejected.

9. Hearing of the appeal is expedited.

[R. M. JOSHI, J.]

[R.G. AVACHAT, J.]

KBP