



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 260 OF 2024
IN
CRIMINAL APPEAL NO. 82 OF 2024

Sanjay Shankar Bhalkar

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.G. Bobde, Advocate h/f Mr. D.A. Paikrao, Advocate for applicant
Ms. V.S. Chaudhary, A.P.P. for respondent – State
Ms. R.S. Kulkarni, Advocate for assist to A.P.P.
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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 25th APRIL, 2024

PER COURT :

1. This is an application for suspension of substantive sentence imposed by Additional Sessions Judge, Aurangabad vide judgment and order dated 06th July, 2023 in Sessions Case No. 153 of 2015, thereby convicting the applicant for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. It is the prosecution case that the land of deceased – Vishwas and that of the applicant are adjacent to each other. There was civil dispute between them in respect of the said land. The incident is dated 14th March, 2015. P.W.2 - Mangalchand, who was a labour working in the land of the

deceased, heard the sound of quarrel. When he went at the spot, he saw that the applicant and the deceased were quarreling. It is seen from his evidence that scuffle took place between the applicant and the deceased. The applicant assaulted the deceased with a wet *bamboo*. After sometime he saw that the applicant again started assaulting the deceased and the co-accused also joined him in beating up the deceased. The weapon used by the assailants was a bamboo. Due to said assault, the deceased suffered in all thirty-nine injuries, out of which ten injuries were in the nature of abrasion. Due to said injuries, Vishwas succumbed. Wife of the deceased lodged the F.I.R. and crime came to be registered. The trial Court acquitted three co-accused and convicted two i.e. the applicant and his wife.

3. It is submitted by learned counsel for the applicant that the co-accused, who is the wife of the present applicant, has been granted bail by this Court vide order dated 07th November, 2023 in Criminal Application No. 3336 of 2023. He submits that the role attributed to both of them is similar, and therefore, ground of parity is available. He submits that the applicant is behind the bars for more than eight and half years. He submits that the application be allowed.

4. Learned A.P.P. vehemently opposed the application. She pointed out the evidence of an eye witness to submit that the applicant is the main assaulter, though there was other accused persons. She submits that the wet

bamboo is used to assault the deceased, and therefore, intention of the applicant can be gathered. She further submits that after the assault, the assaulter including the present applicant wanted to eliminate wife of the deceased. However, the deceased telephonically informed her and so she could save herself. It is submitted that though wife of the applicant has been released on bail, she was not the main accused. She submits that the application may be rejected.

5. Learned counsel for the informant opposed the application. She pointed out medical evidence on record. It is submitted that injury nos. 17, 27 and 34 are vital injuries, which reads thus :-

17.	Contusion of size 3.5cm x 3 cm present on left side of chest, 7cm from midline, bluish.
27.	Contusion of size 11cm x 7cm present on posterior-lateral aspect of upper 1/3 of left thigh, 14cm below anterior superior illeac spine, bluish
34.	Multiple intermingled contusions of size ranging from 5cm x 2cm present over an area of size 22cm x 21cm present on left scapular region, bluish

6. She submits that P.W.18 - Kailash, Medical Officer, who has examined the deceased, in his evidence clearly deposed that injuries mentioned in column no.17 were sufficient in normal cause of nature to cause death. She further submits that the delay in trial was due to the applicant, and therefore, the ground of long incarceration in jail is not available to the applicant.

7. We have perused the evidence available on record. The case is based on testimony of sole eye witness, P.W.2 - Mangalchand, who happened to be a labour, employed by the deceased in his field. His evidence clearly shows that there was scuffle between the deceased and the applicant. There is no dispute that the deceased has suffered injuries in the nature of abrasion. Admittedly, the weapon used by the applicant is a wet bamboo. Evidence of P.W.2 - Mangalchand indicates that the co-convict, who is the wife of applicant, has also assaulted the deceased with a *bamboo*. There is nothing to show as to which injury proved fatal for the deceased. In short, there is nothing to show that the injury caused by the applicant proved fatal since there were more assault in number. There is no dispute that the co-accused, who also assaulted the deceased, are acquitted by the trial Court.

8. There is no dispute that the co-convict - wife of the present applicant, who has been attributed with the same role, has been granted bail by this Court. The State and the informant has filed appeal against acquittal which are yet to be admitted. Thus, there is no possibility that the appeal filed would be heard in near future. In our considered view, ground of parity would be available to the applicant. Hence, we proceed to pass the following order :-

ORDER

(I) Criminal application is allowed.

- (II) Pending the appeal, substantive sentence imposed on the applicant by Additional Sessions Judge, Aurangabad vide judgment and order dated 06th July, 2023 in Sessions Case No. 153 of 2015 stands suspended.
- (III) The applicant be released on P.R. bond of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.
- (IV) The applicant shall not enter village Ohargaon, Tq. & Dist. Aurangabad for next two years.
- (V) The applicant shall not contact the informant in any manner.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD