

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

**CRIMINAL APPLICATION NO.1654 OF 2021
IN
CRIMINAL APPEAL NO.373 OF 2021**

1. Sk. Mohd. Ahemad s/o. Sk. Mohd. Umar,
2. Sk. Mohd. Issaq s/o. Sk. Mohd. Umar,
3. Sk. Mohd. Imran s/o. Sk. Mohd. Isaq ..Applicants

Vs.

The State of Maharashtra and anr. ..Respondents

Mr.N.S.Ghanekar, Advocate for applicants
Mr.R.B.Bagul, APP for respondent no.1
Mr.A.L.Kanade, Advocate for respondent no.2

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

DATE : DECEMBER 14, 2022

ORDER :-

This is an application under Section 389 of the Code of Criminal Procedure. Vide order dated 28.06.2021 passed by learned Special Judge under (POA) Act, Aurangabad, in Special Case No.316 of 2016, the applicants/appellants (original accused nos.2, 5 and 6) have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and therefore, sentenced to suffer rigorous life imprisonment and to pay fine of Rs.1,000/- each, with the default stipulation.

2. Heard learned counsel for the parties. Perused the impugned judgment and the evidence relied on.

3. The applicants along with three others were prosecuted for the offence punishable under Section 302 of Indian Penal Code and other offences. The other three accused, i.e. original accused nos.1, 3 and 4, have been acquitted of the offences with which they were charged. There was dispute over a house site. On the fateful day, construction activities were in progress on the house site. A civil suit was filed by the applicants against the deceased and his family members. The deceased died of head injuries. The applicant (original accused no.2) is alleged to have assaulted the deceased on the head with stone. The other applicants allegedly caught hold of the deceased to facilitate the blow on his head. This evidence of the informant was found to be an improvement over the averments made by her in the FIR. True, another eye witness gave evidence consistent with the same.

4. The fact is that the acquitted accused – Jakir assaulted on the head of the deceased with stick. There was another injury in the nature of abrasion on the head of the deceased. The Medical Officer opined that the head injury, which proved to be fatal, was

caused with a stick. Admittedly, the stick blow on the head of the deceased, is attributed to Jakir (acquitted).

5. The incident took place on account of dispute over a plot. The applicants have been in jail for little over six years. It will take time for the appeal to come up for hearing. It is, therefore, desirable to allow the application. Hence, the following order:-

(i) The application is allowed;

(ii) During pendency of the appeal, the substantive sentence of imprisonment imposed vide order dated 28.06.2021 passed by learned Judge under (POA) Act, Aurangabad, in Special Case No.316 of 2016, to stand suspended. The applicants be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

[R.M.JOSHI, J.]

[R.G.AVACHAT, J.]

.....

KBP