

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

919 CRIMINAL APPLICATION NO. 1498 OF 2024  
IN  
CRIMINAL APPEAL NO.1157 OF 2019

Ravindra S/o. Murlidhar Sapkale

....Applicant

**Versus**

The State of Maharashtra

.....Respondent

.....

Advocate for Applicant : Shri. Nilesh S. Ghanekar

APP for Respondent / State : Smt. S. N. Deshmukh

.....

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

**Dated : May 09, 2024**

**PER COURT :-**

. This is the Application for suspension of sentence imposed by the learned Additional Sessions Judge, Jalgaon in Sessions Case No.11 of 2016 by Judgment and Order dated 21.09.2019 convicting three (3) out of six (6) Charge-sheeted accused for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The case of Prosecution as seen from the relevant paragraph from Judgment, reproduced below, in brief is as follows:

“2. As per the charge-sheet, prosecution case against the accused, is that on 04.11.2015 at about 05:30 to 06:00 p.m., the accused Nos.1 to 3 and 6 were present at their Dhaba situated at the area of village Maldabhadi on Bodwad Road opposite Starch Factory. At that time, Yogesh Vasant Kapase (the deceased)

came on the Dhaba. Because of earlier dispute there was altercation between accused No.1 Murlidhari and Yogesh Kapse which resulted in quarrel and accused Murlidhar by a knife stabbed on the chest and stomach of the deceased and grievously hurt him. At the same time, accused No.2 Shantaram, by using an iron axe, hit the deceased on his head and temple. Similarly, accused No.3 Ravindra with the help of iron rod hit the deceased on his head, chest and stomach and killed him. At that time, accused Nos.4 and 5 also abused deceased and helped accused Nos.2 to 3 to run away.”

3. It is submitted by the learned Advocate for the Applicant / that Appellants No.1 and 2 expired during the pendency of Appeal. He submits that as per the testimony of the eye witnesses the role attributed to the Applicant is assault by Aasari (Iron Rod) on the deceased. He submits that similar role was attributed to Appellant No.1 – Murlidhar Sapkale. He submits that if we see the injuries as seen from the Post-mortem Report and medical evidence, it is not possible that these type of injuries would be caused by use of Aasari (Iron Rod). He submits that the vital blows according to the eye witnesses were dealt by Appellant No.2. He submits that the Applicant - Ravindra Murlidhar Sapkale is behind the bars for more than Eight (8) years and Six (6) months. He prays that the application be allowed.

4. The Application is opposed by learned APP. She submits that the case is based on the testimony of the eye witnesses. She submits that the evidence of the eye witnesses show that the Applicant had actively participated in the assault with the help of Aasari (Iron Rod). She submits that the injuries speak for themselves. She submits that the FIR

is not an encyclopedia and therefore, seizure of Knife from spot of the incident cannot be reason to disbelieve the eye witnesses. She submits that there is no explanation by the Applicant regarding the blood on his clothes. She submits that the Application be rejected.

5. The FIR and the evidence of the eye witnesses show that the role attributed to the Applicant is assault by Aasari (Iron Rod). Evidence show that the Knife was seized from the place of incident. The injuries as per the Post-mortem Report are as follows:

- “1. CLW over scalp in midline 8cm x 4cm x 2cm deep  
brain matter coming out thr. Wound.  
# skull bone
2. Incised wound 8cm x 3 cm x 3 cm deep  
# temporal bone.
3. Incised wound 8.5 cm x 3 cm x 4 cm deep
4. Incised wound 2 cm x 1 cm x ½ cm on rt cheek
5. Incised wound over rt side of neck 6 cm x 2 cm x 2 cm
6. Incised wound 3.5 cm x 1 cm x 1.5 cm deep  
2 cm below wound No(5)
7. Incised wound 5.5 cm x 3 cm x 3.5 deep on lt side of  
chest at T10- T11 level lat aspect
8. Incised wound 4.5 cm x 3.5 x 3.5 cm on lat aspect of  
abd.”

6. The cause of death is shown to be **“death due to shock due to poly trauma”**. The nature of injury show that out of Eight (8), Seven (7) are the Incised wounds which can be caused by sharp weapon. As per PW6 – Vijay Tapiram Kapse, the Appellant No.2 used the axe and gave assault on the head of deceased. The evidence of Medical Officer - Dr. Jayshree Shridhar Patil who is examined as PW4 opined that the injury no. 1 was caused by Aasari (Iron Rod). Injury Nos. 2 and 3 were

caused by Axe and other injuries were caused by Knife. Therefore, whether the Injury No.1 was caused by the Applicant or the Deceased Appellant No.1 is not established, whereas PW6 – Vijay Tapiram Kapse attributed the assault on the head by blunt side of the Axe to Deceased Appellant No.2. The Applicant is behind bars for last more than Eight and Half (8 ½) years. There is Appeal by State against the acquittal of Accused Nos.4 to 6. Under such circumstances, there is no possibility that this Appeal would come up for final hearing in the near future. In this view of the mater, we proceed to pass the following order.

#### ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Jalgaon in Sessions Case No.11 of 2016 by Judgment and Order dated 21.09.2019 on the Applicant - Ravindra S/o. Murlidhar Sapkale, is suspended during the pendency of the Appeal.
- (iii) Applicant be released on bail on furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- (iv) Bail before the learned Trial Court.

7. Criminal Application stands disposed of accordingly.

( NEERAJ P. DHOTE, J. )

( R. G. AVACHAT, J. )

GGP