

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

**CRIMINAL APPLICATION NO.3766 OF 2019
IN
CRIMINAL APPEAL NO.1207 OF 2019**

Gangaram S/o Lachiram Rathod,
Age-33 years, Occu:Agri.,
R/o-Kasarpeth Tanda, Tq-Bhokar,
Dist-Nanded,
(At present the Appellant is in Jail)

...APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station,
Bhokar, Tq-Bhokar, Dist-Nanded.

...RESPONDENT

...
Mr. Uttam L. Telgaonkar Advocate for Applicant, appointed
through Legal Aid.
Mr. S.J. Salgare, A.P.P. for Respondent- State.
...

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

DATE : 12th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for suspension of sentence by the original accused – convict. Criminal Appeal has been filed by him challenging his conviction by the learned

Additional Sessions Judge, Bhokar, District-Nanded in Sessions Case No. 1 of 2017 dated 28th March 2018 by holding him guilty of committing offence punishable under Section 302 and 504 of the Indian Penal Code.

2. Heard learned Advocate Mr. Telgaonkar appearing for the applicant, appointed through Legal Aid and Mr. Salgare, learned APP for the State and with their able assistance we have gone through the record and proceedings.

3. The main points which learned Advocate for the appellant wants to harp upon are that the case of the prosecution is resting on three alleged eye witnesses, however, learned trial Judge failed to consider that they are the interested witnesses i.e. close relatives of the deceased. Further PW-5 Pandit is not only the relative of the accused but also of the informant, but he is resident of other village and therefore, he appears to be chance witness. The defence that has been raised by the accused has not been considered properly. The medical evidence does not support the ocular evidence though the medical officer had found in all four injuries on the person of the deceased. The learned trial Judge has relied on the discovery panchnama alleged to be

proved through PW-4 Sachin, the panch. There is political rivalry and therefore, false implication of the accused cannot be ruled out. Under such circumstance, the sentence needs to be suspended till the Appeal is heard and disposed of. It would take long time to decide the said Appeal.

4. Per contra, the learned APP supported the reasons given by the learned trial Judge and submitted that testimony of three eye witnesses corroborate the fact and further PW-5 Pandit is not only the relative of the informant but is also the relative of the accused. He has given reasons as to why he was at the said place and therefore, it cannot be said that he is a chance witness. The medical evidence supports the ocular evidence as there were four injuries which were fatal in nature. The Grampanchayat elections were held about six months prior to the incident, but fifteen days prior to the incident appellant had given threat to the deceased that he had caused defeat to his three members and the deceased had made his wife Deputy Sarpanch and therefore accused wanted to take revenge. The weapon that has been used is an axe and it has been discovered by accused in presence of panchas. PW-4, the panch witness is a Government servant and therefore, it cannot be said that he has

any grudge against the accused. The medical evidence would show that it was the homicidal death and therefore, the learned trial Judge has rightly held that the offence is proved beyond reasonable doubt.

5. We have considered the evidence from a limited point of view, as to whether the appellant has made a case for suspension of sentence. It is to be noted that the accused was never on bail since the date of his arrest and therefore, even on that count also no leniency can be shown to him. As regards the evidence that has come on record, it appears that three eye witnesses have supported the prosecution story. No doubt they are the family members of deceased but whether that can be the only ground to discard their testimony is a question. PW-5 Pandit is not only the relative of informant but also relative of the accused. The further support is byway of discovery of the weapon by the accused and it has been proved through PW-4, panch, who is a Government servant. The medico legal evidence would show that deceased had sustained four injuries and the medical officer has opined that those injuries are possible by the seized weapon.

6. Thus there appears to be strong evidence against the appellant – applicant dis-entitling him to be released on bail. Hence the Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JUN23