

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

CRIMINAL APPLICATION (APPA) NO.566 OF 2023

IN
CRIMINAL APPEAL NO.364 OF 2023.

[Surendra S/o Ramdas Bhure and Ors. ..V/s.. The State of Maharashtra]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr A. M. Quazi, Advocate with Mr T. T. Mirza, Advocate for Applicants/Appellants.
Ms H. N. Jaipurkar, APP for Respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 16th MAY, 2023.

. Present application is for suspension of sentence and releasing the appellants on bail.

2. The appellants have preferred the appeal challenging the conviction awarded by the Sessions Judge, Bhandara by which, the appellants Surendra Ramdas Bhure, Ramdas Ganesh Bhure and Durga Surendra Bhure are held guilty under Section 304 Part II read with Section 34 of the Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/- each and in default to suffer simple imprisonment for six months each.

3. It is submitted that during pendency of the trial, the appellants were already on bail and faced the trial. The appellant No.2 is 77 years of age and the appellant No.1 is the only earning member of the family. The appellant No.3 is the wife of appellant No.1. There is every chance of success in the present appeal, and therefore, the appellants prayed for suspension of the sentence and for releasing them on bail.

4. The said application is strongly opposed by the learned Additional Public Prosecutor on the ground that the deceased has sustained 31 injuries. The present offence is covered under Section 304 Part II of the IPC and prayed for rejection of the application.

5. Heard learned Counsel appearing for the appellants. Perused the judgment of the trial Court. It reveals from the judgment of the trial Court that the trial Court has discussed the evidence PW-8 Dr. Jaideo Laxman Borkar, who is the Medical Officer, witnessed the 32 injuries on the person of the deceased. The said injuries are in the nature of contusions. The learned Sessions Judge discussed about the injuries that Medical Officer has opined that injuries mentioned in column No.19 are sufficient to cause death and other injuries in column No.17 collectively are sufficient in the ordinary course of nature to cause the death and accordingly opined that deceased Nepal died due to head injuries in his postmortem notes Exh-58. While, discussing the entire evidence, the learned Sessions Judge further held that the offence is covered under exception and by keeping in mind the legal aspects and the evidence on record as well as the statement of the accused came to the conclusion that the circumstances clearly shows that prior to the incident there was quarrel between the deceased and accused persons. The NC reports are filed against each other. The learned Sessions Judge further held that the conduct of the accused in previous offence as well as subsequent crime are the relevant facts. It is further observed that there was no common intention and concluded that the accused persons though assaulted the deceased Nepal by stick

at the material time which resulted fatal after laps of period of ten days, and therefore, the act of the accused persons clearly falls under Section 304 Part II. As accused were having knowledge, but there was no intention for causing the death and held the accused persons guilty for the offence punishable under Section 304 Part II.

6. Considering the quantum of sentence awarded and the appellants have challenged the said judgment and order of sentence, it would be in the interest of justice to release all the appellants on bail by suspending the sentence. In view of the same, I proceed to pass the following order :

ORDER

- i) The application is **allowed**.
- ii) The appellant Nos.1 to 3 are hereby released on bail on executing P.R. Bond of Rs.15,000/- each with one solvent surety of like amount.
- iii) The sentence awarded by the learned Sessions Judge, Bhandara be suspended, till conclusion of the trial.

7. *Hamdast* allowed.

JUDGE