

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

**907 CRIMINAL APPLICATION NO.1432 OF 2020
IN APPEAL/576/2018**

SURESH DATTATRAYA SONAWANE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. A.S. Sawant, Advocate for applicant

Mr. A.M. Phule, APP for respondent No.1

Mr. V.R. Dhorde, Advocate for respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 25th JANUARY, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application is filed by original accused No.1 for suspension of sentence. It will not be out of place to mention here that when the matter was before this Court on 02.09.2020 it was specifically observed that this Court was not inclined to grant the prayer on that day, however, taking into consideration the statement made by the learned Advocate for the applicant that the Record and Proceedings should be called in respect of CCTV footage, which is the piece of evidence in the trial leading to the

conviction of the appellant, notice was issued. Thereafter, it appears that the application is pending since then. The applicant stood prosecuted for the offence punishable under Sections 120-B, 147, 148, 302, 324, 504, 506 read with Section 149 of the Indian Penal Code. In Sessions Case No.82/2016 the learned Sessions Judge, Jalgaon by Judgment and order dated 30.11.2019 held the applicant guilty of committing offence punishable under Section 302 of the Indian Penal Code and he has been sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- (Rupees Five Thousand only), in default to suffer simple imprisonment for six months.

2 With the able assistance of the learned Advocate for the appellant and learned APP, we have gone through the depositions of 14 witnesses, who were examined on behalf of prosecution. It has been contended by the learned Advocate for the appellant that when it is a case of the prosecution that after the deceased was assaulted by ice breaker by the present applicant and the weapon had caused injury near chest, it could not have been gone unnoticed when he himself had gone to Police Station immediately. The reference letter that was given referring him to the Medical Officer (Exh.187) shows that he had sustained injury to his nose and forehead. Even in the CCTV footage it is not seen that the present applicant had assaulted deceased with ice breaker. It is stated that the applicant had

come on a scooty and parked in front of a Pan Centre and then he had assaulted deceased. It is then the prosecution story that when others tried to intervene, they had also received injuries. The Medical Officer, who had examined deceased Kishor, in his cross-examination has stated that with the injuries, which were noted by him on the person of deceased, it was absolutely not possible for the deceased to drive two wheeler and go to the Police Station. Therefore, the prosecution story is not only an exaggerated version but the eye witnesses were also deposing with ulterior motive. The CCTV footage does not support the prosecution, rather it supports the defence of the accused. Though the applicant was seen in the CCTV, it can be certainly said that he had returned to the said place after the deceased had instigated and abetted. He was not holding any weapon in his hand. There are more such discrepancies and other points involved which will show that the applicant has been falsely implicated. It will take time to decide the appeal filed by the applicant and, therefore, the sentence deserves to be suspended.

3 Per contra, the learned APP and learned Advocate representing the original informant strongly opposed the application and submitted that the learned Trial Court has properly scanned the evidence. Even in respect of the CCTV footage it is observed that the incident occurred behind a dumper

and, therefore, it could not have been captured by the CCTV. The applicant had come armed and that too with intention to commit murder. There was a motive for the applicant to commit the said offence and, therefore, the conviction of the applicant is just, proper and legal.

4 At the outset, it is to be noted that there are eye witnesses to the incident and they have been examined in this case. PW 1 Motilal, PW 2 Tushar, PW 3 Jayshree, PW 4 Nilesh and PW 5 Sagar are those witnesses and out of them Nilesh is the injured. As against causing injury to the other witnesses the learned Trial Judge has held accused Nos.2, 3 and 4 guilty of committing offence punishable under Section 324 of the Indian Penal Code but it is observed by the Trial Court that they had not shared with common intention with accused No.1 and there was no prior meeting of mind. They had come to the spot when they were informed about the quarrel between accused No.1 and deceased and, therefore, separate sentence has been awarded to them for the offence punishable under Section 324 of the Indian Penal Code. Prima facie the testimony of the eye witnesses appeared to be corroborating each other. As regards the applicant is concerned, it is stated that he had assaulted the deceased by ice breaker and the injury caused is deep in the left side of chest. The medical evidence is supporting the ocular as regards the injury is concerned. Now, it is stated that Exh.187 does not

say that deceased had sustained injury to the chest. Even at this stage we can say that the police officer is not an expert. The purpose of giving medical yadi is to request the medical officer to give treatment to those accused persons thereby treating the case as medico legal case. It was not expected from the concerned Police Officer to write the details of the injuries caused to each and every accused. Therefore, what kind of importance is required to be given to Exh.187 will have to be considered at the time of final hearing, however, certainly it cannot be so considered as the appellant desired. The testimony of the eye witnesses cannot be discarded at this stage by branding them as 'interested witnesses', only on the ground that they are the family members. Each one of them has tried to narrate as to why he or she was at the spot.

5 Much has been stated about the CCTV footage, however, the basic nature of such evidence is corroborative in nature and it cannot replace the ocular evidence of an eye witness. The weapon in the commission of the crime has been discovered at the instance of the applicant and evidence to that effect under Section 27 of the Indian Evidence Act has been adduced. The external injuries noted on the dead body, mostly consisted of stab wounds and it is categorically stated that injury Nos.1 to 4 mentioned in column No.17 would be caused by the ice breaker like Article 'A'. The death

is homicidal in nature. As regards the motive is concerned, motive for the commission of the offence is that the Sagar Choudhari, who is another son of PW 1 Motilal, deposed against the Sagar's brother-in-law Ganesh Vishwas Sapkale. Accused Ganesh has also been convicted by the Trial Court. A reasoned order has been given after scanning the evidence and, therefore, we do not find this to be a fit case where the applicant should be released on bail. He was not released on bail throughout the trial. Hence, the application stands rejected.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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