



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2983 OF 2024
IN
CRIMINAL APPEAL NO. 745 OF 2024

Rohit Bhagwanrao Shelke

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.J. Salunke, Advocate for applicant

Dr. K.B. Patil Bharaswadkar, Addl.P.P. for respondent - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 19th SEPTEMBER, 2024

PER COURT :

1. This is an application for suspension of sentence imposed by Additional Sessions Judge, Latur vide judgment and order dated 14th March, 2024 in Sessions Case No. 141 of 2019 wherein the applicant has been convicted for the offence punishable under Section 302 of the Indian Penal Code for murder of one Arun Rathod and sentencing him to suffer imprisonment for life and fine of Rs.5,000/-, in default to suffer imprisonment for six months.

2. The case of the prosecution, as revealed from the impugned judgment is as follows :-

On 29.8.2019, Pooja Bharat Rathod lodged FIR with MIDC Police

Station, Latur alleging therein that she is residing near M.I.T. College, Latur with her parents and brothers Anil & Arun. Bhima Chavan, Dilip Chavan, Ramesh Chavan and Vinod Chavan are her maternal uncles. Bhima Chavan is residing at Bhambri Chowk, Dilip Chavan is residing next door to her, while Ramesh Chavan and Vinod Chavan are residing at new Renapur Naka, Latur. Since last six months, there are family disputes between her maternal uncle Bhima Chavan and his wife Lalita Chavan. Lalita was always quarreling with Bhima Chavan.

3. On 28.8.2019 at 7:00 p.m., Bhima Chavan called her brother Anil and said that there was quarrel between him and his wife Lalita, so his wife called her brother Nilkanth and mother Bharatbai and assaulted him and he asked him to come on road near his house i.e., on the road near Kirti Oil Mill, Bhambri Chowk, Latur. So, her brothers Anil and Arun, maternal uncle's son Anand Dilip Chavan and maternal uncle Ramesh Chavan went there. At 8:45 p.m., when they all were enquiring about the quarrel, at that time accused Nilkanth and his friends Rohit Shelke, Sagar Shinde and other two to three caused severe injuries to Anand Dilip Chavan and Arun Bharat Rathod by knife near road to Kirti Oil Mill from Bhambri Chowk, Latur. The injured were shifted to the Civil Hospital, Latur but the Doctor declared them dead.

4. As per the report lodged by the informant, Police Station Officer at MIDC Police Station, Latur registered crime, vide C.R. No. 302 of 2019 for the

offences punishable under Section 302 read with Section 34 of Indian Penal Code.

5. It is submitted by learned counsel for the applicant that in all six accused were prosecuted and though the evidence is similar, five have been acquitted. He submits that the eye witnesses turned hostile. He submits that even if the evidence of Accused Nos.6 and 7 is considered, it shows that the applicant gave single stab to the deceased. However, postmortem report shows that deceased – Arun suffered eleven stab injuries and died thereof. He further submits that when the evidence on record do not show that the applicant had caused the said eleven injuries, the applicant was entitled for acquittal or conviction for lesser offence. He submits that the evidence on record goes to show that the applicant had also suffered injuries. The applicant is behind the bars since August 2019 i.e. for more than five years. He, therefore, urged for allowing the application.

6. The application is opposed by learned A.P.P. She submits that though the material witnesses have not supported the case of the prosecution, the evidence of police witnesses, who had reached the spot of the incident deposed that the applicant had caused injury by knife. She submits that though the evidence on record shows that the applicant also suffered injuries, that cannot be the ground to grant bail. She ultimately submits that the application be rejected.

7. We have gone through the evidence on record. There is no dispute that the co-accused have been acquitted. The evidence of PW 6, 7 and 8, who were the policemen and reached the spot of the incident, shows that the applicant inflicted blow by knife to Arun. Their evidence nowhere shows that the applicant inflicted multiple blows on the deceased. In such case, it was for the prosecution to explain as to how the deceased suffered ten more injuries. The applicant had no enmity with the deceased. Applicant was the friend of the co-accused with whom the deceased had enmity. The applicant had also suffered head injury. The material witnesses did not support the prosecution case. The statements of the policemen, who witnessed the incident, were recorded after seven days. The applicant is behind the bars for more than five years. There is no possibility that the appeal would be heard finally in near future.

8. In view of above, execution of substantive sentence of imprisonment to stand suspended pending the appeal. The applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

9. Criminal application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)