

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

**CRIMINAL APPLICATION NO.4173 OF 2022
IN APPEAL/955/2022**

BALWAN JODHARAM

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.J. Salunke, Advocate for applicant

Mr. P.V. Diggikar, APP for respondent

...

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

RESERVED ON : 10th FEBRUARY, 2023

PRONOUNCED ON : 17th FEBRUARY, 2023

ORDER :

1 Present application has been filed for suspension of substantive sentence. Present applicant/appellant is the original accused, who has been sentenced to suffer imprisonment for life and to pay fine of Rs.3,000/- (Rupees Three Thousand only), in default to suffer simple imprisonment for six months by learned Additional Sessions Judge, Hingoli on 20.12.2021 in Sessions Trial No.51/2018 after holding him guilty of committing offence punishable under Section 302 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.J. Salunke for the
applicant/appellant and learned APP Mrs. P.V. Diggikar for the respondent.

3 With the able assistance of the learned Advocate for the
applicant as well as learned APP we have gone through the record. The
prosecution story is that the present accused as well as deceased were in
employment of Transport Company as driver of containers. They both are
resident of Haryana State. They were driving two different containers. Both
the containers started from Hyderabad. One was going to Indore and
another was going to Ahmedabad. It appears that two containers were
parked in the open premises of hotel Sher-E-Panjab in village Jaroda Pati, Tq.
Kalamnuri, Dist. Hingoli on 19.07.2018. There was scuffle between deceased
and accused in the cabin of second container and it was on account of
sending slang messages from the mobile of the accused to the mobile of the
wife of the deceased. The accused assaulted deceased severely and the said
incident was witnessed by PW 2 Vitthal Chandu Bhise and PW 5 Sahebrao
Mhaske. After the accused went away with his container, the second
container was lying there and thereafter the fact was informed by the owner
of the Dhaba to police, as a result of which police came and took the dead
body for Postmortem.

4 It was vehemently submitted on behalf of the applicant/appellant that though the two alleged eye witnesses have been examined, one of them is minor and they are not inspiring confidence. There is much gap between the alleged incident of assault seen by them and the dead body being recovered by police. Exh.67 is the Postmortem Report, which gives cause of death as - “hemorrhagic shock due to chest injury”, but the important fact is that the wife of the deceased, who has been examined as PW 4, had filed petition under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, Parbhani for getting compensation. That means, she was not even accepting that the death of her husband is homicidal in nature. The applicant/appellant is in jail since the date of his arrest and with the said evidence when his appeal would be heard after a long time he need not be kept behind the bars.

5 Per contra, the learned APP submits that there is ample evidence against the present applicant/appellant. Learned APP supported the reasons given by the learned Trial Judge. When the Postmortem Report gives specific cause of death, which is chest injury, then it has to be treated as homicidal in nature and there are two eye witnesses to the incident.

6 At the outset, it is to be noted that the present applicant was

never released on bail throughout the trial. The second aspect, that has to be considered is, that there are two eye witnesses to the incident and taking into consideration their testimony, apparently it does not appear that their presence at the spot was unnatural. One is having business of applying grease to the vehicles and his small shop is just near the place where the containers were parked. The another witness/brother was having job of removal of tyre puncture and sometimes he used to help his brother. Both were consistent in saying about the presence of each other and they had seen the accused giving blows to the deceased. Further, it appears that from the testimony of the wife of the deceased the obscene or slang message, which was alleged to have been sent on her mobile, was also got proved. The photographer, who had taken the photo of dead body, has been examined. The call details have been fetched and got proved. Under such circumstance, there appears to be evidence against the present applicant and, therefore, it cannot be taken as a fit case where the sentence should be suspended. Life of a young person has been taken. Therefore, no leniency can be shown at this stage. Application stands rejected.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)