

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

**CRIMINAL APPLICATION NO.721 OF 2023
IN APEAL/145/2023 WITH APEAL/145/2023**

**NITIN MAHADEV SUGAVE
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. Satej S. Jadhav, Advocate for applicant
Mr. S. J. Salgare, APP for respondent - State

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**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 11.04.2023.

PER COURT :-

. The present application has been filed for suspension of substantive sentence. The applicant-appellant is the original accused who faced trial for the offence punishable under Section 302 of the Indian Penal Code. He has been tried in Sessions Case No.79/2021 before the learned Additional Sessions Judge, Latur. The learned trial Judge by judgment and order dated 03.02.2023 has held the applicant guilty of committing offence and sentenced him to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month.

2. Heard Mr. Satej S. Jadhav, learned Advocate for the applicant and the learned APP for the State.

3. With the able assistance of both the sides, we have gone through the record and proceedings.

4. The informant Vikas, who was then aged 16 was the nephew of the deceased Govind. Govind was working as agricultural labour in the field of accused since Gudhipadwa festival of 2020. Govind had not gone to the field for labour work on 27.05.2021, as accused had not paid him agreed charges. However, the accused went to the house of Govind around 9.00 a.m. on 28.05.2021 and asked him to resume the work with an assurance that he would pay the amount to him. Govind went along with accused in presence of the informant, Kalinda - wife of deceased and Swapnil - son of deceased. It is the further prosecution story that, around 11.50 a.m., the accused had given a phone call from the mobile of Govind to the informant and asked him as well as Swapnil to come to his field immediately. Accordingly, the informant as well as Swapnil went to the field and they saw Govind was lying in injured condition under a Mango tree situated near the bandh. It was noticed that there was no

pant or underwear on the person of deceased, but there was only shirt. He had sustained bleeding injuries to his right elbow and left hand and bruise injuries on his abdomen, back and on his buttocks. As per the informant, Govind was still able to speak and he told that the accused had severely beaten him with a Bamboo stick. Thereafter, Govind demanded water, which was given by the informant and then Govind became unconscious. He was shifted to Government Hospital, Ausa in auto-rickshaw. The Medical Officer at that place examined Govind and declared him dead. Later on, on the same day, the First Information Report (FIR) was lodged.

5. It appears from the record that prosecution has examined in all nine (9) witnesses to bring home guilt of the accused. However, out of them, PW-3 Kalindabai, the wife of deceased, PW-4 Swapnil, son of deceased, have turned hostile.

6. The informant has stuck to his FIR and then there is evidence in the form of postmortem report, discovery panchanama at the instance of the accused, thereby discovering the stick, spot panchanama, the evidence of carrier and Investigating Officer.

7. It has been vehemently submitted on behalf of the appellant that it has come on record that the informant is not residing

with the deceased and therefore how he came to know about the fact that the accused had come to the house of deceased to call him and had given assurance, is a question because the persons who were in the house have turned hostile. Except bare words, there is nothing on record to show that the deceased was serving with the accused. If the dimensions of the stick are considered, it is not possible that the injuries on the person of the deceased could have been caused by such weapon, though it is stated that the said stick has been discovered by the accused. Further, the postmortem report shows that in all seven injuries were found upon the external examination and it is said that riger mortis was well marked on all over the body. In the cross examination, the Medical Officer has admitted the preposition of Parekh's Text Book on Medical Jurisprudence that in India, rigor mortis commences in 2 to 3 hours and takes about 12 hours to develop from head to toe, persist for another 12 hours and takes about 12 hours to pass off. At one place, she admits that in the present case the riger mortis was well developed and therefore the death might have occurred before 12 hours to 24 hours from the time of postmortem. She has also admitted that the death might have occurred around 2.00 a.m., but then, again volunteered that death may be before 6 hours to 24 hours.

8. The postmortem was conducted between 5.00 p.m. to 6.15 p.m. on the same day and therefore it has to be taken that the death might have occurred at 5.00 a.m., then it does not support the ocular evidence that deceased was at home around 9.00 a.m.

9. The Investigating Officer has not collected the CDR to prove that there was call from the mobile of the deceased to the informant around 11.50 a.m.

10. Learned Advocate for the appellant has further pointed out the lacunas in the investigation and submitted that even if we do not want to go into the aspect of the lacuna in the investigation, yet, there was no investigation on the point of motive. With these shortcomings, the appellant need not be kept behind the bars till the decision of the appeal as it will take long time. He, therefore, prayed for suspension of sentence during the pendency of the appeal.

11. The learned APP strongly opposed the application and submitted that a well reasoned order has been passed. Though the wife and son of the deceased have turned hostile, yet the informant who is the nephew which stood to the prosecution story, his testimony is consistent with the FIR, statement under Section 164 of Cr.P.C. and

the substantial evidence. There is oral dying declaration that was given to the informant which carries more importance. The ocular evidence would prevail. The ultimate cause of the death is hemorrhagic shock following multiple injuries. The prosecution has proved that the death is homicidal in nature. The dead body was found in the field of the accused and therefore he ought to have explained the circumstances under which the dead body was found in his field. Further there is no explanation by the accused as to how the blood stains of the group of the deceased were found on his clothes. But, further evidence of prosecution was sufficient to hold the accused guilty beyond reasonable doubt and therefore, it cannot be said that there is case made out for suspension of sentence.

12. At the outset, we would like to say that we are assessing the evidence, but for a limited purpose as to whether the case is made out for suspending sentence.

13. The wife and the son of the deceased have turned hostile. They were supposed to be the persons who were in the house of the deceased at the relevant time. Questions in the nature of cross put to them are definitely required to be considered at the time of final hearing, but then the position stands that now except the testimony of

PW5 Vikas, the nephew - informant, there is no other evidence which could be immediately connected to the death. It is, therefore, also required to be considered as to whether the motive was proved when it is a case based on dying declaration. Whether the said oral dying declaration can be said to be believable, is also required to be considered that too in the background that the riger mortis was developed all over the body when the postmortem was conducted. The admissions given by the Medical Officer are also required to be considered and it has also come on record that there was a political rivalry between one Balaji who is the brother of deceased and the accused, as well as Balaji and PW-5 Vikas.

14. No doubt, there is evidence in the nature of discovery of the weapon by the accused and also the fact that the Medical Officer says that the injuries which she had noted on the person of the deceased were possible with such stick, but again the question comes down to the riger mortis that was well marked at the time of postmortem. Again, at the cost of repetition, it can be said that whether the prosecution was able to prove the motive is required to be considered and also if that was the motive, why there were no clothes, such as, pant and under-pant on the dead body, when PW-5

Vikas and PW-4 Swapnil had gone to the place. The spot panchanama has been conducted on the next date and while executing the spot panchanama, those clothes have been recovered from the spot.

15. With all these things, we find that the case is made out for suspending the sentence, pending appeal.

16. It appears that the accused was not released on bail throughout the trial, yet, with the above discussion, the said sentence needs to be suspended till the final disposal of the appeal. Hence, following order:

ORDER

- (i) The application stands allowed.
- (ii) The substantive sentence imposed on the applicant in Sessions Case No. 79/2021 by the learned Additional Sessions Judge, Latur on 03.02.2023 stands suspended till the hearing and final disposal of Criminal Appeal No.145/2023.
- (iii) The applicant Nitin Mahadev Sugave be released on P. R. bond of Rs.30,000/- with two solvent sureties of Rs.15,000/-.
- (iv) The applicant shall not commit any criminal activity.

- (v) The applicant to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal starting from the date he tenders bail papers and thereafter the trial Judge to fix dates for his subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same, and in that case the prosecution would be at liberty to file application for cancellation of the bail granted to the applicant.
- (vii) Though the present order is passed, in appeal, the applicant shall not act in any such way which would be detrimental to the witnesses.
- (viii) Bail before the trial Court.

[Y. G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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