



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

**CRIMINAL APPLICATION NO.1447 OF 2024
IN
CRIMINAL APPEAL NO.320 OF 2024**

1. Rajesh Pundalik Danake,
2. Yogesh Pundalik Danake ..Applicants

Vs.

The State of Maharashtra ..Respondent

Mr.B.S.Bhale, Advocate for applicants
Mr.B.B.Bhise, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : APRIL 25, 2024**

ORDER :-

This is an application for suspension of sentence awarded by learned Sessions Judge, Aurangabad, vide judgment and order dated 19.03.2024 in Sessions Case No.119 of 2019, whereby, the applicants/appellants have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for three months.

2. It is the case of prosecution that the applicants and co-accused (real brothers and father) are neighbours of the informant. On 02.12.2018 at 11.30 p.m., the informant's husband scolded his own sons to maintain discipline in life. Due to scolding, the informant's two sons went out of the house. The informant's husband came out of the house and continued to shout on his own sons. The applicants came out and objected for his behaviour. The applicants along with their father and another brother assaulted the informant's husband with weapons like stick, sickle (*koyta*) and hockey-stick. The informant's husband suffered injuries to which he succumbed in the hospital. The incident was reported to the police. Crime, vide C.R. no.504 of 2018, came to be registered at Police Station, Satara, Dist.Aurangabad.

3. Learned counsel for the applicants submitted that it is clear from the evidence on record that there was no intention to kill the informant's husband. He submits that the medical evidence also shows that there was no injuries on the vital part of the body of deceased. He submits that the applicants were on bail during trial. He, therefore, prays for suspension of sentence and grant of bail.

4. The application is opposed by learned APP. He submits that applicant no.1 used sickle. The case is based on the evidence of

eye witness, which is corroborated by the medical evidence. He submits that the application may be rejected.

5. We have gone through the evidence on record. The cause of death of the informant's husband - Baban Magare, is shown as "*hemorrhage and shock due to multiple injuries*". The injuries mentioned in column no.17 of the post-mortem report (Exh.85), show abrasion on parietal region and fore-head. The evidence of Medical Officer, who is examined as PW 11 - Dr. Sagar Dole, shows that the injuries mentioned in column no.17 of the post-mortem report, were not on vital part of the body. His relevant evidence is reproduced below:-

"12] It is true that, injuries as I have mentioned in column no.17 in postmortem examination report are not on vital part of the body.

Que: I say that none of the injuries mentioned in column no.17 of postmortem report are life threatening injuries?

Ans. If the injuries mentioned in column no.17 of postmortem report are collectively seen then death can occur.

Injuries as mentioned in column no.17 of postmortem report are not possible due to fall of a person. It is true that injuries as mentioned in column Nos.1, 2, 3 and 6 are possible if a person falls on rough surface.

13]

Que. Have you observed any injury caused by sharp weapon?

Ans. I have not observed any cut or incise wound but abrasion or contusion could be possible by sharp weapon like Koyata if it is used from backside or handle.

6. It is, therefore, clear that the assault was on non-vital part of the body of the deceased. Though sickle was used, it is clear from the medical evidence that sharp side of sickle was not used, whereas, it was used from its blunt side. The applicants were on bail during trial. There is no possibility that the appeal will be heard finally in the near future.

7. Hence, we pass the following order:-

(i) The application is allowed.

(ii) During pendency of the appeal, the substantive sentence of imprisonment imposed against the applicants/appellants, by learned Sessions Judge, Aurangabad, vide judgment and order dated 19.03.2024 in Sessions Case No.119 of 2019, for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, to stand suspended. The applicants/appellants be released on bail, on executing P.R. Bond in the sum of Rs.25,000/- (Rupees

Twenty Five Thousand) each with one solvent surety each in the like amount.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP