

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

**CRIMINAL APPLICATION NO. 3126 OF 2022
IN
CRIMINAL APPEAL NO. 685 OF 2022**

1] Madhav Venkatrao Chopde
2] Manohar Venkatrao Chopde ... Applicants
Versus
The State of Maharashtra ... Respondent

....
Mr. Chaitanya C. Deshpande, and Mr. S. S. Palnitkar, Advocates for
applicants
Mr. A. A. Jagatkar, APP for respondent - State
....

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

DATED : 10th OCTOBER, 2022

PER COURT :-

. Heard.

2. The applicants have been convicted for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and pay fine of Rs.25,000/-, in default, to suffer rigorous imprisonment for three months.

3. The applicants have been convicted solely on the basis of evidence of PW9. The record indicates that the police statement of PW9 was recorded 40 days after the incident. This witness in his evidence attributed the acquitted accused (original accused No.5) an assault with a '*Katti*'. While the evidence on record indicates that on the given date and time, the original accused No.5 was on duty in the school. This renders the evidence of PW9 Madhukar doubtful, at least for the present unless the entire evidence for the prosecution is scanned during hearing of the appeal finally.

4. The learned APP has strong reservation to grant application, since according to him there was dispute over right of way. The clothes on the person of the appellants had blood stains.

5. For the observations made in para 3 herein above and the fact that the Chemical Analysis report does not indicate the clothes on the person of the applicants had blood stains of blood group of the deceased and the fact that it will take time for the appeal to come up for hearing by its turn, we are inclined to allow the application.

6. The execution of substantive sentence of imprisonment to stands suspended, pending the appeal. The applicants be released on

bail on executing P. R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each and surety bond in the like amount.

7. Bail before the trial Court.

8. The Criminal Application stands disposed of.

[R. M. JOSHI, J.]

[R. G. AVACHAT, J.]

SMS