



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

945 CRIMINAL APPLICATION NO.1817 OF 2024
IN CRIMINAL APPEAL NO.418 OF 2024

Ankush Ganeshrao Jagtap

....Applicant

Versus

The State of Maharashtra

....Respondent

.....
Mr. Nilesh S. Ghanekar i/by. Mr. Dhananjay M. Shinde, Advocate
for the Applicant

Mr. Govind A. Kulkarni, APP for the Respondent / State

.....

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

Dated : July 16, 2024

PER COURT :-

. This is the Application for suspension of substantive sentence awarded by learned Additional Sessions Judge, Basmath, Dist. Hingoli in Sessions Case No.37/2021 *vide* Judgment and order dated 12.04.2024 convicting the Applicant for the offence punishable under Section 302 of the Indian Penal Code.

2. Heard learned Advocate for the Applicant and learned APP for the Respondent / State.

3. The Applicant is the nephew of deceased Kisan. There was dispute between the family of the Applicant and the deceased in respect of the agricultural land. It is the case of the Prosecution that on

27.04.2021 quarrel had taken place between the Applicant and acquitted accused on the one side and deceased on the other side in front of shop of PW10 – Vishwanath Annapurve. In the quarrel the Applicant used the piece of tile and assaulted the deceased. The injury suffered by the deceased in the head, proved fatal. Wife of deceased, who had witnessed the incident, reported the matter to the police and crime came to be registered for the offence punishable under Sections 302, 323, 504 and 506 r/w. Section 34 of the Indian Penal Code. After the trial, the learned Sessions Court acquitted the Accused No.2, who was the father of the Applicant.

4. It is submitted by the learned Advocate for the Applicant that even if the case of the Prosecution is accepted as it is, the offence made out would be punishable under Section 304-Part II of the IPC as there was no intention on the part of the Applicant to kill his uncle. He submitted that the injury which proved fatal was only one. He further submitted that the Appeal would not come up for hearing in near future and the Application be allowed.

5. Learned APP opposes the Application. He submitted that the case is based on the testimony of eye witnesses. He submitted that the Applicant assaulted the deceased on vital part of his body with the piece of tile, which proved fatal. He submitted that due to the previous enmity out of land dispute, the Applicant had intention to kill his uncle.

He submitted that the Application be rejected.

6. We have perused the evidence on record. Admittedly, there are eye witnesses to the incident. The relations between the parties i.e. informant (applicant) and uncle (deceased) were strained, is not disputed. The object used in the assault is piece of tile (एक त्रिकोणी आकाराचा फरशीचा तुकडा). If we see the evidence of PW10 - Vishwanath Annapurve, who is the eye witness to the incident, it show that the brawl had taken place between the deceased and the Applicant. It is thus clear that brawl took violent turn. The medical evidence show following injuries on deceased:-

- “1. Lacerated wound 6 x deep to bone, skull bone left side parietal side.
2. Contusion injury on right eye lid upper 2 x 2 c.m.
3. contusion injury on right cheek 4 x 2 c.m.
4. Contusion injury right shoulder 4 x 2 c.m.
5. Contusion injury left side throat 4 x 2 c.m.
6. Contusion injury on right parietal side head 4 x 3 cm
7. Under beneath scalp fracture of skull laceration wound mentioned at serial no.1

All above injuries were ante-mortem injuries and their age was within 24 hours. I found internal injuries as under:-

1. Fracture of the skull under scalp left side laceration wound mentioned at serial no.1 i.e. the injury mentioned at serial no.7
2. Hematoma 6 x 4 on left side brain
3. Hematoma 6 x 4 on right side brain.”

7. The evidence of Medical Officer, who is PW12 – Dr. S. M. Narwade, show that the death was due to head injury and injury Nos.2, 3, 4 and 5 were not life threatening injuries. With this evidence on record, we find *prima facie* substance in the argument of learned

Advocate for the Applicant that the Applicant had no intention to kill his uncle. At the time of the incident the Applicant was 22 years of age. The Appeal would not come up for hearing in near future.

8. In view of above, we proceed to pass the following order.

ORDER

(i) The Application is allowed.

(ii) The substantive sentence imposed by the learned Additional Sessions Judge, Basmath, Dist. Hingoli in Sessions Case No.37/2021 *vide* Judgment and order dated 12.04.2024 on the Applicant - Ankush Ganeshrao Jagtap, is suspended during the pendency of the Appeal.

(iii) Applicant be released on bail on furnishing P. R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only), with one or two surety / sureties in the like amount.

(iv) Bail before the Trial Court.

9. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP