



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

CRIMINAL APPLICATION (APPA) NO.754 OF 2023 IN
CRIMINAL APPEAL NO.473 OF 2023

Ganesh s/o Ramesh Pesode Vs. State of Maharashtra
WITH

CRIMINAL APPLICATION (APPA) NO.742 OF 2023 IN
CRIMINAL APPEAL NO.402 OF 2023

Vaibhav s/o Janardhan Lonagare Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri/s S.V. Sirpurakr and Ved Deshpande, Advocates for applicants.
Shri Jaywant Ghurde, APP for non-applicant/State.

CORAM : VINAY JOSHI &M.W. CHANDWANI JJ.
DATE : OCTOBER 31, 2023.

Both applicants are seeking suspension of execution of sentence passed in Sessions Trial No.77 of 2016 by the Additional Sessions Judge, Khamgaon, District Buldhana, whereby the applicants have been convicted for the offences punishable under section 302 read with section 34 of the Indian Penal Code (IPC).

2. Applicants – Ganesh and Vaibhav have been tried alongwith Sonal Vitthal Mankar (not applied) for committing the murder of the father of Sonal namely Vitthal on 24.05.2016. It is a prosecution case that on the date of occurrence Sonal alongwith two unknown persons went to the house of Vitthal, had an altercation and after some time Vitthal was found lying dead. The prosecution evidence consists of several witnesses, however admittedly, there is no

eye witness to the occurrence. The prosecution has heavily relied on the evidence of PW1-Rajendra and PW2 - Ramkrishna, who are eye witnesses to the extent presence of assailants in the house of deceased Vitthal. It is their evidence that on the date of occurrence, Sonal came to the house of Vitthal with two unknown boys and they had a quarrel. Both witnesses were seated out of the house and after some time they saw that Sonal came out of house and confessed that he had killed his father. Both witnesses have stated that the unknown boys had left from the backside door. The prosecution case solely depends upon the prior test identification parade as well as identification in Court. It is argued that test identification is conducted after one month from the occurrence. Besides that, the test identification parade was not conducted in a proper manner. The learned prosecutor has not pointed out any other concerned material connecting the applicants. The cause of death was blunt injuries to the vital organ meaning thereby no weapon was used. No one has seen the actual assault. The case against the applicants solely depends on their identification. The matter requires re-appreciation of the entire material on said count. Learned APP pointed out that Sonal as well as applicants went absconding for one year. However, it reveals that the applicant - Vaibhav has been in jail from last seven years whilst applicant – Ganesh has been in jail for seven months.

3. Having regard to the above facts, we deem it appropriate to suspend the execution of substantive sentence as appeal will take its own time for disposal. In view of that, both applications are allowed and disposed of.

4. The execution of substantive sentence passed in Sessions Trial No.77/2016 by Additional Sessions Judge, Khamgaon on 02.05.2023 for the offence punishable under Section 302 read with Section 34 of the IPC, as regards applicants – Ganesh Rameshwar Pesode and Vaibhav Janardhan Lonagare is hereby suspended till disposal of appeal.

5. In the meantime, the applicant - Ganesh Rameshwar Pesode shall be released on bail on his furnishing P.R. bond of Rs.1,00,000/- with one solvent surety in the like amount. The applicant - Vaibhav Janardhan Lonagare shall be released on bail on his furnishing P.R. bond of Rs.25,000/- with one surety in the like amount.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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