



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 477/2023
IN CRIMINAL APPEAL NO.293/2023.

Bhaskar Vitthalrao Choudhary (in Jail)

-VERSUS-

The State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.W. Sambre, Advocate for the Applicant/Appellant.
Shri S.S. Doifode, A.P.P. for Non-applicant/Respondent.
Shri A.S. Mardikar, Senior Advocate with Shri T.S. Kene,
Advocate Assisting Prosecution.

CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.

DATE : NOVEMBER 02, 2023.

Heard.

2. This is an application seeking suspension of execution of sentence passed by the Sessions Judge, Achalpur in Sessions Trial No.67/2017 on 10.03.2023, whereby the applicant/appellant came to be convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life.

3. The applicant and his wife Vidya were put on trial for committing murder of deceased Ganeshrao aged 82 years. It is prosecution case that wife of applicant namely Vidya was Sarpanch of the Village Panchayat. There was meeting in the gram panchayat office where quarrel took place in which the co-accused Vidya caught hold the deceased, while the applicant assaulted him by fists, blows and chappal, which proved to be fatal.

4. The learned Counsel appearing for the applicant/appellant would submit that there is no external injuries on the person of the deceased. No weapon was used in the commission of crime and the incident had occurred in a spur or moment. In other words, he wish to emphasize that there was no intention to kill, and thus, the case squarely falls under the provisions of Section 304 of the Indian Penal Code.

5. There is evidence of three eye witnesses which conveys that at the relevant time there was a quarrel in the office of gram panchayat, where the applicant assaulted the deceased by chappal, kicks and

fist blows. We have also gone through the medical report, coupled with the evidence of P.W.10 Dr. Pal. There were two abrasions and one CLW on the person of the deceased, however, as there was rupture of spleen and and kidney, the death occurred.

6. The learned trial Court held that there was requisite intention and knowledge. However, considering the nature of occurrence, the article used for assault, nature of injuries, it is a matter of debate whether the act of accused can be constituted as an offence of murder. Moreover, prima facie it reveals that the incident had occurred while there was quarrel in the office of the gram panchayat. The learned Counsel for the applicant has pointed out that during the pendency of the trial the applicant/ appellant was on bail.

7. The learned A.P.P. responded by relying on the decision of Supreme Court in case of **Gajraj Yadav .vrs. Rajendra Singh and others - [2008] 15 SCR 88**, to contend that the fact that during trial the applicant was on bail, is no ground for grant of suspension. Certainly that cannot be a decisive factor,

however, that is one of the consideration which is to be taken into account coupled with other circumstances.

8. Having regard to the above circumstances, we are of the opinion that a case for suspension is made out. Hence, following order is passed.

9. Criminal Application is allowed and disposed of. The execution of substantive sentence imposed by the Sessions Judge, Achalpur in Sessions Trial No.67/2017 on 10.03.2023, is hereby suspended till the final disposal of the appeal.

In the meantime, the applicant/ appellant – Bhaskar Vitthal Rao Choudhary be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

JUDGE

JUDGE