



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1297 OF 2024
IN
CRIMINAL APPEAL NO. 276 OF 2024

Bhikan Girjaba Pathare

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.S. Jadhav, Advocate for applicant
Mr. B.B. Bhise, A.P.P. for respondent - State
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 04th APRIL, 2024

PER COURT :

1. This is an application for suspension of sentence imposed by Additional Sessions Judge-1, Vaijapur in Sessions Case No. 1 of 2019 vide judgment and order dated 14th March, 2024 thereby convicting the applicant for the offence punishable under Section 302 of the Indian Penal Code.

2. It is submitted by learned counsel for the applicant that though all the accused persons were charge-sheeted, the trial Court, on appreciation of evidence in the case, acquitted eight accused persons. He submits that the only incriminating circumstance is the act of assault by the applicant with a stick on the head of the deceased and recovery of the said stick with blood

stains. He submits that the applicant is behind the bars since last more than five and half years. He, therefore, urged for allowing the application.

3. Learned A.P.P. opposed the application. He submits that the case is based on testimony of the eye witnesses, who attributed the role of assault by stick on the head of the deceased to the present applicant. The stick, used in the assault, is recovered at the instance of the applicant and the C.A. report shows human blood on the said stick. He submits that the medical evidence also supports the case of prosecution and seeks to reject the application.

4. We have perused the evidence on record. There are five eye witnesses to the incident. The incident occurred due to previous enmity between the two groups. P.W.1 – Shivaji Pathare attributed role of assault by stick on the head of the deceased to the applicant. The evidence of other witnesses show that role of assault is attributed to all the accused. If we see the medical evidence, the cause of death is shown as, “head injury associated with multiple injuries”. P.W.10 – Dr. Dole, Medical Officer in his evidence deposed that Injury Nos. 2 to 10 mentioned in Column No.15 of the postmortem report were not life threatening. Injury No.1 is a lacerated wound present over high parietal region of size 1cm x 0.5cm x bone deep. Margins irregular and blood infiltrated, surrounded by contusion of size 4cm x 3cm, bluish in colour.

5. However, the fact remains that the other assailants which were eight in number have been acquitted by the trial Court. Though stick is recovered at the instance of applicant, the C.A. report does not indicate the blood group of deceased on the said stick. In only speaks of human blood. Considering the evidence on record which shows assault by all the accused persons, the applicant behind the bars for more than five and half years and no possibility of the appeal coming up for final hearing in near future, we proceed to pass the following order :-

Criminal application is allowed. Applicant be released on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD