

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

CRIMINAL APPLICATION (APPA) NO.1230 OF 2023
IN
CRIMINAL APPEAL NO.281 OF 2021

(Sagar s/o Suresh Gavhane Vs. State of Maharashtra thr. PSO PS Ansing, District Washim)

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

Court's or Judge's orders.

Mr. R. M. Daga, Advocate for Applicant.
Mr. M. K. Pathan, APP for Respondent No.1/State.
Mr. A. M. Kasthe, Advocate h/f Mr. P. M. Pande, Advocate for Respondent No.2

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

DATE: 14th DECEMBER, 2023.

Heard.

2. This is an application seeking suspension of execution of sentence passed in Sessions Case No.57/2019 vide judgment and order dated 07.04.2021. Applicant – Sagar and nine others have been tried for the offence punishable under sections 143, 147, 148, 294, 302, 323, 324, 341, 427, 452 and 506 read with section 149 of the Indian Penal Code.

3. The prosecution has examined several witnesses including eye witness. Eye witness Rahul is brother of deceased Sanjay as well as informant. It is the informant's case that on 15.01.2019 while he was with his deceased brother Sanjay, a quarrel erupted on no issue as applicant asked the informant as to why you are looking him with

anger. At said instance, there was a minor scuffle which was settled. Later on informant and deceased Sanjay while returning to the house, applicant Sagar and co-accused accosted him. The applicant was holding iron rod by which he dealt a blow at the hands of informant and the rest beat the deceased by fist blows and kicks. The quarrel was again separated. After sometime, informant and deceased Sanjay started to proceed to police station however, again all of them interrupted. At that time applicant picked a stone and hit at the backside of Sanjay which proved to be fateful.

4. The learned counsel appearing for applicant would primarily submit that the essential ingredients to constitute the offence of murder are totally absent. It is submitted that neither it was a pre-planned attack nor applicant was carrying weapon. It is pointed out that at the relevant time applicant picked a stone of small size and hit from the backside which unfortunately took his life. We have also taken through the medical evidence to impress that the stone blow was not a forceful as there was no internal brain damage. We have noted that the stone was weighing 1 and $\frac{1}{2}$ kg.

5. The learned APP in resistance would submit that consecutively on three occasion there was an assault and thus it was a pre-planned attack. Moreover it is submitted that particularly a blow was given at the vital part and therefore, the applicant had intention to kill. The learned counsel appearing for informant equally opposed the

application by reiterating the stand taken by the learned APP.

6. While considering the material aspect whether the applicant had intended to kill the deceased, is to be appreciated after considering the incident as a whole. There are various parameters like the manner of occurrence, the weapon used, the part chosen of the body, initiation of occurrence and all other relevant factors. We feel that it would be too early to make any comment on the said aspect. However, it is evident that the quarrel erupted on a minor issue, the applicant was not carrying any weapon, a stone was picked and a blow was given at the head. Therefore, certainly an argueable case whether section 302 of the IPC would attract has been made out. The applicant is behind bar from last 16.01.2019 meaning thereby for more than five years. In view of above, we are inclined to exercise our discretion.

7. The application is allowed. The execution and implementation of substantive sentence passed in Sessions Case No.57/2019 stand suspended till disposal of the appeal. In the meantime, the appellant shall be released on bail on furnishing P.R. bond of Rs.50,000/- with one surety of like amount.

8. The application is disposed of.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)