



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

CRIMINAL APPLICATION [APPA] NOs. 1024, 1036 and 969 OF 2023
IN CRIMINAL APPEAL No.257/2023.

Ajit Ramesh Satpute.

-VERSUS-

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 R.R. Vyas, Advocate for the Applicant (Criminal
Application (APPA) No.1024/2023).

Shri T.A. Mirza, Advocate for Applicants (Criminal
Application (APPA) No.1036/2023).

Shri S.P. Bhandarkar, Advocate for the Applicant (Criminal
Application (APPA) No.969/2023).

Shri J.U. Ghurde, A.P.P. for Non-applicant/Respondent.

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

DATE : OCTOBER 16, 2023.

Heard learned Counsel for the parties.

2. Applicants who are accused No.2 Ritesh @ Gabbu
Mahesh Gupta, accused no.4 – Suraj @ Bawa Pradip Kaithwas
and Accused No.5 – Amit @ Marbal Manohar Andarsahare are
claiming suspension of execution of substantive sentence passed
in Sessions Trial No.530/2014 by the Additional Sessions Judge,
Nagpur on 27.02.2023 for the offence punishable under Section

302 of the Indian Penal Code.

3. It is prosecution case that on 12.07.2014 around 1.50 p.m. 5 to 6 persons barged in to the office of the deceased Roshan Kamble, assaulted him by means of sharp edged weapon and done to death. At the instance of a report lodged by P.W.2- Raghuvir, the crime has been registered on the very same day. In all 8 accused were put on trial. On appreciation of evidence, the trial Court has convicted accused nos. 1 to 5, whilst acquitted the rest. One juvenile in conflict with law was also involved in the crime against whom the trial was held before the Juvenile Justice Board which ended into acquittal. Accused no.3, though convicted has not applied for suspension.

4. The first set is about accused no.2 Ritesh and accused no.5 Amit (Criminal Application No.1036/2023). It is submitted by Shri Mirza, the learned Counsel appearing on their behalf that there is absolutely no evidence against them, however, on the basis of conjectures and surmises, they have been convicted. It is argued that neither their names were mentioned in the first information report, nor they were identified by the informant in the Court. No prior test identification parade was conducted. Moreover, besides mobile hand set, nothing has been seized at their instance.

5. Perusal of the first information report discloses that the informant Raghuvir (PW 2), stated that at the relevant time 5 to 6 persons armed with deadly weapon entered into the office of the deceased. Particularly he stated that the accused no.1 – Ajit dealt blows on the head of the deceased by means of sword, whilst rest participated in the assault. Admittedly, names of accused nos. 2 and 5 has not been stated by the informant.

6. Contextually we have gone through the evidence of informant Raghuvir. He has equally stated about assault at the hands of accused no.1 Ajit, along with a person namely Baba / accused no.4. He has also stated certain utterances of assailant which bear reference of accused no.1 -Ajit and accused no.3- Rakesh Waghmare. He has identified some of the assailants before the Court, but, not accused nos. 2 and 5.

7. The prosecution has heavily relied on the evidence of P.W.3 Anna @ Santosh Murgan, who claims to be another eye witness. He has stated names of total 5 accused, including accused no.2 Ritesh and accused no.5 Amit. Evidence of this witness is strongly criticized on the ground that he has not seen the actual occurrence, but, stated that when the incident was over, the accused were seen while fleeing from the spot with

weapons. Particularly, our attention has been invited to the evidence of P.W.2 – Raghuvir. According to the accused, the evidence of Raghuvir improbabilizes the presence of P.W.3 – Anna on the spot. It is the evidence of Raghuvir that soon after the assault, he rushed to the house of Anna to inform the things. When he returned to the spot, already the police van had reached. On that basis, it is submitted that, it is totally improbable that P.W.3 Anna has seen the occurrence. The said submission requires serious consideration. Apart from the evidence of P.W.3 Anna nothing has been pointed out to establish the involvement of accused nos.2 and 5. Notably from last 10 years, they are in jail. Considering all above circumstances, we are of the view that accused nos. 2 and 5 have made out a case for suspension of execution of sentence.

8. As regards to the accused no.4 Suraj (Criminal Application No.1024/2023) is concerned, his name is also not mentioned in the first information report. It reveals from the evidence of the informant that he has stated the nick name of accused no.4 “Baba” as one of the assailant. However, it is brought to our notice that during cross-examination P.W.2 Raghuvir admitted that he was not knowing accused no.4 – Baba prior to the occurrence. He admits that he has not stated

the name of Baba in the first information report, but, it is said to be stated in his police statement, which was recorded after a gap of 6 days. It is argued that when the informant P.W.2 Raghuvir, was not knowing Baba, there is every possibility of implicating him after 6 days at the behest of some body else. The said submission cannot be brushed aside, which requires consideration.

9. During the course of investigation at the instance of accused no.4 – Baba, police have seized blood stained clothes allegedly to be of all the accused. Our attention has been invited to the point of delay in sending the seized articles for chemical analyzation and another aspect that blood group of deceased was not detected. Though the prosecution claims that blood group of the deceased was 'AB', however, it was pointed out that the said blood group was detected from the blood, which was collected from the spot. Admittedly while carrying postmortem, blood was extracted from the body of which the result is inconclusive. Therefore, it requires a detail analysis and obviously said material would act as a corroborative piece only. Moreover, identification parade was not conducted. Considering the nature of material against accused no.4 Suraj, coupled with his long incarceration, we

deem it fit to suspend the execution of sentence as regards to accused no.4 Suraj too.

10. Accused No.1 Ajit (Criminal Application (APPA) No.969/2023) is also claiming suspension of execution of sentence on various grounds. Shri Bhandarkar, learned Counsel appearing on his behalf would submit that the trial Court utterly failed to appreciate the evidence as regards to accused no.1. We have been taken through the evidence of material witnesses along with the evidence in the form of corroborative nature, several reported judgments have been cited to uphold the submission.

11. Before considering the submissions we may recapitulate that the first information report [Exh.66], lodged within few hours from the occurrence bears specific name of accused no.1 Ajit and Chotu (accused no.3- not applied). Beside that the first information report itself states that accused no.1 Ajit was holding a sword and had dealt blow at the head of the deceased. There is recital in the first information report about the utterances at the time of occurrence which also bears specific reference of accused no.1- Ajit. Contextually we have gone through the evidence of star witness of the prosecution P.W.2 Raghuvir. He has equally stated in the evidence that at

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the relevant time 5 to 6 armed assailants entered into the office. No sooner they entered, the deceased started saying "*Ajit bat karlo*". He deposed that then accused no.1 Ajit gave blow on the head of the deceased with a weapon like sword and then rest repeated the things. He deposed that while the assailants were leaving the place accused no.1 Ajit again said "*Ajit se panga loge to yahi hal hoga*". P.W.3 Santosh @ Anna who is another eye witness, has also stated name of the accused no.1 Ajit.

12. It has been argued that P.W.3 is a planted witness as his presence on the spot is suspicious. True there are ground to assail the evidence of P.W.3 Santosh, however we find the clinching material against the accused no.1 Ajit in the first information report as well as in the evidence of P.W.2 Raghuvir. The learned Counsel for accused no.1 Ajit has submitted that though it is the prosecution case that Ajit was holding sword and dealt blows by means of sword, however, a knife and khanjar has been seized at his instance. To our mind the said variance cannot be tested at this stage, since it has been stated that a weapon looking like sword was used. It is a matter of appreciation, as it depends upon the length of the weapon and perception of a person who gives evidence.

13. It has been argued that as per evidence, there were blood stains on the shoes of P.W.2 Raghuvir, however, his shoes were not seized. True the investigating office could have seized the shoes of P.W.2, however, to our mind that cannot be the sole reason to outrightly reject his testimony. Shri Bhandarkar has relied on various decisions to canvass that no independent witness was examined, there is delay in sending seized articles for chemical analysis, no blood stains were found on the clothes/shoes of the witness, medical officer states that as per statement of deceased the assailants were unknown, there was no confession in presence of panch witness, T.I. parade was not conducted and the Juvenile Justice Board on the same set of facts has acquitted the JCL, who was involved in the occurrence. To substantiate above grounds reliance is placed on the following decisions.

- (1) Komal and others .vrs. The State of Maharashtra – Cri.Appeal No.559/2018 decided on 02.02.2022 (Bombay High Court, Nagpur Bench).
- (2) Ansar Dastgir Aitawade and others .vrs. The State of Maharashtra and others – 2018 [3] AIR Bom.R (Cri) 744.
- (3) Rehmat .vrs. State of Haryana – [1996] 10 SCC 346.
- (4) Babli @ Shakuntala Devi .vrs. State – Criminal Appeal

No.750/2018 decided on 21.08.2019 (Delhi High Court).

- (5) Angela Diniz .vrs. State – 2012 [2] Bom.C.R. (Cri) 745.
- (6) Balaram Bhumia and another .vrs. State of Odisha – 2020 [1] Ori.Law Rev. 356. (Orrisa High Court).
- (7) Gurudas Patru Bhalve .vrs. The State of Maharashtra – Criminal Appeal No.527/2017 decided on 09.04.2018 (Bombay High Court, Nagpur Bench).
- (8) Dinesh Mahadeo Meshram .vrs. State of Maharashtra – Criminal Appeal No.340/2012 decided on 20.04.2016 (Bombay High Court, Nagpur Bench).
- (9) Rajpal .vrs. The State of Maharashtra – Criminal Appeal No.1/2012 decided on 30.09.2022 (Bombay High Court, Nagpur Bench).

14. Certainly all these aspects have little bit to say having repercussions on merits of the case, but, we are afraid to consider these submissions at this stage. While dealing with the application for suspension of sentence, we have to see or take a prima facie view on the basis of the entire evidence, coupled with the reasons assigned by the Court of Sessions. All above points may provide a lead, however, we are much impressed by the substantive evidence of the eye witnesses who have stated specific role of accused no.1 Ajit. Moreover, within few hours from the occurrence the name of the applicant Ajit as leader of the group, coupled with his role has been disclosed in the police

report. Moreover, medical evidence corresponds the oral testimony of eye witnesses.

15. True, accused no.1 Ajit is in jail since last 10 years, but, the said circumstance alone would not persuade us to overlook the substantial evidence. Moreover, the presumption of innocence has sustained a dent by the order of conviction. Thus considering the nature of material against accused no.1 Ajit, and his vital role, we hold that this is not a fit case to suspend the sentence to his extent. In view of above, we pass the following order :

- (a) Criminal Application (APPA) No.969/2023 filed by Applicant/accused no.1 Ajit Ramesh Satpute, is rejected.
- (b) Criminal Application (APPA) No.1024/2023 filed by Applicant/accused no.4 – Suraj Pradip Kaithwas and Criminal Application (APPA) No.1036/2023 filed by Applicants/accused no.2- Ritesh Mahesh Gupta and accused no.5 – Amit Manohar Andarsahare are allowed. The execution of substantive sentence passed in Sessions Trial No.530/2014 by the Additional Sessions Judge, Nagpur on 27.02.2023, stands suspended till the final disposal of the Criminal Appeal to the extent of Applicants/accused nos.2, 4 and 5 only.

- (c) In the meantime, Applicants/ accused no. 2- Ritesh Mahesh Gupta, accused no.4 – Suraj Pradip Kaithwas and accused no.5 – Amit Manohar Andarsahare shall be released on bail on their furnishing P.R. bond in the sum of Rs.25,000/- each, with one or two sureties in the like amount.
- (d) All three Criminal Applications are accordingly disposed of.

JUDGE

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