

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

**CRIMINAL APPLICATION NO.1942 OF 2023
IN APEAL/463/2023 WITH APEAL/463/2023**

**SHANKAR S/O LAHANU SALUNKHE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. K. N. Shermale
APP for Respondent: Mrs. V. N. Patil Jadhav
...

CORAM : S. G. MEHARE, J.

DATE : 15.06.2023

PER COURT :

1. Heard the learned counsel for the applicant. The learned A.P.P waives service of notice for respondent/State.

2. The applicant was tried for the offences punishable under Sections 302, 323, 504 and 506 of the Indian Penal Code. However, the learned Additional Sessions Judge, Sangamner, District Ahmednagar on appreciating evidence held the accused guilty for the offences punishable under Sections 304 Part II, 323, 504 and 506 of the Indian Penal Code. The applicant has been sentenced to suffer Rigorous Imprisonment for 10 years for the offences punishable under Sections 304 Part II i.e. maximum punishment imposed by the learned

Additional Sessions Judge Sangamner.

3. The learned counsel for the applicant has referred to the medical evidence and tried to convince the Court that the injury was not possible due to alleged weapon used in the crime. There was delay in medical examination of the deceased and performing the *post mortem*. He also referred to the evidence of the eye witnesses and vehemently argued that it was the deceased who instigated the applicant and therefore, the incident happened. There are no circumstances to believe that the offence against the applicant is proved under Sections 304 Part II of the Indian Penal Code. It was a case of single blow. Relying on the case of **Bhagwan Rama Shinde Gosai And Others Vs. State of Gujarat 1999 DJLS (SC) 614**, he would argue that the applicant has been sentenced for a fix period. He has already undergone two years of imprisonment, therefore, this Court may liberally suspend the sentence. There are no exceptional circumstances to refuse the suspension. The past of the applicant/accused was unblemished. He is the bread winner of his family. The appeal may takes it's time and there are no chance of hearing of the appeal on merits in the near future. For the above reasons, he claims suspension of sentence.

4. Per contra, the learned A.P.P. Mrs. Vaishali N. Patil Jadhav has argued that there was no reason to the accused/convict to assault the deceased with a wooden log. The applicant was aggressive and this is the exceptional circumstances to believe that he may be harmful to the society. For no reason the accused killed the deceased. Therefore, the sentence cannot be suspended.

5. Perused the impugned judgments and orders. The learned Additional Sessions Judge has observed that there is a evidence that initially deceased slapped the applicant/convict and he got angry and left away and again came with his wife and then the incident happened. The applicant picked up the wooden log laying on the spot and gave a single blow on the head of the deceased. The question whether that act is out of the anger or instigation by the deceased may fall for consideration. The learned Additional Sessions Judge imposed maximum sentence of 10 years it is a fixed period.

6. Considering the past of the applicant and the way in which the incident happened the Court believe that there are no exceptional circumstances to refuse the suspension. The statutory right of the applicant/accused needs to be protected as there is no possibility of immediate hearing of the appeal in near future.

7. The ratio laid down in the Bhagwan Rama Shinde Gosai and Others (supra) is squarely applicable to the case at hand. Hence, the application deserves to be allowed. Hence, the following order :--

ORDER

- (i) The application is allowed.
- (ii) The execution, implementation, effect and operation of the judgment of conviction of learned Additional Sessions Judge, Sangamner in Sessions Case No. 42 of 2022 dated 29.04.2023 is suspended till the conclusion of the appeal.
- (iii) The learned counsel for the applicant states that the applicant is ready to deposit the fine amount with the Sessions Court, Sangamner, District Ahmednagar forthwith.
- (iv) Applicant be released on bail on P.B. and S. B. of Rs. 50,000/- with one solvent surety of the like amount on the conditions that he shall not flee away from the justice and pursue the appeal to dispose it of at the earliest.
- (iv) Bail before the learned Additional Sessions Judge, Sangamner.
- (v) Unless the applicant deposit the fine amount, the release warrant of the accused/appellant shall not be issued.
- (vi) Call record and proceedings.

(vii) List the Criminal Appeal N o. 463 of 2023 in due course.

(S. G. MEHARE)
JUDGE

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