



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

920 CRIMINAL APPLICATION NO. 1541 OF 2024
IN
CRIMINAL APPEAL NO.1167 OF 2023

1. Nitin Laxmanrao Aadne
2. Sachin Laxmanrao AadneApplicants

Versus

The State of MaharashtraRespondent

Advocate for Applicants :
Shri. S. J. Salunke h/f.
Shri. V. D. Salunke
Addl. PP. for Respondent / State : Shri. S. D. Ghayal
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CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : May 09, 2024

PER COURT :-

1. This is the Application for suspension of sentence imposed by the learned Additional Sessions Judge, Parbhani in Session Trial No.135 of 2019 *vide* Judgment and Order dated 07.11.2023 convicting the Applicants for the offence punishable under Section 302 r/w. Section 34 of the Indian Penal Code for committing the Murder of their Step Brother.

2. The case of the Prosecution, as seen from the evidence of PW2 – Gangabai Laxman Aadne who is the eye witness, reproduced below, is as under :-

“3. On the day of incident i.e. on 4th, my son Somnath loaded Sugar Garlands in an Auto and left the house around 08.30 a.m. I followed him by walk for going to Gujri Bazar via Kumbhar

Galli and Sonar Galli. When I reached upto Vithal-Rukhmai Temple, I have seen Nitin and Sachin raising quarrel with Somnath. I had seen Sachin assaulting my son Somnath with Sattur (Chopper) used for cutting fish. Thereafter, Nitin took Sattur and repeatedly assaulted my son on his neck. My son fell down. Thereafter, they lifted stone and brick and gave blow on the head of my son. The incident took place in front of the Jewellery shop, on the Ota. I started screaming, people gathered there. Both of them ran away on their motorcycle. Somnath was put in an Auto by an Auto Driver and was taken to the Government Hospital. I followed the Auto by walk to the Government Hospital. The doctor informed me that Somnath is dead. I can identify Sattur if shown to me. The muddemal article Sr. No.23 Sattur now shown to me, is the same. It is marked as Article-A. I can identify the accused if shown to me.”

3. It is submitted by the learned Advocate for the Applicants that PW2 – Gangabai who is posed as the eye witness to the incident, in fact has not witnessed the incident. He submits that except this there is no evidence against the Applicants. As the blood group of the Applicants and deceased is of the same group i.e. “**B**”, the C.A. Reports would not be of any assistance for the Prosecution. He submits that the Applicants are behind the bars for more than Four (4) years. He prays that the application be allowed.

4. The Application is opposed by the learned Addl. P. P. He submits that the case is based on testimony of eye witness who is the mother of deceased. He submits that her presence on the spot of incident was natural. He submits that there is recovery of Sattur at the instance of Applicant No.2. He submits that both the Applicants assaulted the deceased by the said Sattur one after another and the testimony of the eye witnesses is corroborated by pieces of blood stained

bricks found on the spot of incident. He submits that the Application be rejected.

5. Perusal of the evidence on record show that the Prosecution examined PW2 - Gangabai as the eye witness to the incident. She is the mother of deceased. Her evidence go to show that *prima facie* her presence is on the spot of incident as seen from the tenor of the cross-examination is admitted. Her testimony is corroborated by the evidence in the nature of recovery of Sattur at the instance of Applicant No.2. The Post-mortem Report show that there were Eighteen (18) injuries on the deceased which comprised of chopped wounds, incised wounds and linear abrasions. The cause of death as per the Post-mortem Report is “**due to haemorrhage and shock due to multiple injuries**”. This show that the testimony of the eye witness is corroborated by medical evidence. In this view of the matter, we are not inclined to grant the prayers in the Application. Hence, the following order:

ORDER

- (i) Application is rejected.
- (ii) The Applicants are at liberty to revive the prayer for suspension of sentence after a period of One (1) year, if the Appeal is not finally heard.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP