



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1876 OF 2024
IN CRIMINAL APPEAL NO. 438 OF 2024

Pradip @ Gabbar Bapurao Gaware

....Applicant

VERSUS

The State of Maharashtra

.....Respondent

.....
Ms. Lomte Ashwini Annasaheb, Advocate for Applicant

Mr. B. B. Bhise, APP for Respondent - State

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

DATE : 09.05.2024

PER COURT :

1. This is an Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Ambajogai, District Beed, vide Judgment and Order dated 29/04/2024 passed in Sessions Case No.62/2019, convicting the Applicant i.e. Accused No.2 for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 [For short 'IPC'].

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

3. The case of Prosecution as can be seen from the relevant para from the impugned Judgment and order which is reproduced below, is thus:-

“1. On 25.03.2019 one Pravin @ Keshav S/o. Pandurang Gaikwad, aged 25 years, resident of Bheemwadi, Parali Vaidynath, came to Sambhajinagar Police Station, Parali and informed that he was residing at above address with his parents, wife & younger brother Akshay. His mother Mrs. Meena was the Councilor of Gautam nagar and Phule nagar Ward No.8 of Parali Municipal Council; previously his father Pandurang was the Councilor of said Ward.

Pravin reported that before about six months, a girl from 'Shikalkari' community residing in ward No. 8 and one Ajay S/o. Ashok Bhosale were eloped; on 24.03.2019 at about noon time, police staff of Poorna Police Station, District Parbhani, came at Parali town; then he and others learnt that said Ajay who was eloped, was killed and was buried in and that the police had come for said purpose; therefore, and since his father Pandurang was the Councilor cum reputed person from said Ward and since the members of both the communities were honouring his father's advice, his father was trying to take meetings of the persons from both those communities and to find out some solution. Towards it, on 24.03.2019, at about 5.00 p.m., his father had been to see the Bhosale family members in the ward; however, Bhosale family and some residents of said lane were not in a mental condition to hear his father, rather, they were saying that, *'if the other side killed our son, why to relieve them, and we would also kill them'*. His father Pandurang was saying those persons that since the birth anniversary (of Dr. Babasaheb Ambedkar) was coming, they would find the solution, after the anniversary. At that time, some persons gathered over there used arrogant language to his father Pandurang. Therefore, his father left said place. Thereafter, some of the members of Bhosale family went to meet the Sachin Kagde, the other Councilor. Hearing it, his father Pandurang called Sachin Kagde at Lokmanya Raswanti Gruha, Rode square, Parali and discussed with him, but the Sachin Kagde never responded positively, and said that 'would see' and went away. Pravin informed that his father Pandurang had told him this incident.

2. Pravin reported that on 24.03.2021 at about 10.45 p.m. to 11.15 p.m. when he was watching a cricket match at S. K. Hotel Siddharth Nagar, Parali, he saw that Magar Ballal, Balu Gaikwad, Pradeep Gaware, the handicapped brother of Ajay Bhosale, his father and other two to three persons came at S. K. Hotel, met Sachin Kagde and discussed for long time. However, when they observed that he i.e. Pravin @ Keshav was there, they stopped the discussion and went away. Pravin told this incident to his father on a phone call. Pravin reported that thereafter, Balaji @ Balu Gaikwad and Dayanand Ballal met his father at Rode square and discussed. He then saw that his father Pandurang, Balaji @ Balu Gaikwad and Dayanand Ballal went one after another in the Ward. Pravin reported that therefore, he made the phone call to his father and asked as to where was he. His father informed that a water tanker had come in the Ward and he would come home after distribution of the water and asked him to go home. Pravin informed that thereafter he came to bus stand and had a tea over there. At that time, he received a phone call of his younger brother Akshay asking as to whether there was a quarrel between anyone in their

Ward. Hearing it, Pravin made three to four phone calls to his father Pandurang who never lifted the same. Therefore, Pravin and Vaibhav Bhokare went on a motorcycle in the Ward and saw that the people from Ward were running here and there. Thereafter, Pravin took turn towards fish market near from Shahi hotel. He saw in the light of his motorcycle's head light that some persons were standing in front of the house of Shetty with sticks and swords. Out of them, Magar Ballal, Pradeep Gaware, Balaji @ Balu Gaikwad, Dayanand Ballal were having swords in their hands, Ashok Bhosale, Waman Bhosale, Sunil Gaware and Vijay Ballal had wooden logs in their hands. Malanbai Bhosale and Shobhabai Bhosale were also there. Pravin informed that hearing noise and observing light of his two wheeler, those persons ran away therefrom. He, therefore, went to said spot and found that his father Pandurang was lying on the ground in the pool of blood. His two wheeler 'scooty' was lying on his legs, his face was disfigured by the assaults of the swords and sickles. There was also an assault at his hand. At that time, Pravin's younger brother Akshay came over there. Pravin asked the Akshay to go to police station and inform the incident. Pravin called his friends and relatives. Till that time, police came over there. Pravin reported that since his father Pandurang Gaikwad was participating to settle the matter, as per the say of Sachin Kagde, the Magar Ballal, Pradeep Gaware, Balaji @ Balu Gaikwad, Dayanand Ballal, Ashok Bhosale, Waman Bhosale, Sunil Gaware, Vijay Ballal, Mangalbai Bhosale and Shobhabai Bhosale made conspiracy amongst them to kill his father and on 25.03.2019 between 00.55 a.m. to 1.00 attacked his father by swords, sickle and wooden logs and killed him. Thus, he had filed report against them.”

4. It is submitted by the learned Advocate for the Applicant that all the witnesses examined by the Prosecution as the eye witnesses did not support the case of Prosecution. Though they were cross-examined on behalf of the Prosecution, nothing has come so as to prove the Charge. She submits that though the CA reports show the blood on the clothes of Applicant, the result of analysis is inconclusive. She submits that the evidence of recovery of sickle cannot be believed for the reason that there was joint memorandum of the Applicant and co-convicts. She submits that the Applicant is behind bars for more than five (05) years. She submits that the Application may be allowed.

5. It is submitted by the learned APP that though the eye witnesses have not supported the case of Prosecution, there is evidence of recovery / discovery of weapon used in the assault at the instance of the Applicant and blood stains were found from the clothes of the Applicant. Therefore, he submits that the Application may be rejected.

6. There is no dispute that the witnesses examined by the Prosecution as the eye witnesses have not supported the case of Prosecution. The discovery under Section 27 of the Evidence Act is shown as joint discovery at the instance of Applicant and co-convicts. The blood shown on the Applicant's clothes is admittedly inconclusive. With this evidence on record, prima facie, it is debatable as to how the conviction could be maintained. The Applicant is behind bars for more than five (05) years. There is no possibility that the Appeal would be heard in near future. Hence, we proceed to pass the following order:

ORDER

- (i) The Criminal Application is allowed.
 - (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Ambajogai, District Beed, vide Judgment and Order dated 29/04/2024 on the Applicant, namely, Pradip @ Gabbar Bapurao Gaware, is suspended during the pendency of the present Appeal.
 - (iii) The Applicant be released on bail on his furnishing P.R. Bond of Rs.15,000/- [Rupees Fifteen Thousand Only] with one surety in the like amount.
 - (iv) Bail before the Trial Court.
7. Criminal Application stands disposed of accordingly.