

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4130 OF 2022
IN
CRIMINAL APPEAL NO.716 OF 2022

Sachin s/o Chandramuni Lone
Age: 22 years, Occu.: Labour,
R/o. Bhayyasaheb Ambedkar Nagar,
Degaon Chal, Nanded.

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. N. S. Ghanekar, Advocate for applicant.
Mrs. V. S. Choudhary, APP for the respondent - State.

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**CORAM : SMT. VIBHA KANKANWADI AND
GAURI GODSE, JJ.**

DATE : January 27, 2023.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed under Section 439 of the Code of Criminal Procedure for suspension of sentence.

2. The appellant/applicant has been convicted for committing offence punishable under Section 302 of Indian Penal Code and he has been sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for six months vide judgment and order dated 22.06.2022 passed by learned

Additional Sessions Judge, Nanded in Sessions Case No.35 of 2017.

3. Heard learned Advocate Mr. N. S. Ghanekar for the applicant and learned APP Mrs. V. S. Choudhary for the respondent - State.

4. Informant - Pankaj Hatkar is the younger brother of deceased Pawan. Uttamrao Narayanrao Lokhande is the maternal uncle of the informant and deceased Pawan. One Jyoti was the married daughter of Uttamrao Lokhande, who was residing behind the house of informant. The elder brother of accused was troubling said Jyoti and insisting that she should marry with him, otherwise he would commit suicide. Jyoti had settled the said matter amicably with the help of one Social Worker, however, the accused was stated to have had anger in his mind. Accused Sachin Lone was working as cleaner in a Gym by name and style Pranada Health Planet. P.W.4 - Pradip Godbole was serving as a technician at Prasad Hospital. It is the further prosecution story that accused Sachin had given a missed call to Pradip Godbole around 2.00 p.m. on 08.01.2007. In reply, Pradip had phoned accused Sachin and then Sachin told that there is a party at gym and asked him to come. It was told by him that deceased Pawan is at gym. Then Pradip told him that he would finish the marriage and would join them. Accused Sachin had then asked him to bring country liquor bottle. At 4.30 p.m. Pradip went to gym

where Sachin and Pawan were talking with each other. Accused Sachin had already brought 1.5 liter beer bottle. It is then stated that Pradip and Sachin went at wine mart and purchased country liquor bottle. They went back to the gym and all of them i.e. Pradip, Pawan and Sachin started consuming liquor. Pawan was under the influence of liquor, but accused Sachin was not under the influence of liquor. Pawan went for nature's call in the gym and behind him accused Sachin went there. Pradip also thereafter went in the bathroom where he saw accused Sachin having knife in his hand and one gloves. Accused Sachin was having altercation by putting knife on the throat of the deceased. It is the prosecution story that Pradip had brought them back to the counter of the gym. Pawan went off-balance and fell down and then Sachin had sat on the body of Pawan. Pradip tried to hold hand of accused Sachin in which he was having knife, but then accused threatened Pradip. Therefore, Pradip went away from that place. He went to his house on motorcycle. He told the informant about the thing what is going on at the gym. Informant went there by that time. The accused had committed murder of deceased Pawan.

5. It appears that the prosecution has examined in all eight witnesses to bring home the guilt of the accused. Taking into consideration the seven external injuries out of which five are stab

wounds and one is cut throat injury, there is sufficient evidence to say that death of Pawan is homicidal in nature. The learned Trial Judge has believed the star witness P.W.4 Pradip Godbole. Now, it has been tried to be contended that the conduct of P.W.4 is unnatural. When the accused was allegedly about to stab deceased, how he could have left the place. It is to be noted that the said witness appears to be consistent with his statement under Section 161 and 164 of the Code of Criminal Procedure. P.W.5 Dr. Ashok Vithalrao Uttarwar is the owner of the gym and he has stated that one key of the gym is with the accused, who was serving as cleaner in the said gym. Therefore, taking into consideration the testimony of these three witnesses, when a reasoned judgment and order has been passed, we see that there is *prima facie* evidence against the applicant. The applicant was never released on bail throughout the trial. Hence, we do not find this to be a fit case where the sentence should be suspended. The application stands rejected.

[GAURI GODSE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm