

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CRIMINAL APPLICATION NO.700 OF 2021
IN APEAL/136/2021

SHIVAJI GANGADHAR BORHADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Ambar S. Barlota
APP for Respondent-State : Mr. R. V. Dasalkar
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 10 JANUARY 2023

PER COURT :-

1. Present application has been filed for suspension of sentence. The applicant stood prosecuted in Sessions Case No. 53 of 2015 before the Learned Additional Sessions Judge, Vaijapur, District Aurangabad. He has been held guilty of committing offence under Sections 302 and 452 of IPC. On 21.01.2021, he has been sentenced thus :

1. Accused No.1 Shivaji Gangadhar Borhade is hereby convicted u/s 235(2) of the Code of Criminal Procedure of the offences punishable under section 302 of Indian Penal Code and is sentenced to undergo imprisonment for life and pay fine of Rs.2,000/- (Rs. Two Thousand Only) in

default to undergo rigorous imprisonment for six months.

2. Accused No.01 Shivaji Gangadhar Borhade is also convicted u/s 235(2) of the Code of Criminal Procedure of the offences punishable under section 452 of Indian Penal Code and is sentenced to undergo rigorous imprisonment for three years and pay fine of Rs.2,000/- (Rs. Two Thousand Only) in default to undergo rigorous imprisonment for six months.

2. With the able assistance of both sides, we have gone through the evidence. What is turning out is that two eye witnesses have deposed about entering of the accused in the house of informant and assault to the deceased by means of a tong (word used in the trial is 'Chimta'-an instrument used for plucking cotton). Learned Advocate for the applicant tried to submit that there are discrepancies in the testimony of the eye witnesses. The informant states that there was scuffle outside the house and then the accused went to his house, brought the tong, entered the house of deceased and then the blow was given. However, the wife of deceased is not supporting this theory. She states about the assault only inside the house. Further, medical evidence is not supporting the ocular evidence as injuries, which are 26 in number, have been found by the medical officer and the probable cause of death has been given as 'head injury with

throttling'. None of the eye witnesses have come with a case of throttling. There are other points also on which the learned Additional Sessions Judge has not paid attention, but with this kind of evidence, the applicant need not be asked to languish in jail. He is ready to abide by the terms of bail.

3. Per contra, learned APP has strongly advocated for continuing the applicant in jail to suffer the sentence as he has been held guilty in a reasoned judgment by the learned trial Judge.

4. At this stage, even if we brush aside the theory of throttling or reason, yet what we could find *prima facie* is that the ocular evidence is consistent in respect of blow on the head by tong and PW5 i.e. the medical officer has stated in categorical terms that the said single blow was sufficient to cause death. Even if we take that an attempt has been made to get the admission that other injuries are possible by fall, yet there are two eye witnesses to the incident and they were consistent that the accused had gone to his house and brought the tong. *Prima facie*, it indicates the preparation and it is stated that he had uttered the words that deceased should not be kept alive before he gave the blow. It has to be tagged with the intention. Under such circumstance, we find *prima facie* evidence against the applicant

which has been considered by the learned trial Judge. Another aspect is that the applicant was not released on bail throughout the trial. In view of this fact, no case is made out for suspension of sentence. The application stands rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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