

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

**CRIMINAL APPLICATION NO.1335 OF 2020
IN APEAL/444/2020 WITH APEAL/444/2020**

**RAJU S/O. JAGANNATH BOTHE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant :Mr. P.S. Paranjape alongwith Rupesh A Jaiswal
APP for Respondents: Mrs. V.S. Chaudhari.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 5TH JULY, 2023

P.C.:-

Present application has been filed for suspension of sentence. The appellant/applicant is the original accused No.1 in Sessions Case No. 110 of 2015. He has been held guilty of committing an offence punishable under Section 302 and 324 of IPC by the learned Sessions Judge, Parbhani.

2. Heard Mr. Paranjape advocate for the appellant. With the able assistance of both sides, we have gone through the evidence which was before the trial judge. The learned advocate Mr. Paranjape appearing for the appellant submits that there was only one eye witness and injured in this case i.e. PW 4 Pandurang. The FIR is lodged by PW 3 – Jagannath but he is not the eye witness.

3. PW-1 Jagannath has two wives. The appellant is the son of the first wife whereas, PW-4 Pandurang is the son of the second wife. It has been brought on record that there is a dispute in respect of the property between them. As regards PW-4 Pandurang is concerned, he has stated that the appellant had assaulted his mother by scythe on her throat, hand and he says that he became unconscious. After some time, he regain consciousness. By that time, his mother was not there. He came in the village by bullock cart and then, he was brought by police patil to the Civil Hospital, Parbhani.

4. The learned advocate for the appellant has taken us through the testimony of PW-8 – API Zunjare, who in clear terms admitted that there was no independent witness, who had seen the incident or seen the appellant going towards the spot i.e. field. Therefore, it was practically a case of no evidence and the learned trial judge has concluded the other accused persons. As such, the appellant has a good chance of succeeding. The sentence, therefore, deserves to be suspended pending the appeal.

5. Per contra, the learned APP submits that apart from the testimony of PW-4 Pandurang, who had also sustained injuries and he had seen his mother being assaulted by accused No.1 by scythe, the evidence gets supported by Post mortem report and medical evidence and the Discovery Panchanama by which the scythe has been discovered by the appellant. The learned APP supports the reasons given by the trial judge.

6. At the outset, we are considering the evidence for a limited purpose, as to whether the case is made out for suspension of sentence or not. No doubt, there appears the background of dispute between the step brothers, but it's a double edged weapon and only party can not be given benefit of the same.

7. The case of the prosecution rests on direct evidence of PW-4 Pandurang, who has stated that he had seen the accused No.1 assaulting his mother by scythe on her throat. He was also injured in the incident. PW-5 Dr. Avinash Bhise is the Medical Officer who had examined Pandurang and also conducted post mortem. He had noted in all 8 external injuries on Pandurang. As regards column No. 17 of the post mortem report, he has noted 7 external injuries and it is stated that all those injuries were ante-mortem and fresh in nature. The probable cause of death that has been given by him is "*shock and haemorrhage due to multiple injuries received over neck*" and further he states that those injuries are possible by Article 12 – Scythe. Further there is evidence of discovery of Scythe. Under such circumstances, we do not find this to be a fit case where the appellant should be released on bail by suspending the sentence during the pendency of the appeal.

8. The application stands rejected.

[S.G. CHAPALAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-