

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2081 OF 2023

IN APEAL/505/2023

1. Sampat Popat Rawade
 2. Ganpat Sukhdev Rawade
 3. Sandip Popot Rawade
 4. Sukhdev Baburao Rawade
- .. Applicants**

Versus

The State of Maharashtra **.. Respondent**

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Mr. R. R. Karpe, Advocate for the applicant.
Mr. A. V. Deshmukh, APP for the respondent – State.

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

DATE : 17th July, 2023

ORDER :-

. Present application has been filed for suspension of sentence. The applicants have been held guilty in Sessions Case No.283 of 2010 by learned Additional Sessions Judge, Ahmednagar on 25.04.2023. The appellants have been sentenced thus :-

“ The appellants/accused have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and thereby sentenced to suffer life imprisonment and to pay fine of Rs.5,000/- each, in

default, to suffer rigorous imprisonment for six months.”

2. Heard learned Advocate Mr. R. R. Karpe for the applicants and learned APP Mr. A. V. Deshmukh for the respondent – State and perused the evidence, which was before the learned Trial Judge.

3. It will not be out of place to mention here that the present case is the outcome of the cross complaints and this fact was brought to the notice of learned Additional Sessions Judge and, therefore, note of the same is taken by him in paragraph No.17 of the judgment. It is stated that the presence of both sides is, therefore, admitted. It appears that as per the story put up by the prosecution in this case, the reason for the incident was that the cattle belonging to informant had gone to the agricultural land of accused and then the accused had tied the cattle in their cattle shed and, therefore, the informant had gone to get the cattle back by untying it. The weapon that is allegedly used is stick and wooden clog (*Lodhane*), which was found on the spot. The spot panchanama Exhibit-63 shows that there is a cattle shed and house of accused No.4. It is therefore required to be considered, which side was the aggressor. The probable cause of death of deceased Bhausahab has been given by PW.8 Dr. Amol Shinde as “death due to head injury with its complications.” He has given the description of injuries in column No.17 and corresponding injuries in column No.19 (internal and external injuries), however, in his cross-examination he has stated that if

any person falls on hard and stony surface, then injury No.1 in column Nos.17 and 19 are possible. It has also been brought on record that absence of skull bone over left front parietal region over an area of 11 x 10 c.m. was noted and he admits that such bone might have been removed while doing craniotomy. Injury No.1 stitched wound in column No.17 is related to the procedure of craniotomy. He admits that he did not see the removed bone part of skull. Further, he says that the police have not forwarded him the weapon seized for obtaining opinion. He further says that if while carrying out craniotomy any mishap happens, complications may arise out of that. Therefore, the ambit of offence stated to be under Section 302 of Indian Penal Code is also required to be considered.

4. It appears from the record itself that the accused persons were in jail from 21.10.2010 to 03.02.2011 and, thereafter, they were released on bail till the conviction on 25.04.2023. Therefore, we find that the grounds have been made out for releasing the applicants on bail pending appeal. The appeal stood admitted on 20.06.2023 and it will definitely take long time to hear it finally. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The substantive sentence awarded against the applicants/accused in Sessions Case No.283 of 2010 by learned

Additional Sessions Judge, Ahmednagar on 25.04.2023 stands suspended till the hearing and final disposal of Criminal Appeal No.505 of 2023.

III) The applicants viz. (i) Sampat Popat Rawade, (ii) Ganpat Sukhdev Rawade, (iii) Sandip Popot Rawade and (iv) Sukhdev Baburao Rawade be released on P. R. Bond of Rs.30,000/- each and two solvent sureties of Rs.15,000/- each.

IV) The applicants shall not commit any criminal activity.

V) The applicants shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and thereafter, the Trial Judge to fix dates for their subsequent appearance.

VI) In case of two consecutive defaults on the part of the applicants to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

VII) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm