



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2589 OF 2024
IN CRIMINAL APPEAL NO. 568 OF 2024

Atul Karbhari Gawali

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

AND CRIMINAL APPLICATION NO. 2590 OF 2024
IN CRIMINAL APPEAL NO. 568 OF 2024

Bharat Karbhari Gawali

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

AND CRIMINAL APPLICATION NO. 2680 OF 2024
IN CRIMINAL APPEAL NO. 592 OF 2024

Raghunath Jagannath Sarovar

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. S.S. Jadhav, Advocate for applicants in APPLN/2589/2024 &
APPLN/2590/2024

Mr. S.G. Bobade, Advocate for applicant in APPLN/2680/2024

Mrs. S.N. Deshmukh, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 04th SEPTEMBER, 2024

PER COURT :

1. These are the applications for suspension of substantive sentence
of imprisonment imposed by Additional Sessions Judge, Vaijapur in Sessions

Case No. 37 of 2024 vide judgment and order dated 30th April, 2024, thereby convicting the applicants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. It is the case of prosecution that Accused No.1 – Karbhari was having matrimonial dispute with deceased – Kesharbai, who was his first wife. A litigation in that regard was pending in the Court. On 03rd October, 2020 around 11:00 a.m. when the deceased and the informant (her grandson) had gone to the Court at Vaijapur to attend the date. They were sitting outside the Court premises. Accused No.1 – Karbhari and the present applicants came there. Accused Nos. 3 and 4 i.e. Atul and Raghunath caught hold the informant. Accused No.2 - Bharat Gawali caught hold Kesharbai and Karbhari inflicted repeated blows on Kesharbai. Due to the assaults, Kesharbai suffered sever injuries to which he succumbed. Grandson of the deceased i.e. the informant reported the incident to the concerned police station on 03:15 p.m. on the same day and the criminal law was set in motion. Learned trial Court convicted all the accused persons.

3. It is submitted by learned counsel for the applicants that the applicants were not knowing whether Accused No.1 – Karbhari was having knife with him. They submit that the evidence of informant cannot be believed for more than one reason i.e. firstly for delay for four (4) hours in

lodging the F.I.R., secondly, he did not inform police about the incident when he was present in the government hospital where the deceased was taken, and thirdly, he had grudge against Accused No.1 since Accused No.1 had assaulted his father prior to the date of incident. They submit that the applicants were attributed with no role of assault. They submit that the applicants are behind the bars nearly for four years. They submit that the appeals would not come for hearing in near future, and therefore, the applications be allowed.

4. The applications are vehemently opposed by learned A.P.P. She submits that the informant is the eye witness to the incident and there is another independent eye witness to the incident present in the vicinity. She submits that the applicants prevented the informant from helping the deceased. She submits that the delay of four hours in lodging the report cannot be fatal. Also, since the informant is the relative of the applicants, has no reason to speak against them. She, therefore, urged for dismissal of the applications.

5. We have gone through the evidence on record. One of the eye witnesses, P.W.5 – Syed Mansoor was a reporter. His evidence shows that the applicants and deceased were unknown to him. Admittedly no test identification parade of the accused was conducted for the purpose of

identification by this witness. Therefore, evidence of this witness to identification of the applications was for the first time in the Court.

6. As regards evidence on P.W. 1 – Kisan Thambe (informant) is concerned, he is the grandson of the deceased. His evidence shows that he witnessed the incident. However, in his cross he admits that while he was present in the Government Hospital, Vaijapur, he did not attempt to inform the incident to police. His evidence further goes to show that he lodged the report after four (4) hours that too on arrival of his father and one Sainath. These aspects prima facie indicate that he is not a witness of sterling quality. It is clear that no role of assault is attributed to the applicants. Their conviction is with the aid of Section 34 of the I.P.C. There is no possibility that the appeals would come up for hearing in near future.

7. In view of above, execution of substantive sentence of imprisonment to stand suspended pending the appeals. The applicants be released on their executing P.R. bonds in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

8. Criminal applications stand disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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