



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 12 OF 2024
IN
CRIMINAL APPEAL NO. 6 OF 2024

1. Sunil Tejrao Shejwal
2. Sahebrao Tejrao Shejwal
3. Sangita Sunil Shejwal
4. Jyoti Sahebrao Shejwal

..APPLICANTS

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. N.S. Ghanekar, Advocate for applicants

Mr. S.D. Ghayal, A.P.P. for respondent – State

Mr. A.S. Usmanpurkar, Advocate for respondent no.2 in appeal

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 07th FEBRUARY, 2024

PER COURT :

1. Heard.
2. This is an application for suspension of sentence awarded by Additional Sessions Judge, Aurangabad in Sessions Case No. 340 of 2014, whereby the applicants are convicted for the offence punishable under Section 302, 323 and 504 read with Section 34 of the Indian Penal Code.

3. It is submitted by learned counsel for the applicants that in all three accused were charge-sheeted and after trial, Accused Nos. 3, 6 and 7 to whom the role of assault was also attributed have been acquitted by the trial Court. He submits that the dispute arose out of possession of land and the witnesses alongwith deceased – Kondiram had come to the agricultural field which is in possession of the appellants. He submits that they attempted to take possession of the agricultural field which resulted in quarrel and scuffle and the incident had taken place. He submits that none of the assailants had intention to kill Kondiram. He submits that the applicants were on bail during trial. He prayed that substantive sentence may be suspended and the applicants may be granted bail.

4. Learned A.P.P. vehemently opposed the application. He submits that on the basis of evidence on record, the trial Court has rightly convicted the applicants. Evidence of the eye witness has been corroborated by the medical evidence. He submits that there are in all twenty-six injuries on the person of the deceased which show intention of the appellant to kill Kondiram. He submits that the appellants also removed clothes of the deceased and they were carrying him in the bullock cart. He submits that the weapons used in the commission of offence are wooden stick and iron rod, and therefore, no case is made out for suspension of sentence and application shall be rejected.

5. Learned counsel representing Respondent No.2 – original informant in appeal submits that there is ample evidence on record to nail the applicants and learned trial Court has rightly convicted the applicants.

6. Both sides have taken us through the evidence of eye witnesses and medical evidence. It is clear from the evidence on record that there was land dispute between the applicants on one side and the deceased and his family members on the other. It is seen from the evidence available on record that the applicants and their family members were in possession of the land, which according to the prosecution was an encroachment and the deceased and the eye witnesses had gone in the said field for sowing *Bajra*. The quarrel turned violent which culminated in the death of Kondiram. Whether the offence would fall under Section 302 or 304 of the Indian Penal Code is the aspect to be scrutinised at the time of final hearing. The weapons used in commission of offence are wooden sticks and iron rod. The postmortem report shows that most of the injuries are on the legs and hands of the deceased. It is not that the appellant had brought the weapon and thereafter assaulted the deceased. It is seen that whatever was available on the spot was used for assaulting the deceased. The trial Court has acquitted the other assaulters, who were Accused Nos.3, 6 and 7. Prima facie, the possibility that the fatal blow may have been given by one of the acquitted accused cannot be ruled out. Two of the present applicants are females.

Undisputedly, the appellants were on bail during trial. There is no likelihood that the appeal would come up for final hearing in the near future.

7. In the backdrop of the facts and circumstances of the case, we proceed to pass the following order :-

ORDER

(i) Criminal application is allowed in terms of prayer clause (B).

(ii) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court against the applicants is suspended. The applicants be released on bail on their executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety in the like amount.

(iii) Bail before the trial Court.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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