

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.572 OF 2024

IN

CRIMINAL APPEAL NO.117 OF 2024

1. Devaibai Rohidas Sapkal
2. Rohidas Navnath Sapkal .. Applicants

Versus

The State of Maharashtra .. Respondent

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Shri. S. S. Thombre, Advocate for the Applicants
Smt. V. S. Choudhari, APP for the Respondent / State.

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CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : March 08, 2024

PER COURT :-

1. This is the Application for suspension of substantive sentence awarded by the learned Additional Sessions Judge, Beed in Sessions Case No.105/2021 vide Judgment and Order dated 10.01.2024 convicting the Applicants / Appellants for the offence punishable under Sections 302, 201 r/w. Section 34 and 120-B of the Indian Penal Code.

2. The Prosecution case in a nutshell is that, the father of the deceased played the black magic due to which the buffalo of the Applicants / Appellants died and on that account, the Applicants killed the minor grandson of the Informant. The cause of death as per Post-mortem Report is 'asphyxia due to compression of neck'. The dead

body was found on the open space within the school premises where the deceased was playing.

3. Heard learned Advocate for the Applicants / Appellants and the learned APP for the Respondent / State. Learned APP opposed the Application. Perused the documents on record.

4. The case is based on circumstantial evidence i.e. last seen theory. The learned Advocate for the Applicants / Appellants has taken us through the evidence of the witnesses. The incident occurred on 03.02.2021. The First Information Report was lodged on 04.02.2021. It is seen that the witness, who claims to have lastly seen the deceased with the Appellants, did not disclose the said fact to the police though he acted as the panch for the panchanama while receiving the dead body. He kept mum for two (02) days. His evidence show that he was suspecting the Applicants. The statement of another student, who is examined as the witness for last seen, is recorded on 07.02.2021. The said student is aged ten (10) years old. Except this, there is no evidence against the Applicants.

5. The Applicants are having arguable point in the matter and there is no possibility that the Appeal would come up for final hearing in the near future. The Applicants / Appellants are behind the bars for a period of more than three (3) years. One of the Appellants is female. In this view of the matter, we proceed to pass the following order:

ORDER

(i) The Application is allowed.

(ii) The substantive sentence imposed by the learned Additional Sessions Judge, Beed in Sessions Case No.105/2021 vide Judgment and Order dated 10.01.2024 on the Applicants by name (1) Devaibai Rohidas Sapkal and (2) Rohidas Navnath Sapkal for the offence punishable under Sections 302, 201 r/w. Section 34 and 120-B of the Indian Penal Code, is suspended during pendency of the Appeal.

(iii) Applicants by name (1) Devaibai Rohidas Sapkal, and (2) Rohidas Navnath Sapkal be released on bail on furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) each, with one surety in the like amount each.

(iv) Bail before the Trial Court.

6. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP