

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3402 OF 2023
IN
CRIMINAL APPEAL NO. 1034 OF 2023

Parmeshwar s/o Baburao Landge,
Age : 40 years, Occu. Agri.,
R/o. Chincholi (Bhangar),
Tq. Nilanga, Dist. Latur.

...Applicant
(Orig. Accused No. 1)

Versus

The State of Maharashtra

...Respondent

.....
Mr. Tukaram M. Venjane – Advocate for the Applicant
Mr. B. B. Bhise – APP for respondent/State
.....

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

DATED : 26TH APRIL, 2024

PER COURT : -

1. This is the Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Nilanga, vide Judgment and Order dated 16.05.2023 passed in Sessions Case No. 10/2017, convicting the Applicant for the offence punishable under Section 302 of the Indian Penal Code.

2. The case of the prosecution, in brief, is that the Applicant is the Moneylender. Deceased was instigating the people not to repay the

loan which the applicant had lent. Due to the said act of the deceased, the Applicant threatened the nephew of the deceased on 24.12.2016. Thereafter, on the next day i.e. 25.12.2016, when the deceased was passing from the front of the Applicant's house, the Applicant called him inside his house and assaulted by using brick. The deceased managed to escape. The deceased sat on the bridge near the house of the Applicant. In the meanwhile, the Applicant took sickle from his house and came near the bridge and assaulted the deceased with the back side of the handle of the sickle. The deceased succumbed to the injuries. The cause of death as seen from the medical evidence is 'Cardio Respiratory Arrest due to blow / blunt chest injury on left side'. The incident was reported to the police and the crime came to be registered.

3. It is submitted by the learned advocate for the Applicant that the deceased had come to the house of the Applicant with his relatives and assaulted the Applicant. He submits that, in retaliation, the Applicant assaulted the deceased. He submits that the Applicant also suffered injuries on his person in the said assault. He submits that, even if the case of prosecution is taken as it is, the offence of murder would not be made out and at the most, the offence punishable under Section 304 Part – II of the Indian Penal Code will be made out. He submits that the Applicant is behind the bars for more than 7 years and 4 months. He submits that the Appeal would not come up for final

hearing in the near future and, therefore, the Applicant be granted bail by suspending the sentence.

4. The application is vehemently opposed by the learned APP. He submits that the Applicant firstly assaulted the deceased by using brick and thereafter went near the bridge carrying the sickle and assaulted the deceased. He further submits that even if the sharp side of the sickle is not used, carrying sickle by the applicant itself shows the intention. He submits that the deceased was assaulted on the chest, which is the vital part. He submits that since the Applicant was restrained by the crowd, there was no assault from the sharp side of the sickle. He, therefore, submits that the Application be rejected.

5. We have gone through the evidence available on record. There is no dispute that the Applicant and the deceased were knowing each other. There is also no dispute that the Applicant suffered injury on his person. Who was the aggressor at the time of incident would be examined when the Appeal would be heard finally. Had the Applicant intended to kill the deceased, he would have used the sharp side of the sickle in his house itself. However, it did not happen so. Whether the Crime could be scaled down can only be examined on deep scrutiny of the evidence at the time of final hearing of the Appeal. Applicant is behind the bars for more than 7 years and 4 months. The Appeal would

not come up for final hearing in the near future. Hence, we proceed to pass the following order.

ORDER

- [i] The Criminal Application is allowed.
- [ii] The substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Nilanga, vide Judgment and Order dated 16.05.2023 passed in Sessions Case No.10/2017, convicting the Applicant for the offence punishable under Section 302 of the Indian Penal Code, 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.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde