



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 786/2023 IN
CRIMINAL APPEAL NO. 182/2023

(Prakash s/o Gulabrao Masram & anr. 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

Mr. A. V. Bobde, Advocate h/f Ms. S. A. Jadhao, Advocate for
applicants.
Ms. Shamsi Haider, APP for non-applicant/State.

CORAM: VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATED : 17/10/2023.

Heard.

2. This is an application seeking for suspension of execution of sentence passed in Sessions Trial No. 185/2020, whereby both applicants are convicted for the offence punishable under Sections 302, 324 read with Section 34 of the Indian Penal Code.

3. The learned counsel appearing for applicants while claiming suspension, has canvassed that the evidence adduced before the Trial Court is not sufficient to record the finding of guilt. It is submitted that the incident as stated by the prosecution witnesses does not make out a case of murder. At the most, it is a case of culpable homicide not amounting to murder. According to the applicants, there is no intention to kill which takes out the applicants from the offence of murder. It is second submission that though incident took place in public place, no independent witness has been examined. Rather it is a submission that both eye-witnesses are family members of

deceased. It is third submission that there is variance in the evidence of Doctor and one of the witness on the point as to whether the injured was taken by relative to the government hospital at their own or the first hospital directed to shift the injured.

4. With the assistance of both sides, we have examined the entire material. It is a case of direct evidence. The prosecution has examined 12 witnesses, however the prosecution rests on the evidence of three eye-witnesses namely PW-1 informant Shobha, PW-2 Kishor and PW-3 Ujwala. It is the prosecution case that on the date of occurrence, both accused came to the house of deceased armed with iron rod and axe. They have initially called PW-2 Kishor who is brother of deceased out of the house. There was scuffle between PW-2 and accused which was intervened by deceased Bibhishan. At that time, both accused have assaulted Bibhishan by means of weapons. Particularly eye-witnesses have stated that accused No. 2 Ranjit assaulted deceased at his head by means of axe whilst accused Prakash dealt blow by means of iron rod. All witnesses are consistent on the same line of assault. True that they are the family members, however considering the evidence as a whole, their presence on the spot is natural.

5. We have examined the injuries found on the person of deceased at the time of postmortem. There are corresponding head injury which has become a cause for death. Query report also suggests that the injuries were possible by the weapon seized at the instance of accused.

Though it is argued that the essentials to constitute the offence of murder are missing, however at this juncture, we are not ready to undertake said exercise. Suffice to say that eye-witnesses have stated about the assault by dangerous weapons resulting into death by head injury.

6. Learned counsel appearing for the applicants has attracted our attention to the defence witness examined by the accused. Endeavour was made to falsify the seizure and to disprove the happening of the incident at the place. As a matter of fact, defence is not obliged to disprove the prosecution case since under criminal law, it is for the prosecution to establish the guilt with requisite standard of proof. Be that as it may, the defence witness has stated that the Police have taken axe from her which probably might have been shown as a seizure at the instance of one of the accused. As against this, the prosecution led evidence of panch witness coupled with the Investigating Officer supported with the memorandum and seizure panchanama which speaks about the seizure of weapon at the instance of accused. In view of the said material, at this juncture, we are not ready to accept the submission about falsification of seizure. To the last, it is canvassed that accused have surrendered while they were on parole. We are afraid to consider said post conviction conduct of accused while dealing with this application.

7. Suffice to say that, it is a case of homicidal death. Evidence of three eye-witnesses are consistent. Medical evidence supports the ocular evince. Weapons are seized at the instance of accused. Clothes of accused bears blood

stains matching to the blood of deceased. Having regard to the nature of accusation and gravity of offence, we are not inclined to suspend the execution of sentence, hence application stand rejected.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane