

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

11 CRIMINAL APPLICATION NO.4027 OF 2022
IN APPEAL/492/2017

1. Naru S/o. Bhala Barela
Age: 49 years, Occu.: Agriculture
2. Panga @ Bhawani S/o. Naru Barela
Age: Major, Occu.: Agriculture
Both Resident of Tidya,
Tal.: Raver, Dist.: Jalgaon, Maharashtra,
(Presently lodged at Nashik Central Prison,
Nashik Road, Nashik) ..Applicants
(Ori. Accused No.1 & 2)

VERSUS

- . The State of Maharashtra
Through, the Police Inspector,
Investigating Officer, Raver Police Station,
Tal.: Raver, Dist.: Jalgaon.
(C.R.No.159/2014, Raver Police Station,
Raver, Dist.: Jalgaon) ..Respondent

...
Advocate for Applicants : Mr.Abhaykumar Dilip Ostwal
APP for Respondent : Mr.R.V.Dasalkar
...

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

DATE : 16th January, 2023

ORDER :-

. Heard learned Advocate for the applicants and learned APP
for the respondent-State.

2. Present application has been filed for suspension of substantive sentence imposed upon the applicants in Sessions Case No.11 of 2015 by the learned Additional Sessions Judge, Bhusawal, District Jalgaon on 13-10-2015. After holding the applicants guilty of offence under Sections 302, 323, 325 read with 34 of the Indian Penal Code (IPC), applicants have been sentenced to suffer life imprisonment for the offence punishable under Section 302 read with 34 of IPC, they have been further sentenced to suffer rigorous imprisonment for two years for the offence punishable under Section 325 read with 34 of IPC and they have also been sentenced to suffer rigorous imprisonment for one year for the offence punishable under Section 323 read with 34 of IPC.

3. With the help of learned Advocate for the applicants and learned APP for the respondent-State, we have gone through the entire evidence. Deceased is one Ramzan Tadvī. His brothers are the eye witnesses. The post mortem report shows only one injury in column No.17 as contusion on occipital region size 4x3 cm. As regards the internal examination is concerned, it was found that there was haematoma under the scalp on occipital region size 5 x 4 cm and there was no fracture to the skull. The probable cause of death is "Intracranial hemorrhage". As

regards the prosecution evidence is concerned, it is stated by the eye witness that applicant No.2 Panga had given the said blow to Ramzan. It is stated that he had given blow with the backside of blade of axe on the backside of Ramzan's head when Ramzan was caught-hold by applicant No.1 - Naru and a juvenile in conflict with law, who is the another son of applicant No.1. With this evidence, it is then required to be seen as to whether there was intention to kill when there is a single blow and when the weapon like axe having sharp edge was in the hand why it would have been chosen that the blow would be from the backside of the axe. Evidence will have to be scanned from that angle.

4. Another fact that has been pointed out on behalf of the applicants is that Ramzan had gone in front of the house of accused persons. He stated that he had gone there to ask as to why they have taken gum from Salai tree, but there is evidence on record which would show that even accused persons have received injuries and under said circumstance, it is required to be seen whether the prosecution has explained the injuries on the person of the accused persons. Secondly, whether the defence in respect of private defence was available to the accused and whether if at all they had exceeded their right of private defence, who were the aggressors. All these points are involved

in this appeal. Though, it appears that the applicants were never released on bail throughout the trial yet the evidence will have to be scanned from this angle also. Under such circumstances, a case is made out to suspend the sentence imposed on the applicants and to release them on bail.

5. For the aforesaid reasons, following order is passed :

ORDER

- i) Application stands allowed and disposed of.
- ii) The substantive sentence imposed against the applicants in Sessions Case No.11 of 2015 by learned Additional Sessions Judge, Bhusawal, District Jalgaon, on 13-10-2015 stands suspended till the hearing and disposal of Criminal Appeal No.492 of 2017.
- iii) The applicants (i) Naru S/o Bhala Barela and (ii) Panga @ Bhawani S/o. Naru Barela be released on P.R. Bond of Rs.30,000/- each with 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

SPT