

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

907 CRIMINAL APPLICATION NO. 4377 OF 2024
IN
CRIMINAL APPEAL NO.987 OF 2024

1. Onkar Shankar Thakare
 2. Ambalal Onkar Thakare
 3. Dnyaneshwar Onkar Thakare
- ...Applicants

Versus

The State of Maharashtra

.....Respondent

.....

Shri. Tousif Saifuddin Shaikh a/w. Shri. Samir S. Shaikh, Advocate for Applicants

Shri. S. J. Salgare, APP for the Respondent / State

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

Dated : DECEMBER 19, 2024

PER COURT :-

. This is an Application under Section 389 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for Suspension of Sentence awarded by the learned Sessions Judge, Dhule in Sessions Case No.100 of 2020 by the Judgment and Order dated 08.06.2023 convicting the Applicants for the offence punishable under Sections 302 and 323 r/w. Section 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentencing them to suffer Life Imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand) each, in default, to further undergo Simple Imprisonment for three months.

2. The case of Prosecution, in brief, is as under :-

2.1. Deceased by name Vijay Bansi Bhil and his Wife were quarreling around 02:30 p.m. on 12.07.2020 on account of not preparing the food on time by the Wife. Thereafter, the Applicants, who are the Brothers-in-law and Father-in-law of Deceased, who were staying in the same village, came to the house of Deceased. They assaulted the Deceased. Applicant No.1 - Onkar gave fists blows on the chest of Deceased, Applicant No.2 – Ambalal throttled Deceased by holding his right hand, and Applicant No.3 - Dnyaneshwar caught hold left hand of Deceased. Deceased died of 'Asphyxia due to Manual Strangulation'. The incident was reported to the concerned Police Station and Crime came to be registered against the Applicants / Appellants.

3. Heard the learned Advocate for the Applicants and the learned A.P.P. for the Respondent / State.

4. The learned Advocate for the Applicants / Appellants submits that, he is not pressing the Application in respect of Applicant No.2 - Ambalal Onkar Thakare and the same can be disposed of. He further submits that Applicant No.1 - Onkar Shankar Thakare was the Father-in-law of Deceased and 62 years of age on the date of incident and the role attributed to him is assault by fists bows on the chest of Deceased. He submits that the role attributed to Applicant No.3 -

Dnyaneshwar Onkar Thakare is that he caught hold the left hand of Deceased. He further submits that, had the Applicants intended to commit Murder, they would have come armed with weapons. He submits that, Applicants No.1 and 3 be released on bail as the Appeal would not be heard in the near future.

5. It is submitted by the learned APP that, all the Applicants in furtherance of their common intention had come to the house of Deceased to kill him. He submits that the learned Trial Court has rightly convicted the Applicants and the Application be rejected.

6. We have gone through the evidence of the Witnesses examined by Prosecution. Prosecution have examined PW2 – Ajay Bansilal Bhil, PW3 - Lilabai Bansilal Bhil and PW6 – Latabai Shravan Bhil as the Eye Witnesses to the incident. From the evidence of eye witnesses it is clear that, the role attributed to Applicant No.1 - Onkar Shankar Thakare is that, he gave fists blows on the chest of Deceased and Applicant No.3 - Dnyaneshwar Onkar Thakare had caught hold the left hand of Deceased. The C.A. Report shows that Deceased had consumed liquor, therefore, whether holding hand of Deceased was necessary to facilitate Manual Strangulation so as to attract Section 34 of I.P.C. is debatable. The Appeal will not be heard in the near future. The Applicants No.1 and 3 are behind the bars for a period of 4 ½ (four

and half) years. Considering the role attributed the Applicants No.1 and 3, we pass the following order.

ORDER

(i) The Criminal Application to the extent of Applicant No.2 - Ambalal Onkar Thakare stands disposed of as withdrawn.

(ii) The Criminal Application is allowed to the extent of Applicant No.1 - Onkar Shankar Thakare and Applicant No.3 - Dnyaneshwar Onkar Thakare.

(iii) The substantive Sentence imposed by the learned Sessions Judge, Dhule in Sessions Case No.100 of 2020 by the Judgment and Order dated 08.06.2023 on Applicant No.1 - Onkar Shankar Thakare and Applicant No.3 - Dnyaneshwar Onkar Thakare, is suspended during the pendency of the present Appeal.

(iv) Applicant No.1 - Onkar Shankar Thakare and Applicant No.3 - Dnyaneshwar Onkar Thakare be released on bail on furnishing PR. Bond of Rs.15,000/- [Rupees Fifteen Thousand] each, with one or more surety/ sureties in the like amount.

(v) Bail before the Trial Court.

(vi) The Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP