

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2599 OF 2023
IN
CRIMINAL APPEAL NO.629 OF 2023

- 1 Sanjay Dattu Dambre,
Age 45 yrs., Occ. Agri.,
Kalamsara, Pachora,
Tq. Pachora, Dist. Jalgaon.
- 2 Umesh @ Sanjay Madhukar Bagul,
Age 30 yrs., Occ. Agri.,
R/o Mohadi, Tq. Jamner,
Dist. Jalgaon.
- 3 Vijay Sursing Rajput,
Age 35 yrs., Occ. Agri.,
R/o Mohadi, Tq. Jamner,
Dist. Jalgaon.

... Applicants

... **Versus** ...

The State of Maharashtra
Through Police Station Officer,
Police Station, Pimpalgaon (Hareshwar),
Tq. & Dist. Jalgaon.

... Respondent

...

Mr. G.A. Kulkarni, Advocate h/f Mr. B.S. Deshmukh, Advocate for applicants

Mr. S.J. Salgare, APP for sole respondent

Mr. A.L. Gaikwad, Advocate h/f Mr. S.V. Deshmukh, Advocate for assist to PP

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

RESERVED ON : 23rd AUGUST, 2023

PRONOUNCED ON : 04th SEPTEMBER, 2023

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

1 Present application has been filed for suspension of substantive sentence imposed on the applicants. The applicants/appellants are original accused Nos.1, 3 and 4 in Sessions Case No.10/2014, who have been convicted by Additional Sessions Judge, Jalgaon on 28.06.2023 thus -

“1 Accused Sanjay Dattu Dambre, Umesh @ Sanjay Madhukar Bagul and Vijay Sursing Rajput are sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- (Rupees Ten Thousand only) each, in default to suffer rigorous imprisonment for one month for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code.

2 All the accused are sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.2,000/- (Rupees Two Thousand only), each, in default to suffer simple imprisonment for one month for the offence punishable under Section 325 read with Section 34 of the Indian Penal Code.

3 All the accused are sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/- (Rupees Two Thousand only) each, in default to suffer simple imprisonment for one month

for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code.

4 All the accused are sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/- (Rupees One Thousand only) each, in default to suffer simple imprisonment for fifteen days for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code.

5 All the accused are sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/- (Rupees One Thousand only) each, in default to suffer simple imprisonment for fifteen days for the offence punishable under Section 506 read with Section 34 of the Indian Penal Code.

6 All the accused are sentenced to suffer simple imprisonment for three months and to pay fine of Rs.1,000/- (Rupees One Thousand only) each, in default to suffer simple imprisonment for fifteen days for the offence punishable under Section 447 read with Section 34 of the Indian Penal Code.

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9 Substantive sentence shall run concurrently.”

2 Heard learned Advocate Mr. G.A. Kulkarni holding for learned Advocate Mr. B.S. Deshmukh for the applicants and learned APP Mr. S.J. Salgare assisted by learned Advocate Mr. A.L. Gaikwad holding for learned

Advocate Mr. S.V. Deshmukh for sole respondent. With the help of learned Advocates representing the respective parties we have gone through the evidence before the trial Court. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 The prosecution story, in short, is that – informant Vaishali lodged report with Pimpalgaon (Hareshwar) Police Station on 01.06.2013 stating that they have 04 acres of land in Kalamsara area. Out of that 03 acres land was purchased from deceased father-in-law Dattu and 01 acre remained, in which they have share. The mutation has not been effected as it was in the name of deceased Dattu. However, her brother-in-law, accused No.1 Sanjay and his wife Bharti were insisting that the said land should be transferred in their name. Around 7.00 a.m. on 01.06.2013 she was along with her sister-in-law Rekhabai, another brother-in-law Sunil and they had gone to pick the stubble. They were objected by the accused persons, who had come in rickshaw around 9.00 a.m. Accused persons lifted the sticks lying in the field and assaulted them.

4 It appears that initially the offence was under Section 324, 447, 323, 504, 506 read with Section 34 of the Indian Penal Code, but after the medical certificates were received, offence under Section 307, 325 of the

Indian Penal Code came to be added. After the investigation was complete, case was committed to the Court of Sessions, in all 14 witnesses have been examined and after considering the evidence on record the above sentence has been awarded after holding them guilty.

5 Here, it can be seen that all the accused were on bail throughout the trial and this is the additional point in their favour. Further, PW 1 Vaishali has admitted that the agricultural land which is in possession of accused No.1 is not in the name of either herself, her husband, brother-in-law, mother-in-law or sister-in-law. Accused No.1 possess the said land since lifetime of father-in-law. Under the said circumstance, the conviction of the accused under Section 447 of the Indian Penal Code is required to be tested. Further, the testimony of Dr. Vijayeda Pralhad Nage, who had examined the injured Sunil Dattu Dambre and Dilip Dattu Dambre, has stated that both of them had grievous injuries and as regards injury to Dilip is concerned, it was on temporal bone and, therefore, if there would have been much bleeding, then there was possibility of death, so also, that of Sunil. But in the cross-examination it can be seen that he had not brought the medical papers regarding giving primary treatment to Sunil as well as Dilip. Therefore, it is definitely required to be considered, as to whether the case was made out under Section 307 of the Indian Penal Code or it was under Section 324 of

the Indian Penal Code, as it originally stood. What was the motive that was alleged to be proved as against the other accused persons is also required to be tested, as they do not appear to be the family members and, therefore, case is made out for suspension of sentence pending appeal. Hence, following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 The substantive sentence awarded against the applicants/ appellants under Sessions Case No.10/2014 by learned Additional Sessions Judge, Jalgaon on 28.06.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.629 of 2023.
- 3 All the applicants viz. 1) **Sanjay Dattu Dambre**, 2) **Umesh @ Sanjay Madhukar Bagul** and 3) **Vijay Sursing Rajput**, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.
- 4 The applicants shall not commit any criminal activity.
- 5 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 appearances.

6 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.

7 Bail before the Trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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